

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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MEETING DATE: November 1, 2016 [X] Consent [ ] Regular  
[ ] Workshop [ ] Public Hearing

Department: Office of Equal Opportunity

Submitted By: Office of Equal Opportunity

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) Ratify the Mayor's signature on Cooperative Agreement No. FF204K164023 with the U.S. Department of Housing and Urban Development (HUD) allowing the Office of Equal Opportunity (OEO) to receive revenue for processing and resolving housing discrimination complaints for the period of July 1, 2015 through June 30, 2016 in the total amount of \$330,450; and

B) Approve a Budget Amendment in the HUD Fair Housing Fund (Fund 1252) in the amount of \$230,450 to recognize the increased grant revenue and charge-off from the General Fund; and

C) Approve a Budget Transfer in the General Fund (Fund 0001) to increase the contingency reserve and the charge-off to Fund 1252 by \$230,450.

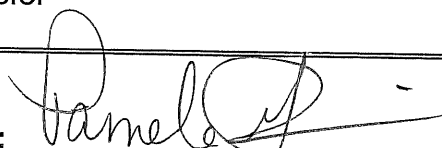
Summary: In order for OEO to receive revenue from HUD for processing and resolving housing discrimination complaints, execution of Cooperative Agreement No. FF204K164023 was required prior to September 21, 2016 to meet HUD's FY 2016 federal funding deadlines. The Agreement amount of \$330,450 represents a \$230,450 increase over the budgeted \$100,000, and includes \$241,700 for case processing; \$33,750 for training funds; and \$55,000 for administrative costs. Board ratification of the Mayor's signature will ensure the receipt of revenue under this Agreement. Countywide (DO)

Background and Policy Issues: On February 4, 1997, the BCC approved an Agreement between OEO and HUD which provided for the processing and referral of housing discrimination complaints between the respective agencies. In each year since 1997, HUD has provided revenue to OEO for the processing of dual-filed complaints of housing discrimination. Under the terms of the FY 2015-2016 contract, HUD will provide funds to OEO in the total amount of \$330,450.

Attachments:

1. Cooperative Agreement (HUD Form 1044)
2. Memorandum from Director, OEO to Mayor, BCC
3. Budget Amendment
4. Budget Transfer

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Recommended by:  19 October 2016.  
Department Director Date

Approved by:  10/26/16  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	\$0	_____	_____	_____	_____
External Revenues	230,450	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Is Item Included in Current Budget? Yes \_\_\_\_\_ No X  
 Budget Account No.: Fund \_\_\_\_\_ Agency \_\_\_\_\_ Org. \_\_\_\_\_ Object \_\_\_\_\_  
 Reporting Category: \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

These funds are to be paid to the County by the U.S. Department of Housing and Urban Development for Fair Housing activities. The funds being received are to reimburse for fiscal year 2016 expenses and they were budgeted in that year. The transfer to the General Fund will increase the Contingency Reserve Line.

**C. Departmental Fiscal Review:**

\_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

[Signature] 10/21/16  
 OFMB 10/21 10/21  
 ET JB

[Signature] 10/24/16  
 Contract Administration  
 10/24/16 TO

**B. Legal Sufficiency:**

[Signature]  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT**

OFFICE OF EQUAL OPPORTUNITY  
 U.S. DEPARTMENT OF HOUSING AND  
 URBAN DEVELOPMENT  
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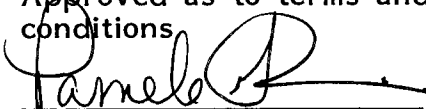
**Assistance Award/Amendment**

**U.S. Department of Housing and  
 Urban Development  
 Office of Administration**

1. Assistance Instrument <input checked="" type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Grant		2. Type of Action <input checked="" type="checkbox"/> Award <input type="checkbox"/> Amendment	
3. Instrument Number FF204K164023	4. Amendment Number	6. Control Number	
7. Name and Address of Recipient Palm Beach County Office of Equal Opportunity 301 N. Olive Avenue, 10 <sup>th</sup> Floor West Palm Beach, Florida 33401 TAX ID# 59-6000785 DUNS# 078470481		8. HUD Administering Office U.S. Department of HUD/FHEO Five Points Plaza, 40 Marietta Street., NW Atlanta, GA 30303	
		8a. Name of Administrator Carlos Osegueda	8b. Telephone Number 678-732-2905
10. Recipient Project Manager Pamela Guerrier, Executive Director		9. HUD Government Technical Representative Vicki A. Ray	
11. Assistance Arrangement <input type="checkbox"/> Cost Reimbursement <input type="checkbox"/> Cost Sharing <input checked="" type="checkbox"/> Fixed Price	12. Payment Method <input type="checkbox"/> Treasury Check Reimbursement <input type="checkbox"/> Advance Check <input checked="" type="checkbox"/> Automated Clearinghouse	13. HUD Payment Office HUD CFO Accounting Center P.O. Box 901013 Fort Worth, TX 76101	
14. Assistance Amount		15. HUD Accounting and Appropriation Data	
Previous HUD Amount	\$0.00	15a. Appropriation Number 8616/170144(TIN) (G, 16)	15b. Reservation number FHEO-04-16-01
HUD Amount this action	\$330,450.00	Amount Previously Obligated	\$0.00
Total HUD Amount	\$330,450.00	Obligation by this action	\$330,450.00
Recipient Amount	\$0.00	Total Obligation	\$330,450.00
Total Instrument Amount	\$330,450.00		

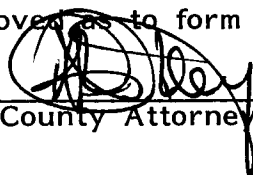
16. Description  
 THE COOPERATIVE AGREEMENT FOR FAIR HOUSING ASSISTANCE PROGRAM (FHAP) FY 2016. This agreement consists of the following, which is incorporated herein and made a part hereof:



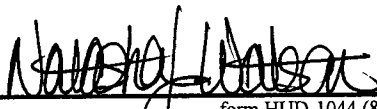
- Form HUD 1044, Assistance Award
- Schedule of Articles including Appendix A, Contributions Agreement Statement of Work
- Attachments: Attachment A – Criteria for Processing (FY 2016)  
Attachment B – Standards for Timelines

Approved as to terms and conditions  
  
 Pamela Guerrier, Director  
 Office of Equal Opportunity

**FUNDS ARE DESIGNATED AS FOLLOWS:**

CASE PROCESSING (TIN) (7/01/2015 – 6/30/2016) (87): \$241,700.00  
 (This amount includes adjustments for FY 2015 post cause conciliations).  
 CAUSE CASE ADMINISTRATIVE HEARING HELD (TIN) (1): \$5,000.00  
 ADMINISTRATIVE COST FUNDS (ADC): \$55,000.00  
 FY 2016 TRAINING FUNDS (TRG): \$28,750.00  
 TOTAL THIS ACTION: \$330,450.00  
 TOTAL CONTRACT AMOUNT: \$330,450.00  
 EXPIRATION DATE: 9/30/2021

Approved as to form and legal sufficiency  
  
 County Attorney

17. <input checked="" type="checkbox"/> Recipient is required to sign and return three (3) copies of this document to the HUD Administering Office		18. <input type="checkbox"/> Recipient is not required to sign this document.	
19. Recipient (By Name) Mary Lou Berger, Mayor Palm Beach County, Board of County Commissioners		20. HUD (By Name)  Carlos Osegueda, FHEO Region IV Director/CAO	
Signature & Title 	Date (mm/dd/yyyy) 09/19/2016	Signature & Title 	Date (mm/dd/yyyy) 09/21/2016

**2016 CONTRIBUTIONS AGREEMENT**

HUD  
OFFICE OF  
EQUAL OPPORTUNITY  
16 OCT -3 PM 2:01

**SCHEDULE OF ARTICLES**

1. SCOPE OF WORK (FIXED PRICE)
2. PERIODS OF PERFORMANCE
3. INSPECTION AND ACCEPTANCE
4. CONDUCT OF WORK
5. INSTRUMENT AMOUNT AND REQUESTS FOR PAYMENT
6. NARRATIVE REPORT
7. CRITERIA FOR PROCESSING
8. 24 CFR PART 200
9. USE OF COOPERATIVE AGREEMENT FUNDS
10. MAINTENANCE OF EFFORT
11. HUD'S SUBSTANTIAL INVOLVEMENT
12. ASSURANCES
13. USE OF CONSULTANTS
14. PUBLICATIONS AND NEWS RELEASES
15. REPRODUCTION OF REPORTS
16. FLOW DOWN PROVISIONS
17. DISPUTES
18. MAINTENANCE OF RECORDS
19. CUSTOMER SERVICE STANDARDS
20. REPORTING REQUIREMENTS
21. TRAINING
22. INITIAL CONTACT DATE
23. CHANGES LIMITING EFFECTIVENESS OF RECIPIENT'S LAW
24. FHAP AND FIRST AMENDMENT
25. TESTING

26. RELEASE OF INFORMATION WHILE COMPLAINT IS OPEN
27. SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL STATUS, AND SOURCE OF INCOME CAUSE DETERMINATIONS

Appendix A: Statement of Work

Attachment A: Criteria for Processing

Attachment B: Standards for Timeliness

Attachment C: Payment Amounts for FHAP Complaint Processing

**1. SCOPE OF WORK (FIXED PRICE)**

The Recipient (or Agency) shall furnish all the necessary personnel, materials, services, equipment, facilities (except at otherwise specified herein) and otherwise do all things necessary for or incidental to the performance of the work set forth in the Statement of Work (SOW) and all attachments for the firm fixed price set forth herein.

**2. PERIODS OF PERFORMANCE**

The Recipient shall provide all services hereunder during the periods of performance.

For the **FY2016** Cooperative Agreement, the periods of performance are as follows:

Complaint Processing: July 1, 2015 – June 30, 2016

Administrative Costs, Training: October 1, 2015 – September 30, 2016

**Note:** While as a general rule, the cut-off day for incurring administrative costs is September 30, 2016, the GTR may change the cut-off date to several days before the end of the fiscal year if that is necessary to complete closeout documentation.

**3. INSPECTION AND ACCEPTANCE**

The Government Technical Monitor (GTM), if so delegated, may accomplish inspection and acceptance of all but the final products. The Government Technical Representative (GTR) shall accomplish acceptance of all final products. The GTR is identified in Block 9 of the HUD-1044.

**4. CONDUCT OF WORK**

During the effective period of this instrument, the GTR or GTM shall be responsible for monitoring the technical effort of the Recipient, unless the Recipient is notified in writing by the Cooperative Agreement Officer (CAO) of a replacement. The CAO is identified in Block 8a of the HUD-1044.

Only the CAO has the power to authorize deviations from this instrument, including deviations from the Statement of Work. In the event the Recipient does deviate without written approval of the CAO, such deviation shall be at the risk of the Recipient, and any costs related thereto shall be borne by the Recipient.

**5. INSTRUMENT AMOUNT AND REQUESTS FOR PAYMENT**

Agencies that have received Capacity Building funds for one year may be eligible for Contributions funds. Contributions funds consist of three categories: Complaint Processing; Administrative Costs; and Training. For FY2016, HUD may also provide an "Enforcement Fund" through Special Enforcement Efforts (SEE) Funding as well as Partnership funds.

- **Complaint Processing** - GTRs shall determine payment amounts based upon the FY2016 Payment Amounts for FHAP Complaint Processing, which are found at Attachment C.
- **Administrative Costs** - Agencies that acceptably process 100 cases or more shall receive 20% of the Recipient's FHAP obligation amount for the preceding year. *For agencies that process fewer than 100 cases, see FY2016 Funding Guidance for FHAP "Contributions Agencies" for the funding framework.* **Training** - All agencies are eligible to receive training funds for attendance at the National Fair Housing Training Academy (NFHTA), and other HUD-approved or HUD-sponsored training. *See FY2016 FHAP Funding Guidance for specific requirements related to training funds.*
- **Special Enforcement Effort (SEE) Funds** – HUD may make available up to \$1.0 million in SEE funds for FY 2016 through the implementation of an *Enforcement Fund*. SEE funds are funds that HUD may provide to an agency to enhance enforcement activities of the agency's fair housing law. In the event these funds are made available, agencies applying for an award from the Enforcement Fund such funds must meet the eligibility criteria set forth in 24 CFR.§ 115.305(a)(1)-(a)(6).

Guidance governing the operation of the fund is being developed and will be distributed if the funds are made available. It is envisioned that that decisions on requests for distributions will be made by the FHAP Division in FHEO Headquarters on a case-by-case basis with the actual fund commitment taking place in the field as with all other FHAP funds.

- **Partnership Funds** – HUD may make available up to \$1.9 million on Partnership funds for FY2016. Specific guidance will be issued if the funds are made available.

The maximum amount for performance under the Articles of this Cooperative Agreement, Appendix, and Attachments, is the total amounts of all categories of Contributions funds (*i.e.*, Complaint Processing, Administrative Costs, and Training (as well as SEE and Partnership funds if such funds are made available)). Draw-downs are permitted at the discretion of the GTR. Complete draw-downs of the total amount obligated for Complaint Processing funds shall be permitted at any point after June 30, 2016, and before September 30, 2016. Payment is subject to withholding if the CAO determines that the Recipient is not complying with all terms of the Cooperative Agreement, the Appendix, and all Attachments hereto.

## 6. NARRATIVE REPORT

A Narrative Report describing activities undertaken during the periods of performance pursuant to which payment is being requested is required. The Narrative Report shall include a listing of complaints acceptably processed, including the name of complainant, respondent, and date closed, type of closure, date referred to legal for enforcement action, information on investigative and conciliation techniques, and descriptions of all activities undertaken to justify all administrative closures. This list must demonstrate that the agency receives and processes a reasonable number of

complaints cognizable under the Fair Housing Act, as required in 24 CFR § 115.206(e)(7). The Narrative Report shall also include a description of outreach activities undertaken in support of fair housing case processing to educate the public on fair housing rights and responsibilities. The GTR/GTM should verify that the Recipient is undertaking the education and outreach activities identified. If the Recipient meets the requirements outlined in the *FY2016 FHAP Funding Guidance*, remaining funds may be used to undertake the fair housing education and outreach activities.

#### **7. CRITERIA FOR PROCESSING**

The Criteria for Processing are the standards by which HUD determines whether a complaint, cognizable under the Fair Housing Act and processed by the Recipient, warrants reimbursement with FHAP funds. The Criteria for Processing are incorporated as Attachment A.

#### **8. 24 CFR PART 200**

The Administrative Requirements for Grants and Cooperative Agreements (2 C.F.R. part 200) are hereby incorporated by reference. The Agency must be familiar with these requirements and verify to the GTR/GTM that the Recipient has a copy on file. A copy of Part 200 may be obtained from your GTR/GTM.

#### **9. USE OF COOPERATIVE AGREEMENT FUNDS AND NO CO-MINGLING**

The Recipient is entitled to receive the fixed amount identified in Block 14 of the HUD-1044 for satisfactory completion of the work to be performed, regardless of costs incurred. FHAP funds must be used for the purpose that HUD provided the funds including the processing of complaints cognizable under the Fair Housing Act, training under the Fair Housing Act and the state or local fair housing law, administrative costs associated with fair housing complaint processing, creation and maintenance of data and information systems, and the development and maintenance of fair housing education and outreach projects. The Recipient must segregate FHAP funds from the Recipient's and the state or local government's other funds.

#### **10. MAINTENANCE OF EFFORT**

The Recipient must spend at least 20 percent of its total annual budget on fair housing activities if it enforces antidiscrimination law(s) other than a fair housing law. The term "total annual budget" means the entire budget assigned by the jurisdiction to the agency for enforcing and administering antidiscrimination laws, but does not include FHAP funds.

Maintenance of effort also means that the Recipient shall not unilaterally reduce the level of financial resources currently committed to fair housing. Budget and staff reductions occasioned by legislative action outside the control of the Recipient will not, alone, result in a determination of ineligibility. However, HUD will take such actions into consideration in assessing the ongoing viability of a Recipient's fair housing program.



## **11. HUD'S SUBSTANTIAL INVOLVEMENT**

- A. HUD intends to have substantial involvement in the review and approval of all aspects of the work to be carried out as a result of an award under this Agreement.
- B. Anticipated substantial involvement may include, but is not necessarily limited to, the following:
  - 1. Review and guidance during and upon completion of cases cognizable under the Fair Housing Act;
  - 2. Requests for additional information on cases to provide clarification or for completeness of a case investigation or file;
  - 3. Development and presentation of national and regional office fair housing investigation and conciliation training;
  - 4. Participation in the development and presentation of in-house investigation and conciliation training;
  - 5. Participation and approval of education and outreach programs or materials;
  - 6. Provision of appropriate directives and guidance for case processing;
  - 7. Assistance in the investigation, conciliation, and/or enforcement of fair housing cases cognizable under the Fair Housing Act;
  - 8. Requests for updates on the final status of cause determinations; and
  - 9. Review and analysis of agency's fair housing law for determinations of continued substantial equivalence to the Fair Housing Act.

## **12. ASSURANCES**

As a condition for the receipt of FHAP funds, the Recipient assures HUD that it will:

- A. Provide a drug-free workplace;
- B. Comply with the provision of the Hatch Act (5 U.S.C. Sections 1501-1508 and 7324-7328) which limits the political activities of employees whose principle employment activities are funded in whole or part with Federal funds;
- C. Establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain;
- D. Comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Sections 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the

nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F);

- E. Comply with all federal nondiscrimination laws including, but not necessarily limited to: (a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by recipients of federal financial assistance (b) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex by recipients of federal financial assistance ; (c) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability by recipients of federal financial assistance, and (d) the Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age by recipients of federal financial assistance;
- F. Comply with all applicable requirements of federal laws, executive orders, regulations, and policies governing this program; and
- G. Comply with the requirements of the Resource Conservation and Recovery Act which mandates that state agencies using federal funds for procurement programs give preference to products containing recycled materials when purchasing specific products identified in guidelines developed by the Environmental Protection Agency (40 CFR 247-253).

### **13. USE OF CONSULTANTS**

Salary payments to consultants under this instrument shall not exceed the equivalent of the maximum daily rate paid to level IV of the Executive Schedule, as evidenced by current pay vouchers.

### **14. PUBLICATIONS AND NEWS RELEASES**

A. Definition. For the purpose of this clause, "publication" includes:

- (1) Any document containing information for public consumption;
- (2) The act of, or any act that may result in, disclosing information to the public; or
- (3) Any products resulting from the education and outreach efforts of the Recipient that are planned to be made available to the public through dedication, assignment by the Government, or other such means as HUD shall determine.

B. Government Ownership of Official Products of Work

All interim and final reports and information, data analyses, special methodology, findings, and their related documents and work products, including reports, work sheets, survey instruments, computer tapes, and any other physical materials and products produced directly under the SOW of this instrument are considered Official Products of Work, owned by the U.S. Government and held for the benefit of the public.

C. Publication of Official Products of Work

Official Products of Work, quotations there from, paraphrasing, or disclosures of interim findings may not be published without the approval of the GTR for a period of sixty (60) days after acceptance of the product by the GTR. Thereafter, the Recipient shall be free to publish without HUD approval.

#### D. Acknowledgement and Disclaimer

All Official Products of Work, or any part thereof, and any Independent Products and Special Products arising out of this instrument, when published by Recipient or other participants in the work, shall contain the following acknowledgment and disclaimer:

“The work that provided the basis for this publication was supported by funding under a Cooperative Agreement with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Government.”

#### E. Notice of News Release and Public Announcements

Copies of all press releases, formal announcements, and other planned, written issuances containing news or information concerning this instrument that may be made by the Recipient or its staff, or any subcontractor or other person or organization participating in the work of this instrument shall be provided to the GTR at the earliest possible time. News releases and other public announcements may not disclose any interim finding or quote or paraphrase any part of any Official Product of Work without complying with paragraph D above, entitled Acknowledgement and Disclaimer.

The Recipient agrees that no news releases or public announcements involving FHAP funded activities will be released to the public without prior HUD approval. The Recipient further agrees that it will submit any and all press releases/news announcements, studies and/or other products developed with FHAP funds to the GTR for review and approval of at least two weeks prior to its release, unless HUD agrees to waive the two-week submission requirements. Publication flyers, and other routine documents previously approved by the GTR and/or the Department, may be published without further HUD approval.

### 15. REPRODUCTION OF REPORTS

In accordance with Government Printing and Binding Regulations, reproduction of reports, data or other written materials, if required herein, is authorized, provided that the materials produced do not exceed 5,000 production units of any page and the items consisting of multiple pages do not exceed 25,000 production units in aggregate.

## **16. FLOW DOWN PROVISIONS**

The Recipient shall include provisions of this instrument in all contracts of employment with persons who perform any part of the work under this instrument, and with all subcontractors and other persons or organizations participating in any part of the work under this instrument. There shall be provisions for a further flow down of such requirements to each sub-tier of employees and subcontractors to the extent feasible. If the Recipient subcontracts to a public or private organization any activity for which it receives FHAP funds, it must ensure in writing that the organization is complying with all relevant civil rights laws including: (a) Title VI of the Civil Rights Act of 1964; (b) Title IX of the Education Amendments of 1972, as amended; (c) Section 504 of the Rehabilitation Act of 1973; and (d) the Age Discrimination Act of 1975.

## **17. DISPUTES**

During performance of the instrument, disagreements may arise between the Recipient and the GTR on various issues, such as the acceptability of complaints forwarded for reimbursement. If a dispute arises, the CAO shall be the final authority on the matter and shall prepare a final decision, taking into account all facts and documentation presented. The CAO's decision shall be mailed, emailed, faxed, or telephonically provided to the Recipient.

## **18. MAINTENANCE OF RECORDS**

The GTR and CAO are to maintain all appropriate records relating to the implementation of this cooperative agreement for a period of 5 years for the GTR files and a period of 7 years for the CAO files. The files for the CAO are to be kept in a secure place and should be accessible to others only with the CAO's permission. After 7 and 5 years respectively, the records may be archived at the records center.

The Recipient agrees to maintain records demonstrating its financial administration of FHAP funds. The Recipient also agrees to maintain records of its performance under FHAP, including all past performance assessment reports, performance improvement plans, and other documents relative to the Recipient's performance.

The Recipient agrees to permit reasonable public access to its records as required at 24 CFR § 115.308(c) (i.e., records are made available at the agency's office during normal working hours for public review). The Recipient agrees to permit the Secretary of HUD, Inspector General of HUD, Comptroller General of the United States, and any of their authorized representatives, access to all the pertinent books, accounts, reports, files, and other payments for surveys, audits, examinations, excerpts and transcripts as they relate to the agency's participation in the FHAP. The Recipient agrees to keep files in such a fashion as to permit the audits under applicable Office of Management and Budget circulars, procurement regulations and guidelines, and the Single Audit requirements for state and local agencies.

## **19. CUSTOMER SERVICE STANDARDS**

The Recipient agrees to ensure that any and all individuals associated with fair housing complaints, including aggrieved persons, complainants, respondents, and representatives, are treated with dignity and respect. The Recipient agrees to maintain regular contact with parties to a complaint, including not allowing more than 30 business days to pass without some form of contact with parties. The Recipient agrees that its staff will not communicate disinterest or distrust in the complaint process to any of the parties to the complaint. Complaints to HUD from individuals associated with FHAP fair housing complaints will be reviewed by the GTR. The GTR will work with the Recipient and the individual to resolve the matter. In addition, customer satisfaction issues identified that may impact the timely and effective processing of fair housing complaints will be considered when HUD conducts performance assessments of the Recipient in accordance with 24 CFR § 115.206.

## **20. REPORTING REQUIREMENTS**

The Recipient agrees to provide the GTR timely information on all fair housing complaints cognizable under the Fair Housing Act, from receipt to closure, regardless of whether payment has been received by the Recipient.

The Recipient agrees to fully utilize the HUD Enforcement Management Systems (HEMS) and input information in HEMS in a timely manner. Failure to meet this requirement shall result in HUD identifying such failure as a deficiency in the FHAP agency's performance assessment, thereby authorizing HUD to proceed with performance deficiency procedures enumerated in the FHAP regulation at 24 CFR § 115.210.

## **21. TRAINING**

The Recipient agrees to send staff to mandatory training sponsored by HUD, including, but not necessarily limited to, the National Fair Housing Training Academy and the National Fair Housing Policy Conference.

## **22. INITIAL CONTACT DATE**

The Recipient must use the Initial Contact Date field in HEMS to record the actual date on which a complainant first contacts the Recipient or FHEO to inquire about filing a housing discrimination complaint, or to report an alleged discriminatory housing practice. The Recipient will be required to comply with the following procedures with respect to documenting a complainant's initial contact.

For cases initially filed with the Recipient, the Recipient must:

- A) Maintain records of each complainant's initial contact with the Recipient, including records of all telephone, e-mail, letters, and in-person contacts;

- B) Place the original record of a complainant's initial contact, or a copy of that record, in the case file under the complainant's evidence section of the file, consistent with the requirements of Chapter 10 of the Title VIII Manual; and
- C) Ensure that the Initial Contact Date field in HEMS reflects the earliest date of contact referenced in the case file.

For cases initially filed with FHEO, the Recipient:

- A) Must ensure that the Initial Contact Date filed in HEMS reflects the earliest date of contact referenced in the case file referred to the Recipient by FHEO;
- B) Must not change the date that FHEO entered in the Initial Contact Date field in HEMS even if records contained in the case file received from FHEO reflect a later date of contact by the complainant. If FHEO has entered an initial date of contact in HEMS that is earlier than any contact date referenced in the case file, the Recipient must contact the FHEO regional office to obtain any records of contact that may have been omitted from the case file.

### **23. CHANGES LIMITING EFFECTIVENESS OF RECIPIENT'S LAW**

Pursuant to 24 C.F.R. 115.211(a), if a state or local fair housing law that a Recipient enforces is amended, or rules or procedures concerning the fair housing law are adopted, or judicial or other authoritative interpretations of the fair housing law are issued, the Recipient must notify HUD's Fair Housing Assistance Program Division within 60 days of its discovery. This requirement also applies to the amendment, adoption, or interpretation of any related law that bears on any aspect of the effectiveness of the FHAP agency's fair housing law. Send correspondence to:

Director, Fair Housing Assistance Program Division  
Office of Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
451 Seventh Street, SW, Room 5206  
Washington, DC 20410

### **24. FHAP AND THE FIRST AMENDMENT**

None of the funding made available under the FHAP may be used to investigate or prosecute any activity engaged in by one or more persons that may be protected by the First Amendment of the United States Constitution.

### **25. TESTING**

The following requirements apply to testing activities funded under the FHAP:

- A. Testing must be done in accordance with a HUD-approved testing methodology;

- B. Testers must not have prior felony convictions or convictions of any crimes involving fraud or perjury;
- C. Testers must receive training or be experienced in testing procedures and techniques;
- D. Testers and the organizations conducting tests, and the employees and agents of these organizations, may not: 1) have an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury; 2) be a relative or acquaintance of any party in a case; 3) have had any employment or other affiliation, within five years, with the person or organization; or 4) or be a competitor of the person or organization to be tested in the listing, rental, sale or financing of real estate.

**26. RELEASE OF INFORMATION WHILE COMPLAINT IS OPEN**

As a general rule, the Recipient will not release information collected during the course of the investigation while the complaint is open. There are three exceptions. First, the Recipient will provide information to HUD, consistent with Section 11 of this document. Second, a party to a complaint being investigated by the Recipient is entitled to receive a copy of any document it submitted during the investigation of the complaint. Third, during conciliation, a conciliator may opt to use the strategy of revealing portions of the evidentiary section of the investigative file to the parties. This type of disclosure may also occur during an investigation when a Recipient investigator questions a party or a witness about a document or a statement in a document.

**27. SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL STATUS, AND SOURCE OF INCOME CAUSE DETERMINATIONS**

Recipient must submit to the Fair Housing Assistance Program (FHAP) Division copies of sexual orientation, gender identity, marital status, and source of income cause determinations. The General Section of HUD's Notice of Funding Availability (NOFA) deems ineligible applicants that have not satisfactorily resolved a cause determination from a FHAP agency for a systemic violation of a state or local prohibition of sexual orientation, gender identity, and source of income housing discrimination. Additionally, on February 3, 2012, HUD issued a final rule entitled Equal Access to Housing in HUD Programs Regardless of Sexual Orientation and Gender Identity, which mandates recipients of HUD funds, FHA-insured lenders, and FHA-mortgagors to provide access to HUD programs without regard to sexual orientation, gender identity, and marital status. Receipt of cause determinations from FHAP agencies on these issues will assist HUD in determining whether an applicant is ineligible for funding under the NOFA and/or has violated the Equal Access Rule. FHAP agencies should submit such determinations electronically to [LGBTfairhousing@hud.gov](mailto:LGBTfairhousing@hud.gov), or send hardcopies to:

Director, Fair Housing Assistance Program Division  
 Office of Fair Housing and Equal Opportunity  
 U.S. Department of Housing and Urban Development  
 451 Seventh Street, SW, Room 5206  
 Washington, DC 20410

**APPENDIX A - CONTRIBUTIONS AGREEMENT STATEMENT OF WORK  
FY 2016**

1. The Recipient agrees to process housing discrimination complaints cognizable under the Fair Housing Act in accordance with the Agreement for the Interim Referral of Complaints and Other Utilization of Services (Interim Agreement) or Memorandum of Understanding (MOU) between the Recipient and HUD, the Schedule of Articles, the Criteria for Processing, and 24 C.F.R. Part 115.
2. The Recipient agrees to cooperate with HUD in the processing of housing discrimination complaints cognizable under the Fair Housing Act in accordance with the Interim Agreement, MOU, the Schedule of Articles, the Criteria for Processing, and 24 C.F.R. Part 115.
3. The Recipient agrees to augment its fair housing enforcement efforts by engaging in outreach and education, and engaging and participating in training and technical assistance pursuant to the Interim Agreement and MOU.
4. The Recipient agrees to follow HUD's guidance in processing complaints cognizable under the Fair Housing Act unless and until the Department rescinds such requirement in writing to the Recipient.
5. The Recipient agrees to identify to HUD all staff assigned to carry out fair housing activities by name, position, salary, relevant experience, and percentage of time spent carrying out fair housing responsibilities.
6. The Recipient may be required to participate in customer satisfaction evaluation activities under this agreement. The Recipient agrees to furnish to HUD all information collected from its customers in the form specified by HUD.
7. If the Recipient has aged cases, upon request from HUD, the Recipient must provide updates to HUD on its handling of aged cases and submit a plan to the GTR/GTM for closing such cases.



## ATTACHMENT A

### **FY2016 Criteria for Processing**

The Criteria for Processing (Criteria) are the standards by which HUD determines whether a complaint, cognizable under the federal Fair Housing Act and processed by a substantially equivalent state or local agency, meets the minimum requirements for quality and timeliness, and identify the documents that must be submitted to HUD in order to receive reimbursement. The Criteria are designed to assure the uniform, timely, and quality processing of housing discrimination complaints processed under substantially equivalent fair housing laws.

The Criteria are enumerated under major subheadings, most of which describe the type of closure, (*e.g.*, cause, no cause, conciliation, etc.). Subheadings I through III set out criteria that apply to most complaints. Subheadings IV through VII set forth additional criteria specific to particular types of complaint closure. For example, to meet the criteria for an administrative closure, criteria under subheadings I (Complaint Filing), II (Notification), III (Cause and No Cause Determinations), VII (Administrative Closures) may need to be met.

An agency must meet the Criteria for each complaint processed and provide all complaint-related documentation identified in the Criteria to HUD within 30 days of completion of complaint processing. Such documentation must be submitted to HUD via the HUD Enforcement Management System (HEMS). An agency's failure to input all required information in HEMS in a timely manner will negatively impact an agency's performance rating.

HUD will address a failure to meet the Criteria through performance deficiency procedures including, but not limited to, technical assistance, performance improvement plans, and suspension from FHAP participation. See 24 C.F.R. § 115.307(a)(3) and 24 C.F.R. § 115.210.

HUD utilizes complaint closure review forms which combine the Criteria for Processing and the Standards for Timeliness into checklists for each type of complaint closure. These forms are available to FHAP agencies as an additional technical assistance tool to support high quality case processing.

## I. COMPLAINT FILING

### A. Quality Requirements:

1. All complaints must be timely filed in accordance with the substantially equivalent state or local fair housing law.
2. All complaints must be in writing, signed by the complainant, and contain the following information:
  - a. The name and address of complainant;
  - b. The name and address of each respondent;
  - c. If a specific property is involved, the property's address and physical description, such as apartment, condominium, house or vacant lot; and
  - d. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.
3. Where the agency determines that there is insufficient information in the complaint to commence an investigation, the agency must notify the complainant in writing by no later than the 5<sup>th</sup> day after receipt of the complaint and inform the complainant what information he or she must provide in order to commence an investigation, and identify a reasonable timeframe for submitting such information. The agency must notify the complainant that unless he or she provides the required information within the specified timeframe, the agency may dismiss the complaint.
4. The FHAP agency must permit complaints to be filed with the assistance of an authorized representative or organization of the complainant.
5. The FHAP agency must permit complaints to be reasonably and fairly amended at any time. Such amendments may include, but are not limited to: a) amendments to cure technical defects or omissions; b) clarification, amplifications, or amendments of allegations in a complaint; or c) joinder of additional or substitute respondents. The FHAP agency should consider amended complaints as having been filed on the date the original complaint was filed.
6. If a FHAP agency requires complaints to be notarized, HUD will not reimburse the agency for a complaint not filed because the complainant did not get the complaint notarized. To preserve the rights of aggrieved

persons, a FHAP agency must refer such complaints to HUD for investigation under the federal Fair Housing Act as soon as practicable and, where necessary, consent to their reactivation.

7. Pursuant to 24 CFR Section 115.210, and the March 7, 2001 memorandum entitled Limitations on Accepting as Dual-Filings FHAP Cases That Implicate First Amendment, HUD will not reimburse FHAP agencies for complaints that implicate the First Amendment of the U.S. Constitution. The FHAP agency must alert HUD to complaints that it receives that may implicate the First Amendment so that HUD may analyze the complaint and determine if reimbursement is appropriate.
8. Pursuant to a Memorandum of Understanding between HUD and the Internal Revenue Service, the FHAP agency must identify in HEMS whether the property named in a complaint receives Low Income Housing Tax Credits. This is required for every complaint.
9. The FHAP agency must refer complaints to HUD when the agency receives allegations involving a practice that is not prohibited by the substantially equivalent State or local law, but which is prohibited by the federal Fair Housing Act.
10. If a housing discrimination complaint is filed against a recipient of federal financial assistance and therefore implicates civil rights laws that FHEO enforces other than the federal Fair Housing Act (multi-jurisdictional), the FHAP agency shall notify FHEO so that FHEO may process that portion of the complaint. Other civil rights laws enforced by FHEO include:
  - a. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (prohibiting discrimination on the basis of race, color or national origin in programs or activities receiving federal financial assistance);
  - b. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (prohibiting discrimination based on disability in programs or activities receiving federal financial assistance);
  - c. Section 109 of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309 (prohibiting discrimination on the basis of race, color, national origin, religion or sex in any program or activity funded in whole or in part by the community development block grant programs);
  - d. Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101

et seq. (prohibiting discrimination based on disability in programs, services and activities made available by public entities);

- e. Architectural Barriers Act, 42 U.S.C. § 4151 et seq. (providing that buildings, including publicly owned residences, designed constructed, leased or altered with certain federal funds must be accessible to persons with disabilities); and
- f. Age Discrimination Act of 1975, 42 U.S.C. § 6101 (prohibiting discrimination based on age in programs or activities receiving federal financial assistance).

B. Required Documents: A signed, dated copy of the complaint, any requests for amendment(s) to the complaint, and evidence of compliance with the timeframes and requirements identified above.

C. Complaint Filing with Multiple Complainants or Respondents:

FHAP agencies will be reimbursed only for complaints that involve separate, distinct discriminatory actions that require a separate investigation. Where allegations may be made against two or more respondents, separate complaints should be filed against each respondent only when each respondent's conduct stands alone as a separate violation of the Act. Furthermore, if complainants are married and both are aggrieved persons, a single, joint complaint should be filed. If there are children under age 18 who reside in the household who may have been injured by the alleged discriminatory housing practice(s), they should be listed as "Other Aggrieved Persons" on that same complaint. FHAP agencies should not typically file separate complaints for spouses or children under 18 residing in the household.

## II. NOTIFICATION

A. Quality Requirements: The FHAP agency must notify HUD within 5 days of receiving complaints that are cognizable under the federal Fair Housing Act. In addition, the FHAP agency must serve notice of the complaint to each complainant and respondent in accordance with the timeframes identified in the substantially equivalent law and the following requirements.

- 1. The notification letter to the complainant must consist of an acknowledgement of receipt of the complaint for filing, the designation of a complaint number, information related to the agency's processing procedures including the name and telephone number of a FHAP agency contact, and the complainant's rights and obligations under the substantially equivalent law, including time limits and choice of forums.

2. The notification letter to each of the respondents must consist of a description of the alleged housing discrimination practice upon which the complaint is based, include a copy of the complaint, and identify the name and telephone number of a FHAP agency contact. The notice to each respondent must advise respondent of his or her procedural rights and obligations, including the right to file an answer within the timeframe identified in the substantially equivalent law.
  3. A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of the investigation, may be joined as an additional or substitute respondent by service of a written notice. The notice must explain the basis for the agency's belief that the joined person is properly joined as a respondent and include information identified in paragraph 2 above.
- B. Required Documents: For complaints that are filed directly with the FHAP agency, the agency must enter information in HEMS regarding the complaint within five days of receiving the complaint, sufficiently notifying HUD of the complaint. In addition, the agency must provide HUD with a copy of the notification letters sent to the parties and must update HEMS to indicate when the agency sent the notification letters.

### III. CRITERIA FOR CAUSE AND NO CAUSE DETERMINATION

Every cause or no cause determination must be based on an investigation that includes sufficient consideration of the complainant's and respondent's evidence, and a sufficient evaluation of any and all conflicting evidence. A cause or no cause determination must be based on a review of all relevant evidence the agency obtained during the investigation. The agency shall not act as an advocate for either the complainant or respondent and shall weigh the evidence objectively in light of the relevant substantially equivalent law. The basis for the cause or no cause determination must be well-documented.

A. Quality Requirements:

In addition to the criteria set forth in subheadings I and II above:

1. Before the end of the 30<sup>th</sup> day after the complaint is filed, the FHAP agency must initiate a comprehensive investigation of issues raised in the complaint. Respondent's defenses, relevant policies and practices, as well as all other relevant data, must be identified and analyzed and the complainant, respondent, and all relevant witnesses must be interviewed. Contradictions between complainant's allegations and respondent's

response must be investigated and when applicable, comparative data must be obtained. Information must be independently corroborated. Simply obtaining respondents' statements rebutting complainant's allegations is insufficient to resolve disputed issues of fact.

2. HUD recommends that FHAP agencies develop investigative plans for every complaint processed that is cognizable under the Fair Housing Act. For guidance on development of an investigative plan, FHAP agencies should refer to Chapter 7 of HUD Handbook 8024.01 REV-2 (Title VIII Complaint Intake, Investigation, and Conciliation Handbook).
3. In planning the investigation, the investigator and his/her supervisor must determine, on a complaint-by-complaint basis, whether on-site inspections and/or interviews are required. For most complaints, on-site inspections and/or interviews are the most thorough way to conduct an investigation. Some cases, *e.g.*, where the complaint does not involve factual disputes or where evidence clearly demonstrates the allegations do not have merit, may not require an onsite visit.
4. During the period beginning with the filing of a complaint and ending with the FHAP agency's determination or charge of discrimination, the agency, to the extent feasible, must attempt to conciliate the complaint (see more detail on criteria for conciliation attempts and conciliation agreements in Section IV of this document).
5. If the agency does not complete the investigative activities with respect to a complaint within 100 days from the date of receipt, it must notify the parties in writing of the reason(s) for the delay. Such notification letters must be sent within 110 days of the filing of the complaint.
6. At the end of each investigation, the agency shall prepare a Final Investigative Report (FIR). An FIR shall be dated and signed by at least one supervisor. The FIR shall contain:
  - a. The names and dates of contacts with the parties and witnesses, except that the report will not disclose the names of witnesses who request anonymity;
  - b. A summary of correspondence and other contacts with the complainant and the respondent;
  - c. A summary description identifying other pertinent records examined;

- d. A summary of statements by witnesses, if applicable; and/or
  - e. Interrogatories and answers provided, if applicable.
7. Each Determination shall be signed and dated by an authorized FHAP official.
  8. The FHAP agency shall send the closure package to HUD within 30 days of closure. (See B below).
  9. The FHAP agency will cooperate with HUD by providing information at regular intervals or upon request related to individual complaint investigations. Upon request, the FHAP agency shall provide status reports for each complaint that is over 100 days old.
- B. Required Documents: The case file shall include all evidence indicating that a comprehensive investigation was commenced and completed in accordance with the above requirements including, but not limited to: a copy of a signed, dated complaint; a copy of a FHAP agency determination, dated and signed by an authorized FHAP official; proof that a FHAP agency sent its determination letter to all parties; an FIR that meets the above listed requirements; an investigative plan (when such plan exists); a copy of the 100-day letters and evidence that they were sent; and all other information pertinent to the investigation, including but not limited to interview notes, documentation of conciliation attempts and, when necessary, independent evidence corroborating respondent's defense(s).

**IV. CRITERIA FOR POST-CAUSE COMPLAINTS HEARD IN AN ADMINISTRATIVE HEARING, CIVIL ACTION, OR THROUGH JUDICIAL REVIEW**

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

- A. Quality Requirements: After a cause determination and a charge of discrimination, or its equivalent, has been issued, and assuming the conciliation was attempted and failed, the complaint must be referred to appropriate counsel to prosecute the charge on behalf of the complainant, at government expense, before an administrative hearing body or civil court.
- B. Documents Required: HUD will accept such a complaint for reimbursement if the agency provides documentation of such a referral in, for example, correspondence, logs or pleadings. Additionally, the FHAP agency shall provide any final administrative hearing decision, consent decree, or settlement agreement entered to HUD within 30 days of such action. If the agency does not provide this information, HUD may request, and the agency will be required to return, up to

50% of the reimbursement previously paid to the agency for the complaint.

Special Note: While the agency may obtain reimbursement on these complaints prior to final disposition by an administrative hearing body or a civil court, the agency must subsequently report to HUD the final status of such complaints. See 24 C.F.R. § 115.206(e)(8). FHAP agencies must input final status information directly in HEMS within 30 days of the administrative or judicial determination.

- C. Post-Cause Administrative Hearings or Judicial Filings: An agency may receive additional funds for engaging in certain post-cause enforcement actions. If, pursuant to the substantially equivalent law, an agency either conducts an administrative hearing or files a civil action upon election to enforce a finding of reasonable cause, HUD may provide additional payment.

Where the triggering event (*i.e.*, conduct of administrative hearing or filing of civil action) for the supplemental payment does not occur, an agreement reached after a cause finding will not qualify as an enforcement action for purposes of this supplemental payment. Such cases will be reimbursed as any other cause case unless the disposition is a conciliation agreement (*i.e.*, an agreement signed by the parties and the FHAP agency), in which case it will be reimbursed as any other case closed with a conciliation agreement. Where the triggering event has occurred, a FHAP agency will receive the supplemental payment even where the case is resolved by a subsequent agreement, *e.g.*, through a consent decree.

Agencies will receive this increased supplemental payment when the agency has engaged in post-cause enforcement actions and has documented its actions in HEMS. This documentation must occur in order for the GTR/GTM to authorize payment.

## V. CRITERIA FOR CONCILIATION

During the period beginning with the filing of a complaint and ending with the agency's no cause determination or charge of discrimination, the agency, to the extent feasible, must attempt to conciliate the complaint. In conciliating a complaint, agencies must attempt to achieve a just resolution of the complaint and obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the complainant and take actions to ensure the elimination of alleged discriminatory housing practices and the prevention of their occurrences in the future. These standards for conciliation remain in effect even if conciliation/settlement takes place after the agency's cause determination.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

- A. Quality Requirements/Required Documents:



The FHAP agency must provide HUD with a signed and dated complaint, a chronology of actions taken up to the conciliation, copies of closure letters sent to the parties indicating that the complaint was closed due to a successful conciliation, together with a copy of the executed conciliation agreement.

The conciliation agreement must be in writing, dated and signed by complainant, respondent, and the authorized FHAP agency representative, and include:

1. HUD and FHAP complaint numbers
2. Names of the parties;
3. Address and description of the subject property;
4. An effective date and the term in which the agreement remains in effect;
5. Relief that remedies the discrimination alleged in the complaint or is otherwise agreed upon by the parties and appropriate based on evidence obtained in the investigation of the matter;
6. As appropriate, relief that adequately vindicates the public interest, and prohibits future discriminatory housing practices by respondent;
7. A statement that the agreement constitutes closure of the complaint at HUD and the FHAP agency;
8. A statement that the agreement shall be made public unless the complainant and respondent otherwise agree, and an authorized representative of the agency determines that disclosure is not required to further the purposes of the substantially equivalent law. Circumstances that may result in partial or complete nondisclosure of a conciliation agreement may include, but are not limited to:
  - Sexual harassment claims;
  - A complainant's physical or mental condition, or medical diagnoses; or
  - The fact that a complainant is a resident in a domestic violence shelter or other protected residence which complainant believes may, if disclosed, be a safety risk.
9. Provisions that allow the FHAP agency to effectively monitor compliance

with the agreement.

10. A statement that violations of other civil rights laws have been alleged (if applicable).

NOTE: A conciliation agreement does not prohibit HUD from taking action against respondent under other civil rights laws. When a complaint is subject to concurrent processing by HUD under other civil rights laws, the FHAP agency may not execute an agreement that resolves matters in regard to these laws without HUD's consent.

#### **VI. CRITERIA FOR CLOSURES BY SETTLEMENT WITHOUT FHAP AGENCY INVOLVEMENT (A.K.A., WITHDRAWALS WITH RESOLUTION)**

If complainant and respondent resolve the complaint without the FHAP agency's involvement, the complainant may withdraw the complaint by submitting a withdrawal request to the FHAP agency.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

- A. Quality Requirements. The withdrawal request must be written; it must be signed and dated by complainant or complainant's authorized representative; identify the respondent(s) to whom the withdrawal applies; contain the HUD and FHAP agency complaint numbers; state the reason(s) complainant seeks to withdraw the complaint; contain a statement that the withdrawal was not obtained by coercion or threat of retaliation from any person, including but not limited to the respondent; and identify the terms of the resolution.
- B. Required Documents: The FHAP agency must provide FHEO with: a signed and dated complaint; a chronology of the FHAP agency actions prior to the withdrawal request; a copy of the signed and dated withdrawal request; documentation showing that the agency notified the complainant and respondent that the investigation would be terminated as a result of the withdrawal, and that the complainant could re-file the complaint if the terms of the resolution are not satisfied and the re-filing is received within the time limit for filing a complaint under the substantially equivalent law; and a copy of the closure letter.

NOTE: The FHAP agency must not encourage or facilitate resolution without its involvement in lieu of proceeding with conciliation. If HUD discovers that such occurred, it will be addressed through performance deficiency procedures.

#### **VII. CRITERIA FOR ADMINISTRATIVE CLOSURES**

Performance Standard 2 in the FHAP regulations, at 24 C.F.R. § 115.206(e)(2), requires that administrative closures only be utilized in limited and appropriate circumstances. It

is critical that FHAP agencies not close complaints administratively except under the specific circumstances set forth below.

- A. Withdrawals without Resolution. If complainant decides to withdraw a complaint, even though the complaint has not been resolved, complainant must submit a withdrawal request.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: The withdrawal request must: be written; signed and dated by complainant or complainant's authorized representative; identify the respondent(s) to whom the withdrawal applies; contain the HUD and FHAP agency complaint numbers; state the reason(s) complainant seeks to withdraw the complaint; contain a statement that complainant is aware that the withdrawal terminates the FHAP agency's investigation; contain a statement that the withdrawal was not obtained by coercion or threat of retaliation from any person, including but not limited to the respondent.
2. Required Documents: The FHAP agency must provide FHEO: a signed and dated complaint; a chronology of FHAP agency actions prior to receipt of the withdrawal request; a copy of the signed and dated withdrawal request that meets the Quality Requirements set out above; and a copy of the closure letter provided to all parties indicating closure due to withdrawal by complainant without resolution.

NOTE: If the withdrawal request indicates that there was coercion or threat of retaliation, FHAP payment may be denied.

- B. Inability to Locate Complainant. The FHAP agency may administratively close a complaint when additional information is needed from complainant and he or she cannot be located.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: If correspondence sent by the agency is returned with an indication that the complainant moved and left no forwarding address, the agency must take the following progressive steps to locate the complainant before administratively closing the complaint:
  - a. Place at least four telephone calls to complainant's residence, cell phone number, and place of employment, two during normal business hours to work number and two during non-business hours to a residential/cell number. If an email address is available, the

agency must attempt to email the complainant at least two times.

- b. Attempt to contact persons identified by complainant at intake to inquire as to complainant's whereabouts.
- c. Check other sources in an effort to obtain complainant's current contact information (e.g., telephone directory, Internet searches, postal service, 411 information, utility company, or witnesses previously identified by complainant).
- d. Send a letter to the complainant's last known address by certified mail, advising complainant of the agency's intent to close the case unless complainant contacts the agency within ten days. If the tenth day elapses without a response, the case may be closed administratively by means of a written notice sent to all parties, including complainant at complainant's last known address.

NOTE: If the FIR shows that the complaint was closed due to the inability to contact complainant without following the steps outlined above, the FHAP agency will not be reimbursed for processing the complaint.

2. Required Documents: The FHAP agency must provide the following documentation to FHEO: a signed and dated complaint; evidence that the above progressive steps were taken to locate complainant; evidence that the certified letter was returned unclaimed, and a copy of the closure letter sent to the parties indicating closure due to inability to locate complainant.

C. Inability to Locate Respondent

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: A FHAP agency must make every effort to identify the correct name and address of each respondent in a complaint. However, there may be circumstances where a respondent cannot be identified or located. If the complaint identifies multiple respondents and only one cannot be adequately identified, the agency must not close the complaint administratively. Rather, the investigation must proceed and further efforts must be made during the investigation to identify the respondent whose correct name or address remains unknown. The complaint may be amended to remove those respondents who could not be located.

If a sole respondent or all respondents cannot be identified or located, the complaint may be closed administratively if the agency first takes the following steps:

- a. The FHAP agency must attempt to obtain additional information from available sources that could result in identifying or locating the respondent, including Internet searches, cell phone numbers, cross reference directories, or property tax records that may identify the owner or prior residents of the property in question and provide enough information to identify or locate the respondent, serve the complainant, and begin the formal investigation.
- b. If a source appears to know the identity or location of a respondent that the FHAP agency seeks, but that source refuses to provide the information voluntarily, the FHAP agency must subpoena the information.
- c. As appropriate, the FHAP agency should attempt an on-site visit, which may help locate and identify the respondent.
- d. If the above efforts to locate or identify the respondent are unsuccessful, a letter must be sent to the complainant giving him or her 10 days to provide information needed to locate or identify respondents.

NOTE: In the absence of sufficient information, the case may be closed administratively, and written notice by regular and certified mail should be sent to the parties.

Required Documents: The FHAP agency must provide the following documentation to FHEO: a signed and dated complaint; evidence that the above progressive steps were taken to locate the respondent, including the signed letters identified in 1(d) above giving notice to complainant or complainant's representative, evidence that certified letters were returned unclaimed, and closure letters to complainant or complainant's representative indicating inability to locate respondent(s).

- D. Failure of Complainant to Cooperate with the Investigation. A complaint may be administratively closed when complainant fails to respond to reasonable requests for information that is needed in order for the FHAP agency to make a determination.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements:
  - a. The FHAP agency must inform the complainants and their representatives of their duty to cooperate with the investigation and the risk of the agency administratively closing the complaint if they fail to

cooperate.

- b. The FHAP agency must make repeated attempts to contact complainants and their representatives by telephone and mail requesting the needed information. If these efforts are fruitless, the FHAP agency must send a letter to the complainant by certified mail return receipt giving complainant at least ten days from receipt of letter to provide the needed information to the agency.
  - c. If the complainant's cooperation cannot be obtained using the above procedures, and the letter is not returned by the post office (i.e., marked addressee unknown, moved, left no forwarding address, etc.), the complaint should then be closed for failure to cooperate.
  - d. If the complaint is closed for failure of complainant to cooperate with the investigation, a closure letter must be sent to the complainant.
2. Required Documents: The following documents must be provided to FHEO: a signed and dated complaint; evidence that the above progressive steps were taken to obtain complainant's cooperation, including the signed letter identified in 1(b) above giving notice to the complainant or the complainant's representative; and a copy of closure letter to the parties indicating closure because of failure of complainant to cooperate with the investigation.

E. Lack of Jurisdiction

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: In order to qualify for reimbursement, the lack of jurisdiction must not have been apparent on the face of the complaint at the time of filing, and must have become known only after further investigation. The following are examples of facts uncovered during an investigation that may justify reimbursement for an administrative closure for lack of jurisdiction: a) the complainant has not suffered the alleged harm needed to establish standing; b) the subject property qualifies for an exemption to coverage of both the Fair Housing Act and the substantially equivalent law. Note that if HUD, but not the agency, has jurisdiction over the complaint, the complaint must be referred to HUD for processing.
2. Required Documentation: The FHAP agency must provide the following documentation to FHEO: reason(s) for closing the complaint for lack of jurisdiction that demonstrates why HUD does not have jurisdiction, and that the lack of jurisdiction could not have been determined at intake;

copies of closure letter sent to the parties that indicate reason for lack of jurisdiction closure, identify FHAP and HUD complaint numbers, and are signed by authorized FHAP agency official.

- F. Trial has Begun A complaint must not be closed merely because an aggrieved party has filed a civil action with respect to the same alleged discriminatory housing practice(s).

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: No additional criteria.
2. Required Documents: To receive reimbursement for an administrative closure due to the commencement of a judicial trial the FHAP agency must produce: a document from the clerk of the court in the jurisdiction that hears the complaint or other sufficient documentation demonstrating that a trial has begun.

**ATTACHMENT B**

**FY2016 Standards for Timeliness**

**Closures of Investigated Complaints**

100 days or less:

- Non-systemic complaints, not novel or complex, that are settled or conciliated. Includes withdrawals with resolution.
- Non-systemic complaints, not novel or complex, where a cause or no cause decision has been made.

300 days or less:

- Systemic complaints that are novel or complex, that are settled or conciliated. Includes withdrawals with resolution.

350 days or less

- Systemic complaints that are novel or complex, where a cause or no cause decision has been made.

**Administrative Closures**

Unable to locate:	100 days or less
Lack of jurisdiction:	30 days or less
Failure to cooperate:	60 days or less
Withdrawal without resolution:	75 days or less
Closed because trial commenced:	N/A
Complaints that are reactivated:	N/A



ATTACHMENT C

**FY2016 Payment Amounts for FHAP Complaint Processing**

<b>Effective Conciliation*:</b>	\$3,100
<b>Cause or no cause:</b>	\$2,800
<b>Post-cause enforcement action supplemental payments:</b>	
• <b>Administrative Hearing held:</b>	\$5,000
• <b>Civil Action filed:</b>	\$8,000
<b>Administrative Closures:</b>	\$1,400
<b>Withdrawals with Resolution:</b>	\$1,400

**\*Effective Conciliation** – an “effective” conciliation is one that provides relief for the complainant(s) and public interest relief. For purposes of determining whether a conciliation warrants the higher payment, public interest relief can take a variety of forms depending on the circumstances of a given complaint. Generally, it means the conciliation agreement contains certain requirements such as implementation of nondiscriminatory policies, changes to existing policies and practices, attendance at fair housing training, or other action that provides remediation or relief for individuals other than a complainant(s). Public interest relief may also encompass prospective relief such as agreeing to ongoing testing to assure compliance, relief for additional victims not identified in complaints, or other affirmative relief that protects the public interest, etc. Public interest relief does not include individual complainant relief or recognition of past policy changes not achieved as a result of conciliation. Reporting and monitoring provisions, which should be included in virtually all conciliation agreements, do not constitute public interest relief. A conciliation that fails to provide public interest relief will be reimbursed at the Full Investigation amount of \$2,800.00.



INTEROFFICE MEMORANDUM

DATE: September 15, 2016

TO: Mary Lou Berger, Mayor
Board of County Commissioners
THRU: Verdenia Baker, County Administrator
FROM: Pamela Guerrier, Director
Office of Equal Opportunity
RE: HUD FY 2016 Complaint Resolution Contract

Office of Equal Opportunity
301 N. Olive Avenue, 10th Floor
West Palm Beach, FL 33401
(561) 355-4884
Fax: (561) 355-4932
www.pbcgov.com/equalopportunity

Palm Beach County Board of County Commissioners

- Mary Lou Berger, Mayor
Hal R. Valeche, Vice Mayor
Paulette Burdick
Shelley Vana
Steven L. Abrams
Melissa McKinlay
Priscilla A. Taylor

County Administrator

Verdenia C. Baker

The U. S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, has awarded the Office of Equal Opportunity a total of \$330,450 for processing and resolving dual-filed housing discrimination complaints. This revenue is for cases processed during the period July 1, 2015 thru June 30, 2016.

In order for OEO to receive this revenue, the contract requires approval by the Board of County Commissioners. To meet HUD's fiscal year end funding deadlines, these funds must be obligated immediately. Therefore, urgent approval is needed so that the HUD deadline can be met.

It is requested that the attached HUD Contract (HUD Form 1044) be signed by the Mayor of the Board of County Commissioners so that it can be forwarded to HUD via overnight mail. Three (3) copies of the 1044 are enclosed for signature. HUD requires 3 originals.

"An Equal Opportunity Affirmative Action Employer"



HUD FY 2016 Complaint Resolution Contract

Page 2

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OEO has prepared an Agenda Item to present this contract item to the Board for ratification of the Mayor's signature at the November 1, 2016 BCC meeting.

If there are any questions concerning this request, or if additional information is needed, please contact me at 355-2558.

cc: David R. F. Ottey, Chief Assistant County Attorney

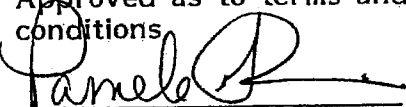
**Assistance Award/Amendment**

**U.S. Department of Housing and  
Urban Development  
Office of Administration**

1. Assistance Instrument <input checked="" type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Grant		2. Type of Action <input checked="" type="checkbox"/> Award <input type="checkbox"/> Amendment	
3. Instrument Number FF204K164023		4. Amendment Number	6. Control Number
7. Name and Address of Recipient Palm Beach County Office of Equal Opportunity 301 N. Olive Avenue, 10 <sup>th</sup> Floor West Palm Beach, Florida 33401 TAX ID# 59-6000785 DUNS# 078470481		8. HUD Administering Office U.S. Department of HUD/FHEO Five Points Plaza, 40 Marietta Street, NW Atlanta, GA 30303	
		8a. Name of Administrator Carlos Osegueda	8b. Telephone Number 678-732-2905
10. Recipient Project Manager Pamela Guerrier, Executive Director		9. HUD Government Technical Representative Vicki A. Ray	
11. Assistance Arrangement <input type="checkbox"/> Cost Reimbursement <input type="checkbox"/> Cost Sharing <input checked="" type="checkbox"/> Fixed Price	12. Payment Method <input type="checkbox"/> Treasury Check Reimbursement <input type="checkbox"/> Advance Check <input checked="" type="checkbox"/> Automated Clearinghouse	13. HUD Payment Office HUD CFO Accounting Center P.O. Box 901013 Fort Worth, TX 76101	
14. Assistance Amount		15. HUD Accounting and Appropriation Data	
Previous HUD Amount                      \$0.00		15a. Appropriation Number 8616/170144(TIN) (G, 16)	15b. Reservation number FHEO-04-16-01
HUD Amount this action                    \$330,450.00		Amount Previously Obligated                \$0.00	
Total HUD Amount                            \$330,450.00		Obligation by this action                      \$330,450.00	
Recipient Amount                              \$0.00		Total Obligation                                 \$330,450.00	
Total Instrument Amount                    \$330,450.00			

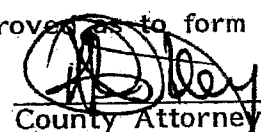
16. Description  
THE COOPERATIVE AGREEMENT FOR FAIR HOUSING ASSISTANCE PROGRAM (FHAP) FY 2016. This agreement consists of the following, which is incorporated herein and made a part hereof:

- Form HUD 1044, Assistance Award
- Schedule of Articles including Appendix A, Contributions Agreement Statement of Work
- Attachments: Attachment A – Criteria for Processing (FY 2016)  
Attachment B – Standards for Timelines

Approved as to terms and conditions  
  
Pamela Guerrier, Director  
Office of Equal Opportunity

**FUNDS ARE DESIGNATED AS FOLLOWS:**

CASE PROCESSING (TIN) (7/01/2015 – 6/30/2016) (87): \$241,700.00  
(This amount includes adjustments for FY 2015 post cause conciliations).  
CAUSE CASE ADMINISTRATIVE HEARING HELD (TIN) (1): \$5,000.00  
ADMINISTRATIVE COST FUNDS (ADC): \$55,000.00  
FY 2016 TRAINING FUNDS (TRG): \$28,750.00  
TOTAL THIS ACTION: \$330,450.00  
TOTAL CONTRACT AMOUNT: \$330,450.00  
EXPIRATION DATE: 9/30/2021

Approved as to form and legal sufficiency  
  
County Attorney

17. <input checked="" type="checkbox"/> Recipient is required to sign and return three (3) copies of this document to the HUD Administering Office		18. <input type="checkbox"/> Recipient is not required to sign this document.	
19. Recipient (By Name) Mary Lou Berger, Mayor Palm Beach County, Board of County Commissioners		20. HUD (By Name) Carlos Osegueda, FHEO Region IV Director/CAO	
Signature & Title	Date (mm/dd/yyyy)	Signature & Title	Date (mm/dd/yyyy)

2016 CONTRIBUTIONS AGREEMENT

SCHEDULE OF ARTICLES

1. SCOPE OF WORK (FIXED PRICE)
2. PERIODS OF PERFORMANCE
3. INSPECTION AND ACCEPTANCE
4. CONDUCT OF WORK
5. INSTRUMENT AMOUNT AND REQUESTS FOR PAYMENT
6. NARRATIVE REPORT
7. CRITERIA FOR PROCESSING
8. 24 CFR PART 200
9. USE OF COOPERATIVE AGREEMENT FUNDS
10. MAINTENANCE OF EFFORT
11. HUD'S SUBSTANTIAL INVOLVEMENT
12. ASSURANCES
13. USE OF CONSULTANTS
14. PUBLICATIONS AND NEWS RELEASES
15. REPRODUCTION OF REPORTS
16. FLOW DOWN PROVISIONS
17. DISPUTES
18. MAINTENANCE OF RECORDS
19. CUSTOMER SERVICE STANDARDS
20. REPORTING REQUIREMENTS
21. TRAINING
22. INITIAL CONTACT DATE
23. CHANGES LIMITING EFFECTIVENESS OF RECIPIENT'S LAW
24. FHAP AND FIRST AMENDMENT
25. TESTING

26. RELEASE OF INFORMATION WHILE COMPLAINT IS OPEN
27. SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL STATUS, AND SOURCE OF INCOME CAUSE DETERMINATIONS

Appendix A: Statement of Work

Attachment A: Criteria for Processing

Attachment B: Standards for Timeliness

Attachment C: Payment Amounts for FHAP Complaint Processing

**1. SCOPE OF WORK (FIXED PRICE)**

The Recipient (or Agency) shall furnish all the necessary personnel, materials, services, equipment, facilities (except at otherwise specified herein) and otherwise do all things necessary for or incidental to the performance of the work set forth in the Statement of Work (SOW) and all attachments for the firm fixed price set forth herein.

**2. PERIODS OF PERFORMANCE**

The Recipient shall provide all services hereunder during the periods of performance.

For the FY2016 Cooperative Agreement, the periods of performance are as follows:

Complaint Processing: July 1, 2015 – June 30, 2016

Administrative Costs, Training: October 1, 2015 – September 30, 2016

Note: While as a general rule, the cut-off day for incurring administrative costs is September 30, 2016, the GTR may change the cut-off date to several days before the end of the fiscal year if that is necessary to complete closeout documentation.

**3. INSPECTION AND ACCEPTANCE**

The Government Technical Monitor (GTM), if so delegated, may accomplish inspection and acceptance of all but the final products. The Government Technical Representative (GTR) shall accomplish acceptance of all final products. The GTR is identified in Block 9 of the HUD-1044.

**4. CONDUCT OF WORK**

During the effective period of this instrument, the GTR or GTM shall be responsible for monitoring the technical effort of the Recipient, unless the Recipient is notified in writing by the Cooperative Agreement Officer (CAO) of a replacement. The CAO is identified in Block 8a of the HUD-1044.

Only the CAO has the power to authorize deviations from this instrument, including deviations from the Statement of Work. In the event the Recipient does deviate without written approval of the CAO, such deviation shall be at the risk of the Recipient, and any costs related thereto shall be borne by the Recipient.

**5. INSTRUMENT AMOUNT AND REQUESTS FOR PAYMENT**

Agencies that have received Capacity Building funds for one year may be eligible for Contributions funds. Contributions funds consist of three categories: Complaint Processing; Administrative Costs; and Training. For FY2016, HUD may also provide an "Enforcement Fund" through Special Enforcement Efforts (SEE) Funding as well as Partnership funds.

- **Complaint Processing** - GTRs shall determine payment amounts based upon the FY2016 Payment Amounts for FHAP Complaint Processing, which are found at Attachment C.
- **Administrative Costs** - Agencies that acceptably process 100 cases or more shall receive 20% of the Recipient's FHAP obligation amount for the preceding year. *For agencies that process fewer than 100 cases, see FY2016 Funding Guidance for FHAP "Contributions Agencies" for the funding framework.* **Training** - All agencies are eligible to receive training funds for attendance at the National Fair Housing Training Academy (NFHTA), and other HUD-approved or HUD-sponsored training. *See FY2016 FHAP Funding Guidance for specific requirements related to training funds.*
- **Special Enforcement Effort (SEE) Funds** – HUD may make available up to \$1.0 million in SEE funds for FY 2016 through the implementation of an *Enforcement Fund*. SEE funds are funds that HUD may provide to an agency to enhance enforcement activities of the agency's fair housing law. In the event these funds are made available, agencies applying for an award from the Enforcement Fund such funds must meet the eligibility criteria set forth in 24 CFR. § 115.305(a)(1)-(a)(6).  
  
Guidance governing the operation of the fund is being developed and will be distributed if the funds are made available. It is envisioned that that decisions on requests for distributions will be made by the FHAP Division in FHEO Headquarters on a case-by-case basis with the actual fund commitment taking place in the field as with all other FHAP funds.
- **Partnership Funds** – HUD may make available up to \$1.9 million on Partnership funds for FY2016. Specific guidance will be issued if the funds are made available.

The maximum amount for performance under the Articles of this Cooperative Agreement, Appendix, and Attachments, is the total amounts of all categories of Contributions funds (*i.e.*, Complaint Processing, Administrative Costs, and Training (as well as SEE and Partnership funds if such funds are made available). Draw-downs are permitted at the discretion of the GTR. Complete draw-downs of the total amount obligated for Complaint Processing funds shall be permitted at any point after June 30, 2016, and before September 30, 2016. Payment is subject to withholding if the CAO determines that the Recipient is not complying with all terms of the Cooperative Agreement, the Appendix, and all Attachments hereto.

## 6. NARRATIVE REPORT

A Narrative Report describing activities undertaken during the periods of performance pursuant to which payment is being requested is required. The Narrative Report shall include a listing of complaints acceptably processed, including the name of complainant, respondent, and date closed, type of closure, date referred to legal for enforcement action, information on investigative and conciliation techniques, and descriptions of all activities undertaken to justify all administrative closures. This list must demonstrate that the agency receives and processes a reasonable number of



complaints cognizable under the Fair Housing Act, as required in 24 CFR § 115.206(e)(7). The Narrative Report shall also include a description of outreach activities undertaken in support of fair housing case processing to educate the public on fair housing rights and responsibilities. The GTR/GTM should verify that the Recipient is undertaking the education and outreach activities identified. If the Recipient meets the requirements outlined in the *FY2016 FHAP Funding Guidance*, remaining funds may be used to undertake the fair housing education and outreach activities.

#### **7. CRITERIA FOR PROCESSING**

The Criteria for Processing are the standards by which HUD determines whether a complaint, cognizable under the Fair Housing Act and processed by the Recipient, warrants reimbursement with FHAP funds. The Criteria for Processing are incorporated as Attachment A.

#### **8. 24 CFR PART 200**

The Administrative Requirements for Grants and Cooperative Agreements (2 C.F.R. part 200) are hereby incorporated by reference. The Agency must be familiar with these requirements and verify to the GTR/GTM that the Recipient has a copy on file. A copy of Part 200 may be obtained from your GTR/GTM.

#### **9. USE OF COOPERATIVE AGREEMENT FUNDS AND NO CO-MINGLING**

The Recipient is entitled to receive the fixed amount identified in Block 14 of the HUD-1044 for satisfactory completion of the work to be performed, regardless of costs incurred. FHAP funds must be used for the purpose that HUD provided the funds including the processing of complaints cognizable under the Fair Housing Act, training under the Fair Housing Act and the state or local fair housing law, administrative costs associated with fair housing complaint processing, creation and maintenance of data and information systems, and the development and maintenance of fair housing education and outreach projects. The Recipient must segregate FHAP funds from the Recipient's and the state or local government's other funds.

#### **10. MAINTENANCE OF EFFORT**

The Recipient must spend at least 20 percent of its total annual budget on fair housing activities if it enforces antidiscrimination law(s) other than a fair housing law. The term "total annual budget" means the entire budget assigned by the jurisdiction to the agency for enforcing and administering antidiscrimination laws, but does not include FHAP funds.

Maintenance of effort also means that the Recipient shall not unilaterally reduce the level of financial resources currently committed to fair housing. Budget and staff reductions occasioned by legislative action outside the control of the Recipient will not, alone, result in a determination of ineligibility. However, HUD will take such actions into consideration in assessing the ongoing viability of a Recipient's fair housing program.

## 11. HUD'S SUBSTANTIAL INVOLVEMENT

- A. HUD intends to have substantial involvement in the review and approval of all aspects of the work to be carried out as a result of an award under this Agreement.
- B. Anticipated substantial involvement may include, but is not necessarily limited to, the following:
1. Review and guidance during and upon completion of cases cognizable under the Fair Housing Act;
  2. Requests for additional information on cases to provide clarification or for completeness of a case investigation or file;
  3. Development and presentation of national and regional office fair housing investigation and conciliation training;
  4. Participation in the development and presentation of in-house investigation and conciliation training;
  5. Participation and approval of education and outreach programs or materials;
  6. Provision of appropriate directives and guidance for case processing;
  7. Assistance in the investigation, conciliation, and/or enforcement of fair housing cases cognizable under the Fair Housing Act;
  8. Requests for updates on the final status of cause determinations; and
  9. Review and analysis of agency's fair housing law for determinations of continued substantial equivalence to the Fair Housing Act.

## 12. ASSURANCES

As a condition for the receipt of FHAP funds, the Recipient assures HUD that it will:

- A. Provide a drug-free workplace;
- B. Comply with the provision of the Hatch Act (5 U.S.C. Sections 1501-1508 and 7324-7328) which limits the political activities of employees whose principle employment activities are funded in whole or part with Federal funds;
- C. Establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain;
- D. Comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Sections 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the

nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F);

- E. Comply with all federal nondiscrimination laws including, but not necessarily limited to: (a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by recipients of federal financial assistance (b) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex by recipients of federal financial assistance; (c) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability by recipients of federal financial assistance, and (d) the Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age by recipients of federal financial assistance;
- F. Comply with all applicable requirements of federal laws, executive orders, regulations, and policies governing this program; and
- G. Comply with the requirements of the Resource Conservation and Recovery Act which mandates that state agencies using federal funds for procurement programs give preference to products containing recycled materials when purchasing specific products identified in guidelines developed by the Environmental Protection Agency (40 CFR 247-253).

### 13. USE OF CONSULTANTS

Salary payments to consultants under this instrument shall not exceed the equivalent of the maximum daily rate paid to level IV of the Executive Schedule, as evidenced by current pay vouchers.

### 14. PUBLICATIONS AND NEWS RELEASES

A. Definition. For the purpose of this clause, "publication" includes:

- (1) Any document containing information for public consumption;
- (2) The act of, or any act that may result in, disclosing information to the public; or
- (3) Any products resulting from the education and outreach efforts of the Recipient that are planned to be made available to the public through dedication, assignment by the Government, or other such means as HUD shall determine.

B. Government Ownership of Official Products of Work

All interim and final reports and information, data analyses, special methodology, findings, and their related documents and work products, including reports, work sheets, survey instruments, computer tapes, and any other physical materials and products produced directly under the SOW of this instrument are considered Official Products of Work, owned by the U.S. Government and held for the benefit of the public.

C. Publication of Official Products of Work

Official Products of Work, quotations there from, paraphrasing, or disclosures of interim findings may not be published without the approval of the GTR for a period of sixty (60) days after acceptance of the product by the GTR. Thereafter, the Recipient shall be free to publish without HUD approval.

#### D. Acknowledgement and Disclaimer

All Official Products of Work, or any part thereof, and any Independent Products and Special Products arising out of this instrument, when published by Recipient or other participants in the work, shall contain the following acknowledgment and disclaimer:

“The work that provided the basis for this publication was supported by funding under a Cooperative Agreement with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Government.”

#### E. Notice of News Release and Public Announcements

Copies of all press releases, formal announcements, and other planned, written issuances containing news or information concerning this instrument that may be made by the Recipient or its staff, or any subcontractor or other person or organization participating in the work of this instrument shall be provided to the GTR at the earliest possible time. News releases and other public announcements may not disclose any interim finding or quote or paraphrase any part of any Official Product of Work without complying with paragraph D above, entitled Acknowledgement and Disclaimer.

The Recipient agrees that no news releases or public announcements involving FHAP funded activities will be released to the public without prior HUD approval. The Recipient further agrees that it will submit any and all press releases/news announcements, studies and/or other products developed with FHAP funds to the GTR for review and approval of at least two weeks prior to its release, unless HUD agrees to waive the two-week submission requirements. Publication flyers, and other routine documents previously approved by the GTR and/or the Department, may be published without further HUD approval.

### 15. REPRODUCTION OF REPORTS

In accordance with Government Printing and Binding Regulations, reproduction of reports, data or other written materials, if required herein, is authorized, provided that the materials produced do not exceed 5,000 production units of any page and the items consisting of multiple pages do not exceed 25,000 production units in aggregate.

## 16. FLOW DOWN PROVISIONS

The Recipient shall include provisions of this instrument in all contracts of employment with persons who perform any part of the work under this instrument, and with all subcontractors and other persons or organizations participating in any part of the work under this instrument. There shall be provisions for a further flow down of such requirements to each sub-tier of employees and subcontractors to the extent feasible. If the Recipient subcontracts to a public or private organization any activity for which it receives FHAP funds, it must ensure in writing that the organization is complying with all relevant civil rights laws including: (a) Title VI of the Civil Rights Act of 1964; (b) Title IX of the Education Amendments of 1972, as amended; (c) Section 504 of the Rehabilitation Act of 1973; and (d) the Age Discrimination Act of 1975.

## 17. DISPUTES

During performance of the instrument, disagreements may arise between the Recipient and the GTR on various issues, such as the acceptability of complaints forwarded for reimbursement. If a dispute arises, the CAO shall be the final authority on the matter and shall prepare a final decision, taking into account all facts and documentation presented. The CAO's decision shall be mailed, emailed, faxed, or telephonically provided to the Recipient.

## 18. MAINTENANCE OF RECORDS

The GTR and CAO are to maintain all appropriate records relating to the implementation of this cooperative agreement for a period of 5 years for the GTR files and a period of 7 years for the CAO files. The files for the CAO are to be kept in a secure place and should be accessible to others only with the CAO's permission. After 7 and 5 years respectively, the records may be archived at the records center.

The Recipient agrees to maintain records demonstrating its financial administration of FHAP funds. The Recipient also agrees to maintain records of its performance under FHAP, including all past performance assessment reports, performance improvement plans, and other documents relative to the Recipient's performance.

The Recipient agrees to permit reasonable public access to its records as required at 24 CFR § 115.308(c) (i.e., records are made available at the agency's office during normal working hours for public review). The Recipient agrees to permit the Secretary of HUD, Inspector General of HUD, Comptroller General of the United States, and any of their authorized representatives, access to all the pertinent books, accounts, reports, files, and other payments for surveys, audits, examinations, excerpts and transcripts as they relate to the agency's participation in the FHAP. The Recipient agrees to keep files in such a fashion as to permit the audits under applicable Office of Management and Budget circulars, procurement regulations and guidelines, and the Single Audit requirements for state and local agencies.

## 19. CUSTOMER SERVICE STANDARDS

The Recipient agrees to ensure that any and all individuals associated with fair housing complaints, including aggrieved persons, complainants, respondents, and representatives, are treated with dignity and respect. The Recipient agrees to maintain regular contact with parties to a complaint, including not allowing more than 30 business days to pass without some form of contact with parties. The Recipient agrees that its staff will not communicate disinterest or distrust in the complaint process to any of the parties to the complaint. Complaints to HUD from individuals associated with FHAP fair housing complaints will be reviewed by the GTR. The GTR will work with the Recipient and the individual to resolve the matter. In addition, customer satisfaction issues identified that may impact the timely and effective processing of fair housing complaints will be considered when HUD conducts performance assessments of the Recipient in accordance with 24 CFR § 115.206.

## 20. REPORTING REQUIREMENTS

The Recipient agrees to provide the GTR timely information on all fair housing complaints cognizable under the Fair Housing Act, from receipt to closure, regardless of whether payment has been received by the Recipient.

The Recipient agrees to fully utilize the HUD Enforcement Management Systems (HEMS) and input information in HEMS in a timely manner. Failure to meet this requirement shall result in HUD identifying such failure as a deficiency in the FHAP agency's performance assessment, thereby authorizing HUD to proceed with performance deficiency procedures enumerated in the FHAP regulation at 24 CFR § 115.210.

## 21. TRAINING

The Recipient agrees to send staff to mandatory training sponsored by HUD, including, but not necessarily limited to, the National Fair Housing Training Academy and the National Fair Housing Policy Conference.

## 22. INITIAL CONTACT DATE

The Recipient must use the Initial Contact Date field in HEMS to record the actual date on which a complainant first contacts the Recipient or FHEO to inquire about filing a housing discrimination complaint, or to report an alleged discriminatory housing practice. The Recipient will be required to comply with the following procedures with respect to documenting a complainant's initial contact.

For cases initially filed with the Recipient, the Recipient must:

- A) Maintain records of each complainant's initial contact with the Recipient, including records of all telephone, e-mail, letters, and in-person contacts;

- B) Place the original record of a complainant's initial contact, or a copy of that record, in the case file under the complainant's evidence section of the file, consistent with the requirements of Chapter 10 of the Title VIII Manual; and
- C) Ensure that the Initial Contact Date field in HEMS reflects the earliest date of contact referenced in the case file.

For cases initially filed with FHEO, the Recipient:

- A) Must ensure that the Initial Contact Date filed in HEMS reflects the earliest date of contact referenced in the case file referred to the Recipient by FHEO;
- B) Must not change the date that FHEO entered in the Initial Contact Date field in HEMS even if records contained in the case file received from FHEO reflect a later date of contact by the complainant. If FHEO has entered an initial date of contact in HEMS that is earlier than any contact date referenced in the case file, the Recipient must contact the FHEO regional office to obtain any records of contact that may have been omitted from the case file.

### **23. CHANGES LIMITING EFFECTIVENESS OF RECIPIENT'S LAW**

Pursuant to 24 C.F.R. 115.211(a), if a state or local fair housing law that a Recipient enforces is amended, or rules or procedures concerning the fair housing law are adopted, or judicial or other authoritative interpretations of the fair housing law are issued, the Recipient must notify HUD's Fair Housing Assistance Program Division within 60 days of its discovery. This requirement also applies to the amendment, adoption, or interpretation of any related law that bears on any aspect of the effectiveness of the FHAP agency's fair housing law. Send correspondence to:

Director, Fair Housing Assistance Program Division  
 Office of Fair Housing and Equal Opportunity  
 U.S. Department of Housing and Urban Development  
 451 Seventh Street, SW, Room 5206  
 Washington, DC 20410

### **24. FHAP AND THE FIRST AMENDMENT**

None of the funding made available under the FHAP may be used to investigate or prosecute any activity engaged in by one or more persons that may be protected by the First Amendment of the United States Constitution.

### **25. TESTING**

The following requirements apply to testing activities funded under the FHAP:

- A. Testing must be done in accordance with a HUD-approved testing methodology;

- B. Testers must not have prior felony convictions or convictions of any crimes involving fraud or perjury;
- C. Testers must receive training or be experienced in testing procedures and techniques;
- D. Testers and the organizations conducting tests, and the employees and agents of these organizations, may not: 1) have an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury; 2) be a relative or acquaintance of any party in a case; 3) have had any employment or other affiliation, within five years, with the person or organization; or 4) or be a competitor of the person or organization to be tested in the listing, rental, sale or financing of real estate.

**26. RELEASE OF INFORMATION WHILE COMPLAINT IS OPEN**

As a general rule, the Recipient will not release information collected during the course of the investigation while the complaint is open. There are three exceptions. First, the Recipient will provide information to HUD, consistent with Section 11 of this document. Second, a party to a complaint being investigated by the Recipient is entitled to receive a copy of any document it submitted during the investigation of the complaint. Third, during conciliation, a conciliator may opt to use the strategy of revealing portions of the evidentiary section of the investigative file to the parties. This type of disclosure may also occur during an investigation when a Recipient investigator questions a party or a witness about a document or a statement in a document.

**27. SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL STATUS, AND SOURCE OF INCOME CAUSE DETERMINATIONS**

Recipient must submit to the Fair Housing Assistance Program (FHAP) Division copies of sexual orientation, gender identity, marital status, and source of income cause determinations. The General Section of HUD's Notice of Funding Availability (NOFA) deems ineligible applicants that have not satisfactorily resolved a cause determination from a FHAP agency for a systemic violation of a state or local prohibition of sexual orientation, gender identity, and source of income housing discrimination. Additionally, on February 3, 2012, HUD issued a final rule entitled Equal Access to Housing in HUD Programs Regardless of Sexual Orientation and Gender Identity, which mandates recipients of HUD funds, FHA-insured lenders, and FHA-mortgagors to provide access to HUD programs without regard to sexual orientation, gender identity, and marital status. Receipt of cause determinations from FHAP agencies on these issues will assist HUD in determining whether an applicant is ineligible for funding under the NOFA and/or has violated the Equal Access Rule. FHAP agencies should submit such determinations electronically to [LGBTfairhousing@hud.gov](mailto:LGBTfairhousing@hud.gov), or send hardcopies to:

Director, Fair Housing Assistance Program Division  
 Office of Fair Housing and Equal Opportunity  
 U.S. Department of Housing and Urban Development  
 451 Seventh Street, SW, Room 5206  
 Washington, DC 20410



**APPENDIX A - CONTRIBUTIONS AGREEMENT STATEMENT OF WORK  
FY 2016**

1. The Recipient agrees to process housing discrimination complaints cognizable under the Fair Housing Act in accordance with the Agreement for the Interim Referral of Complaints and Other Utilization of Services (Interim Agreement) or Memorandum of Understanding (MOU) between the Recipient and HUD, the Schedule of Articles, the Criteria for Processing, and 24 C.F.R. Part 115.
2. The Recipient agrees to cooperate with HUD in the processing of housing discrimination complaints cognizable under the Fair Housing Act in accordance with the Interim Agreement, MOU, the Schedule of Articles, the Criteria for Processing, and 24 C.F.R. Part 115.
3. The Recipient agrees to augment its fair housing enforcement efforts by engaging in outreach and education, and engaging and participating in training and technical assistance pursuant to the Interim Agreement and MOU.
4. The Recipient agrees to follow HUD's guidance in processing complaints cognizable under the Fair Housing Act unless and until the Department rescinds such requirement in writing to the Recipient.
5. The Recipient agrees to identify to HUD all staff assigned to carry out fair housing activities by name, position, salary, relevant experience, and percentage of time spent carrying out fair housing responsibilities.
6. The Recipient may be required to participate in customer satisfaction evaluation activities under this agreement. The Recipient agrees to furnish to HUD all information collected from its customers in the form specified by HUD.
7. If the Recipient has aged cases, upon request from HUD, the Recipient must provide updates to HUD on its handling of aged cases and submit a plan to the GTR/GTM for closing such cases.

## ATTACHMENT A

### **FY2016 Criteria for Processing**

The Criteria for Processing (Criteria) are the standards by which HUD determines whether a complaint, cognizable under the federal Fair Housing Act and processed by a substantially equivalent state or local agency, meets the minimum requirements for quality and timeliness, and identify the documents that must be submitted to HUD in order to receive reimbursement. The Criteria are designed to assure the uniform, timely, and quality processing of housing discrimination complaints processed under substantially equivalent fair housing laws.

The Criteria are enumerated under major subheadings, most of which describe the type of closure, (e.g., cause, no cause, conciliation, etc.). Subheadings I through III set out criteria that apply to most complaints. Subheadings IV through VII set forth additional criteria specific to particular types of complaint closure. For example, to meet the criteria for an administrative closure, criteria under subheadings I (Complaint Filing), II (Notification), III (Cause and No Cause Determinations), VII (Administrative Closures) may need to be met.

An agency must meet the Criteria for each complaint processed and provide all complaint-related documentation identified in the Criteria to HUD within 30 days of completion of complaint processing. Such documentation must be submitted to HUD via the HUD Enforcement Management System (HEMS). An agency's failure to input all required information in HEMS in a timely manner will negatively impact an agency's performance rating.

HUD will address a failure to meet the Criteria through performance deficiency procedures including, but not limited to, technical assistance, performance improvement plans, and suspension from FHAP participation. See 24 C.F.R. § 115.307(a)(3) and 24 C.F.R. § 115.210.

HUD utilizes complaint closure review forms which combine the Criteria for Processing and the Standards for Timeliness into checklists for each type of complaint closure. These forms are available to FHAP agencies as an additional technical assistance tool to support high quality case processing.

## I. COMPLAINT FILING

### A. Quality Requirements:

1. All complaints must be timely filed in accordance with the substantially equivalent state or local fair housing law.
2. All complaints must be in writing, signed by the complainant, and contain the following information:
  - a. The name and address of complainant;
  - b. The name and address of each respondent;
  - c. If a specific property is involved, the property's address and physical description, such as apartment, condominium, house or vacant lot; and
  - d. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.
3. Where the agency determines that there is insufficient information in the complaint to commence an investigation, the agency must notify the complainant in writing by no later than the 5<sup>th</sup> day after receipt of the complaint and inform the complainant what information he or she must provide in order to commence an investigation, and identify a reasonable timeframe for submitting such information. The agency must notify the complainant that unless he or she provides the required information within the specified timeframe, the agency may dismiss the complaint.
4. The FHAP agency must permit complaints to be filed with the assistance of an authorized representative or organization of the complainant.
5. The FHAP agency must permit complaints to be reasonably and fairly amended at any time. Such amendments may include, but are not limited to: a) amendments to cure technical defects or omissions; b) clarification, amplifications, or amendments of allegations in a complaint; or c) joinder of additional or substitute respondents. The FHAP agency should consider amended complaints as having been filed on the date the original complaint was filed.
6. If a FHAP agency requires complaints to be notarized, HUD will not reimburse the agency for a complaint not filed because the complainant did not get the complaint notarized. To preserve the rights of aggrieved

persons, a FHAP agency must refer such complaints to HUD for investigation under the federal Fair Housing Act as soon as practicable and, where necessary, consent to their reactivation.

7. Pursuant to 24 CFR Section 115.210, and the March 7, 2001 memorandum entitled Limitations on Accepting as Dual-Filings FHAP Cases That Implicate First Amendment, HUD will not reimburse FHAP agencies for complaints that implicate the First Amendment of the U.S. Constitution. The FHAP agency must alert HUD to complaints that it receives that may implicate the First Amendment so that HUD may analyze the complaint and determine if reimbursement is appropriate.
8. Pursuant to a Memorandum of Understanding between HUD and the Internal Revenue Service, the FHAP agency must identify in HEMS whether the property named in a complaint receives Low Income Housing Tax Credits. This is required for every complaint.
9. The FHAP agency must refer complaints to HUD when the agency receives allegations involving a practice that is not prohibited by the substantially equivalent State or local law, but which is prohibited by the federal Fair Housing Act.
10. If a housing discrimination complaint is filed against a recipient of federal financial assistance and therefore implicates civil rights laws that FHEO enforces other than the federal Fair Housing Act (multi-jurisdictional), the FHAP agency shall notify FHEO so that FHEO may process that portion of the complaint. Other civil rights laws enforced by FHEO include:
  - a. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (prohibiting discrimination on the basis of race, color or national origin in programs or activities receiving federal financial assistance);
  - b. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (prohibiting discrimination based on disability in programs or activities receiving federal financial assistance);
  - c. Section 109 of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309 (prohibiting discrimination on the basis of race, color, national origin, religion or sex in any program or activity funded in whole or in part by the community development block grant programs);
  - d. Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101

et seq. (prohibiting discrimination based on disability in programs, services and activities made available by public entities);

e. Architectural Barriers Act, 42 U.S.C. § 4151 et seq. (providing that buildings, including publicly owned residences, designed constructed, leased or altered with certain federal funds must be accessible to persons with disabilities); and

f. Age Discrimination Act of 1975, 42 U.S.C. § 6101 (prohibiting discrimination based on age in programs or activities receiving federal financial assistance).

B. Required Documents: A signed, dated copy of the complaint, any requests for amendment(s) to the complaint, and evidence of compliance with the timeframes and requirements identified above.

C. Complaint Filing with Multiple Complainants or Respondents:

FHAP agencies will be reimbursed only for complaints that involve separate, distinct discriminatory actions that require a separate investigation. Where allegations may be made against two or more respondents, separate complaints should be filed against each respondent only when each respondent's conduct stands alone as a separate violation of the Act. Furthermore, if complainants are married and both are aggrieved persons, a single, joint complaint should be filed.

If there are children under age 18 who reside in the household who may have been injured by the alleged discriminatory housing practice(s), they should be listed as "Other Aggrieved Persons" on that same complaint. FHAP agencies should not typically file separate complaints for spouses or children under 18 residing in the household.

## II. NOTIFICATION

A. Quality Requirements: The FHAP agency must notify HUD within 5 days of receiving complaints that are cognizable under the federal Fair Housing Act. In addition, the FHAP agency must serve notice of the complaint to each complainant and respondent in accordance with the timeframes identified in the substantially equivalent law and the following requirements.

1. The notification letter to the complainant must consist of an acknowledgement of receipt of the complaint for filing, the designation of a complaint number, information related to the agency's processing procedures including the name and telephone number of a FHAP agency contact, and the complainant's rights and obligations under the substantially equivalent law, including time limits and choice of forums.

2. The notification letter to each of the respondents must consist of a description of the alleged housing discrimination practice upon which the complaint is based, include a copy of the complaint, and identify the name and telephone number of a FHAP agency contact. The notice to each respondent must advise respondent of his or her procedural rights and obligations, including the right to file an answer within the timeframe identified in the substantially equivalent law.
3. A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of the investigation, may be joined as an additional or substitute respondent by service of a written notice. The notice must explain the basis for the agency's belief that the joined person is properly joined as a respondent and include information identified in paragraph 2 above.

B. Required Documents: For complaints that are filed directly with the FHAP agency, the agency must enter information in HEMS regarding the complaint within five days of receiving the complaint, sufficiently notifying HUD of the complaint. In addition, the agency must provide HUD with a copy of the notification letters sent to the parties and must update HEMS to indicate when the agency sent the notification letters.

### III. CRITERIA FOR CAUSE AND NO CAUSE DETERMINATION

Every cause or no cause determination must be based on an investigation that includes sufficient consideration of the complainant's and respondent's evidence, and a sufficient evaluation of any and all conflicting evidence. A cause or no cause determination must be based on a review of all relevant evidence the agency obtained during the investigation. The agency shall not act as an advocate for either the complainant or respondent and shall weigh the evidence objectively in light of the relevant substantially equivalent law. The basis for the cause or no cause determination must be well-documented.

A. Quality Requirements:

In addition to the criteria set forth in subheadings I and II above:

1. Before the end of the 30<sup>th</sup> day after the complaint is filed, the FHAP agency must initiate a comprehensive investigation of issues raised in the complaint. Respondent's defenses, relevant policies and practices, as well as all other relevant data, must be identified and analyzed and the complainant, respondent, and all relevant witnesses must be interviewed. Contradictions between complainant's allegations and respondent's

response must be investigated and when applicable, comparative data must be obtained. Information must be independently corroborated. Simply obtaining respondents' statements rebutting complainant's allegations is insufficient to resolve disputed issues of fact.

2. HUD recommends that FHAP agencies develop investigative plans for every complaint processed that is cognizable under the Fair Housing Act. For guidance on development of an investigative plan, FHAP agencies should refer to Chapter 7 of HUD Handbook 8024.01 REV-2 (Title VIII Complaint Intake, Investigation, and Conciliation Handbook).
3. In planning the investigation, the investigator and his/her supervisor must determine, on a complaint-by-complaint basis, whether on-site inspections and/or interviews are required. For most complaints, on-site inspections and/or interviews are the most thorough way to conduct an investigation. Some cases, e.g., where the complaint does not involve factual disputes or where evidence clearly demonstrates the allegations do not have merit, may not require an onsite visit.
4. During the period beginning with the filing of a complaint and ending with the FHAP agency's determination or charge of discrimination, the agency, to the extent feasible, must attempt to conciliate the complaint (see more detail on criteria for conciliation attempts and conciliation agreements in Section IV of this document).
5. If the agency does not complete the investigative activities with respect to a complaint within 100 days from the date of receipt, it must notify the parties in writing of the reason(s) for the delay. Such notification letters must be sent within 110 days of the filing of the complaint.
6. At the end of each investigation, the agency shall prepare a Final Investigative Report (FIR). An FIR shall be dated and signed by at least one supervisor. The FIR shall contain:
  - a. The names and dates of contacts with the parties and witnesses, except that the report will not disclose the names of witnesses who request anonymity;
  - b. A summary of correspondence and other contacts with the complainant and the respondent;
  - c. A summary description identifying other pertinent records examined;

- d. A summary of statements by witnesses, if applicable; and/or
  - e. Interrogatories and answers provided, if applicable.
7. Each Determination shall be signed and dated by an authorized FHAP official.
  8. The FHAP agency shall send the closure package to HUD within 30 days of closure. (See B below).
  9. The FHAP agency will cooperate with HUD by providing information at regular intervals or upon request related to individual complaint investigations. Upon request, the FHAP agency shall provide status reports for each complaint that is over 100 days old.
- B. Required Documents: The case file shall include all evidence indicating that a comprehensive investigation was commenced and completed in accordance with the above requirements including, but not limited to: a copy of a signed, dated complaint; a copy of a FHAP agency determination, dated and signed by an authorized FHAP official; proof that a FHAP agency sent its determination letter to all parties; an FIR that meets the above listed requirements; an investigative plan (when such plan exists); a copy of the 100-day letters and evidence that they were sent; and all other information pertinent to the investigation, including but not limited to interview notes, documentation of conciliation attempts and, when necessary, independent evidence corroborating respondent's defense(s).

#### IV. CRITERIA FOR POST-CAUSE COMPLAINTS HEARD IN AN ADMINISTRATIVE HEARING, CIVIL ACTION, OR THROUGH JUDICIAL REVIEW

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

- A. Quality Requirements: After a cause determination and a charge of discrimination, or its equivalent, has been issued, and assuming the conciliation was attempted and failed, the complaint must be referred to appropriate counsel to prosecute the charge on behalf of the complainant, at government expense, before an administrative hearing body or civil court.
- B. Documents Required: HUD will accept such a complaint for reimbursement if the agency provides documentation of such a referral in, for example, correspondence; logs or pleadings. Additionally, the FHAP agency shall provide any final administrative hearing decision, consent decree, or settlement agreement entered to HUD within 30 days of such action. If the agency does not provide this information, HUD may request, and the agency will be required to return, up to



50% of the reimbursement previously paid to the agency for the complaint.

Special Note: While the agency may obtain reimbursement on these complaints prior to final disposition by an administrative hearing body or a civil court, the agency must subsequently report to HUD the final status of such complaints. See 24 C.F.R. § 115.206(e)(8). FHAP agencies must input final status information directly in HEMS within 30 days of the administrative or judicial determination.

- C. Post-Cause Administrative Hearings or Judicial Filings: An agency may receive additional funds for engaging in certain post-cause enforcement actions. If, pursuant to the substantially equivalent law, an agency either conducts an administrative hearing or files a civil action upon election to enforce a finding of reasonable cause, HUD may provide additional payment.

Where the triggering event (*i.e.*, conduct of administrative hearing or filing of civil action) for the supplemental payment does not occur, an agreement reached after a cause finding will not qualify as an enforcement action for purposes of this supplemental payment. Such cases will be reimbursed as any other cause case unless the disposition is a conciliation agreement (*i.e.*, an agreement signed by the parties and the FHAP agency), in which case it will be reimbursed as any other case closed with a conciliation agreement. Where the triggering event has occurred, a FHAP agency will receive the supplemental payment even where the case is resolved by a subsequent agreement, *e.g.*, through a consent decree.

Agencies will receive this increased supplemental payment when the agency has engaged in post-cause enforcement actions and has documented its actions in HEMS. This documentation must occur in order for the GTR/GTM to authorize payment.

## V. CRITERIA FOR CONCILIATION

During the period beginning with the filing of a complaint and ending with the agency's no cause determination or charge of discrimination, the agency, to the extent feasible, must attempt to conciliate the complaint. In conciliating a complaint, agencies must attempt to achieve a just resolution of the complaint and obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the complainant and take actions to ensure the elimination of alleged discriminatory housing practices and the prevention of their occurrences in the future. These standards for conciliation remain in effect even if conciliation/settlement takes place after the agency's cause determination.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

- A. Quality Requirements/Required Documents:

The FHAP agency must provide HUD with a signed and dated complaint, a chronology of actions taken up to the conciliation, copies of closure letters sent to the parties indicating that the complaint was closed due to a successful conciliation, together with a copy of the executed conciliation agreement.

The conciliation agreement must be in writing, dated and signed by complainant, respondent, and the authorized FHAP agency representative, and include:

1. HUD and FHAP complaint numbers
2. Names of the parties;
3. Address and description of the subject property;
4. An effective date and the term in which the agreement remains in effect;
5. Relief that remedies the discrimination alleged in the complaint or is otherwise agreed upon by the parties and appropriate based on evidence obtained in the investigation of the matter;
6. As appropriate, relief that adequately vindicates the public interest, and prohibits future discriminatory housing practices by respondent;
7. A statement that the agreement constitutes closure of the complaint at HUD and the FHAP agency;
8. A statement that the agreement shall be made public unless the complainant and respondent otherwise agree, and an authorized representative of the agency determines that disclosure is not required to further the purposes of the substantially equivalent law. Circumstances that may result in partial or complete nondisclosure of a conciliation agreement may include, but are not limited to:
  - Sexual harassment claims;
  - A complainant's physical or mental condition, or medical diagnoses; or
  - The fact that a complainant is a resident in a domestic violence shelter or other protected residence which complainant believes may, if disclosed, be a safety risk.
9. Provisions that allow the FHAP agency to effectively monitor compliance.

with the agreement.

10. A statement that violations of other civil rights laws have been alleged (if applicable).

NOTE: A conciliation agreement does not prohibit HUD from taking action against respondent under other civil rights laws. When a complaint is subject to concurrent processing by HUD under other civil rights laws, the FHAP agency may not execute an agreement that resolves matters in regard to these laws without HUD's consent.

#### **VI. CRITERIA FOR CLOSURES BY SETTLEMENT WITHOUT FHAP AGENCY INVOLVEMENT (A.K.A., WITHDRAWALS WITH RESOLUTION)**

If complainant and respondent resolve the complaint without the FHAP agency's involvement, the complainant may withdraw the complaint by submitting a withdrawal request to the FHAP agency:

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

- A. Quality Requirements. The withdrawal request must be written; it must be signed and dated by complainant or complainant's authorized representative; identify the respondent(s) to whom the withdrawal applies; contain the HUD and FHAP agency complaint numbers; state the reason(s) complainant seeks to withdraw the complaint; contain a statement that the withdrawal was not obtained by coercion or threat of retaliation from any person, including but not limited to the respondent; and identify the terms of the resolution.
- B. Required Documents: The FHAP agency must provide FHEO with: a signed and dated complaint; a chronology of the FHAP agency actions prior to the withdrawal request; a copy of the signed and dated withdrawal request; documentation showing that the agency notified the complainant and respondent that the investigation would be terminated as a result of the withdrawal, and that the complainant could re-file the complaint if the terms of the resolution are not satisfied and the re-filing is received within the time limit for filing a complaint under the substantially equivalent law; and a copy of the closure letter.

NOTE: The FHAP agency must not encourage or facilitate resolution without its involvement in lieu of proceeding with conciliation. If HUD discovers that such occurred, it will be addressed through performance deficiency procedures.

#### **VII. CRITERIA FOR ADMINISTRATIVE CLOSURES**

Performance Standard 2 in the FHAP regulations, at 24 C.F.R. § 115.206(e)(2), requires that administrative closures only be utilized in limited and appropriate circumstances. It

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is critical that FHAP agencies not close complaints administratively except under the specific circumstances set forth below.

- A. Withdrawals without Resolution. If complainant decides to withdraw a complaint, even though the complaint has not been resolved, complainant must submit a withdrawal request.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: The withdrawal request must be written; signed and dated by complainant or complainant's authorized representative; identify the respondent(s) to whom the withdrawal applies; contain the HUD and FHAP agency complaint numbers; state the reason(s) complainant seeks to withdraw the complaint; contain a statement that complainant is aware that the withdrawal terminates the FHAP agency's investigation; contain a statement that the withdrawal was not obtained by coercion or threat of retaliation from any person, including but not limited to the respondent.
2. Required Documents: The FHAP agency must provide FHEO: a signed and dated complaint; a chronology of FHAP agency actions prior to receipt of the withdrawal request; a copy of the signed and dated withdrawal request that meets the Quality Requirements set out above; and a copy of the closure letter provided to all parties indicating closure due to withdrawal by complainant without resolution.

NOTE: If the withdrawal request indicates that there was coercion or threat of retaliation, FHAP payment may be denied.

- B. Inability to Locate Complainant. The FHAP agency may administratively close a complaint when additional information is needed from complainant and he or she cannot be located.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: If correspondence sent by the agency is returned with an indication that the complainant moved and left no forwarding address, the agency must take the following progressive steps to locate the complainant before administratively closing the complaint:
  - a. Place at least four telephone calls to complainant's residence, cell phone number, and place of employment, two during normal business hours to work number and two during non-business hours to a residential/cell number. If an email address is available, the

agency must attempt to email the complainant at least two times.

- b. Attempt to contact persons identified by complainant at intake to inquire as to complainant's whereabouts.
- c. Check other sources in an effort to obtain complainant's current contact information (e.g., telephone directory, Internet searches, postal service, 411 information, utility company, or witnesses previously identified by complainant).
- d. Send a letter to the complainant's last known address by certified mail, advising complainant of the agency's intent to close the case unless complainant contacts the agency within ten days. If the tenth day elapses without a response, the case may be closed administratively by means of a written notice sent to all parties, including complainant at complainant's last known address.

NOTE: If the FIR shows that the complaint was closed due to the inability to contact complainant without following the steps outlined above, the FHAP agency will not be reimbursed for processing the complaint.

2. Required Documents: The FHAP agency must provide the following documentation to FHEO: a signed and dated complaint; evidence that the above progressive steps were taken to locate complainant; evidence that the certified letter was returned unclaimed, and a copy of the closure letter sent to the parties indicating closure due to inability to locate complainant.

C. Inability to Locate Respondent

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: A FHAP agency must make every effort to identify the correct name and address of each respondent in a complaint. However, there may be circumstances where a respondent cannot be identified or located. If the complaint identifies multiple respondents and only one cannot be adequately identified, the agency must not close the complaint administratively. Rather, the investigation must proceed and further efforts must be made during the investigation to identify the respondent whose correct name or address remains unknown. The complaint may be amended to remove those respondents who could not be located.

If a sole respondent or all respondents cannot be identified or located, the complaint may be closed administratively if the agency first takes the following steps:

- a. The FHAP agency must attempt to obtain additional information from available sources that could result in identifying or locating the respondent, including Internet searches, cell phone numbers, cross reference directories, or property tax records that may identify the owner or prior residents of the property in question and provide enough information to identify or locate the respondent, serve the complainant, and begin the formal investigation.
- b. If a source appears to know the identity or location of a respondent that the FHAP agency seeks, but that source refuses to provide the information voluntarily, the FHAP agency must subpoena the information.
- c. As appropriate, the FHAP agency should attempt an on-site visit, which may help locate and identify the respondent.
- d. If the above efforts to locate or identify the respondent are unsuccessful, a letter must be sent to the complainant giving him or her 10 days to provide information needed to locate or identify respondents.

NOTE: In the absence of sufficient information, the case may be closed administratively, and written notice by regular and certified mail should be sent to the parties.

Required Documents: The FHAP agency must provide the following documentation to FHEO: a signed and dated complaint; evidence that the above progressive steps were taken to locate the respondent, including the signed letters identified in 1(d) above giving notice to complainant or complainant's representative, evidence that certified letters were returned unclaimed, and closure letters to complainant or complainant's representative indicating inability to locate respondent(s).

- D. Failure of Complainant to Cooperate with the Investigation. A complaint may be administratively closed when complainant fails to respond to reasonable requests for information that is needed in order for the FHAP agency to make a determination.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements:
  - a. The FHAP agency must inform the complainants and their representatives of their duty to cooperate with the investigation and the risk of the agency administratively closing the complaint if they fail to

cooperate.

- b. The FHAP agency must make repeated attempts to contact complainants and their representatives by telephone and mail requesting the needed information. If these efforts are fruitless, the FHAP agency must send a letter to the complainant by certified mail return receipt giving complainant at least ten days from receipt of letter to provide the needed information to the agency.
  - c. If the complainant's cooperation cannot be obtained using the above procedures, and the letter is not returned by the post office (i.e., marked addressee unknown, moved, left no forwarding address, etc.), the complaint should then be closed for failure to cooperate.
  - d. If the complaint is closed for failure of complainant to cooperate with the investigation, a closure letter must be sent to the complainant.
2. Required Documents: The following documents must be provided to FHEO: a signed and dated complaint; evidence that the above progressive steps were taken to obtain complainant's cooperation, including the signed letter identified in 1(b) above giving notice to the complainant or the complainant's representative; and a copy of closure letter to the parties indicating closure because of failure of complainant to cooperate with the investigation.

E. Lack of Jurisdiction

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: In order to qualify for reimbursement, the lack of jurisdiction must not have been apparent on the face of the complaint at the time of filing; and must have become known only after further investigation. The following are examples of facts uncovered during an investigation that may justify reimbursement for an administrative closure for lack of jurisdiction: a) the complainant has not suffered the alleged harm needed to establish standing; b) the subject property qualifies for an exemption to coverage of both the Fair Housing Act and the substantially equivalent law. Note that if HUD, but not the agency, has jurisdiction over the complaint, the complaint must be referred to HUD for processing.
2. Required Documentation: The FHAP agency must provide the following documentation to FHEO: reason(s) for closing the complaint for lack of jurisdiction that demonstrates why HUD does not have jurisdiction, and that the lack of jurisdiction could not have been determined at intake;

copies of closure letter sent to the parties that indicate reason for lack of jurisdiction closure, identify FHAP and HUD complaint numbers, and are signed by authorized FHAP agency official.

- F. Trial has Begun A complaint must not be closed merely because an aggrieved party has filed a civil action with respect to the same alleged discriminatory housing practice(s).

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: No additional criteria.
2. Required Documents: To receive reimbursement for an administrative closure due to the commencement of a judicial trial the FHAP agency must produce: a document from the clerk of the court in the jurisdiction that hears the complaint or other sufficient documentation demonstrating that a trial has begun.



ATTACHMENT B

**FY2016 Standards for Timeliness**

**Closures of Investigated Complaints**

100 days or less:

- Non-systemic complaints, not novel or complex, that are settled or conciliated. Includes withdrawals with resolution.
- Non-systemic complaints, not novel or complex, where a cause or no cause decision has been made.

300 days or less:

- Systemic complaints that are novel or complex, that are settled or conciliated. Includes withdrawals with resolution.

350 days or less

- Systemic complaints that are novel or complex, where a cause or no cause decision has been made.

**Administrative Closures**

Unable to locate:	100 days or less
Lack of jurisdiction:	30 days or less
Failure to cooperate:	60 days or less
Withdrawal without resolution:	75 days or less
Closed because trial commenced:	N/A
Complaints that are reactivated:	N/A

ATTACHMENT C

**FY2016 Payment Amounts for FHAP Complaint Processing**

<b>Effective Conciliation*:</b>	\$3,100
<b>Cause or no cause:</b>	\$2,800
<b>Post-cause enforcement action supplemental payments:</b>	
• <b>Administrative Hearing held:</b>	\$5,000
• <b>Civil Action filed:</b>	\$8,000
<b>Administrative Closures:</b>	\$1,400
<b>Withdrawals with Resolution:</b>	\$1,400

**\*Effective Conciliation** – an “effective” conciliation is one that provides relief for the complainant(s) **and** public interest relief. For purposes of determining whether a conciliation warrants the higher payment, public interest relief can take a variety of forms depending on the circumstances of a given complaint. Generally, it means the conciliation agreement contains certain requirements such as implementation of nondiscriminatory policies, changes to existing policies and practices, attendance at fair housing training, or other action that provides remediation or relief for individuals other than a complainant(s). Public interest relief may also encompass prospective relief such as agreeing to ongoing testing to assure compliance, relief for additional victims not identified in complaints, or other affirmative relief that protects the public interest, etc. Public interest relief does not include individual complainant relief or recognition of past policy changes not achieved as a result of conciliation. Reporting and monitoring provisions, which should be included in virtually all conciliation agreements, do not constitute public interest relief. A conciliation that fails to provide public interest relief will be reimbursed at the Full Investigation amount of \$2,800.00.

16-1182

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA  
BUDGET AMENDMENT

BGRV 091916\*571  
BGEX 091916\*1996

1252 - HUD Fair Housing

ACCT.NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 9/19/16	REMAINING BALANCE
<b><u>REVENUES</u></b>								
402-4131-3169	Fed Grant Other Transportation	100,000	100,000	230,450	0	330,450		
	<b>Total</b>	<b>115,977</b>	<b>134,864</b>	<b>230,450</b>	<b>0</b>	<b>365,314</b>		
<b><u>EXPENDITURES</u></b>								
402-4131-1080	Personal Services - Indirect	0	0	230,450	0	230,450	4,864	225,586
	<b>Total</b>	<b>115,977</b>	<b>134,864</b>	<b>230,450</b>	<b>0</b>	<b>365,314</b>	<b>74,307</b>	<b>291,007</b>

Office of Equal Opportunity.  
INITIATING DEPARTMENT/DIVISION  
Administration/Budget Department Approval  
OFMB Department - Posted

Signatures  
Janelle D.  
J. Hall

Date  
19 September 2016.  
10/15/16

By Board of County Commissioners  
At Meeting of \_\_\_\_\_  
Deputy Clerk to the  
Board of County Commissioners

16-1183

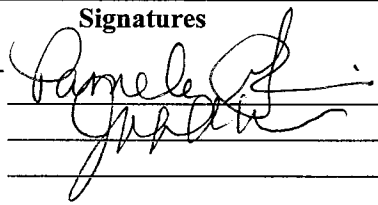
BOARD OF COUNTY COMMISSIONERS  
 PALM BEACH COUNTY, FLORIDA  
 BUDGET TRANSFER

BGEX 091916\*1994

0001 - General Fund

ACCT.NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 7/28/15	REMAINING BALANCE
<b><u>EXPENDITURES</u></b>								
400-4130-1070	Charge-Off Personal Services	0	0	0	230,450	(230,450)	4,864	(235,314)
820-9900-9901	Contingency Reserves	20,775,190	17,157,775	230,450	0	17,388,225	0	17,388,225
				230,450	230,450			

Office of Equal Opportunity  
 INITIATING DEPARTMENT/DIVISION  
 Administration/Budget Department Approval  
 OFMB Department - Posted

Signatures  


Date  
 19 September 2016.  
 10/15/16

By Board of County Commissioners  
 At Meeting of  
 Deputy Clerk to the  
 Board of County Commissioners