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Title 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 45 - FAIR HOUSING

SUBCHAPTER I - GENERALLY

From the U.S. Government Publishing Office, www.gpo.gov**SUBCHAPTER I—GENERALLY****§3601. Declaration of policy**

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

(Pub. L. 90–284, title VIII, §801, Apr. 11, 1968, 82 Stat. 81.)

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–430, §13(a), Sept. 13, 1988, 102 Stat. 1636, provided that: "This Act and the amendments made by this Act [see Short Title of 1988 Amendment note below] shall take effect on the 180th day beginning after the date of the enactment of this Act [Sept. 13, 1988]."

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–76, §1, Dec. 28, 1995, 109 Stat. 787, provided that: "This Act [amending section 3607 of this title] may be cited as the 'Housing for Older Persons Act of 1995'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–430, §1, Sept. 13, 1988, 102 Stat. 1619, provided that: "This Act [enacting sections 3610 to 3614a of this title, amending sections 3602, 3604 to 3608, 3615 to 3619, and 3631 of this title and sections 2341 and 2342 of Title 28, Judiciary and Judicial Procedure, repealing former sections 3610 to 3613 of this title, and enacting provisions set out as notes under this section and section 3602 of this title] may be cited as the 'Fair Housing Amendments Act of 1988'."

SHORT TITLE

Section 1 of Pub. L. 90–284, as added by Pub. L. 100–430, §2, Sept. 13, 1988, 102 Stat. 1619, provided: "That this Act [enacting this chapter, sections 231 to 233, 245, 2101, and 2102 of Title 18, Crimes and Criminal Procedure, and sections 1301 to 1303, 1311, 1312, 1321 to 1326, 1331, and 1341 of Title 25, Indians, amending sections 1973j, 3533, 3535 of this title, and sections 241, 242, and 1153 of Title 18, enacting provisions set out as notes under sections 231 and 245 of Title 18, and repealing provisions set out as notes under section 1360 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Civil Rights Act of 1968'."

Section 800 of Pub. L. 90–284, title VIII, as added by Pub. L. 100–430, §4, Sept. 13, 1988, 102 Stat. 1619, provided that: "This title [enacting this subchapter and amending sections 3533 and 3535 of this title] may be cited as the 'Fair Housing Act'."

SEPARABILITY

Pub. L. 100–430, §14, Sept. 13, 1988, 102 Stat. 1636, provided that: "If any provision of this Act [see Short Title of 1988 Amendment note above] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

DISCLAIMER OF PREEMPTIVE EFFECT ON OTHER ACTS

Pub. L. 100–430, §12, Sept. 13, 1988, 102 Stat. 1636, provided that: "Nothing in the Fair Housing Act [this subchapter] as amended by this Act [see Short Title of 1988 Amendment note above] limits any right, procedure, or remedy available under the Constitution or any other Act of the Congress not so amended."

INITIAL RULEMAKING

Pub. L. 100–430, §13(b), Sept. 13, 1988, 102 Stat. 1636, provided that: "In consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the date of the enactment of this Act [Sept. 13, 1988], issue rules to implement title VIII [this subchapter] as amended by this Act [see Short Title of 1988 Amendment note above]. The Secretary shall give public notice and opportunity for comment with respect to such rules."

FEDERALLY PROTECTED ACTIVITIES; PENALTIES

Penalties for violations respecting federally protected activities not applicable to and not affecting activities under this subchapter, see section 101(b) of Pub. L. 90–284, set out as a note under section 245 of Title 18, Crimes and Criminal Procedure.

§3602. Definitions

As used in this subchapter—

- (a) "Secretary" means the Secretary of Housing and Urban Development.
- (b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.
- (c) "Family" includes a single individual.
- (d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, receivers, and fiduciaries.
- (e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.
- (f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Handicap" means, with respect to a person—

- (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
- (2) a record of having such an impairment, or
- (3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of title 21).

(i) "Aggrieved person" includes any person who—

- (1) claims to have been injured by a discriminatory housing practice; or
- (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

(j) "Complainant" means the person (including the Secretary) who files a complaint under section 3610 of this title.

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

- (1) a parent or another person having legal custody of such individual or individuals; or
- (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(l) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(n) "Respondent" means—

- (1) the person or other entity accused in a complaint of an unfair housing practice; and
- (2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 3610(a) of this title.

(o) "Prevailing party" has the same meaning as such term has in section 1988 of this title.

(Pub. L. 90–284, title VIII, §802, Apr. 11, 1968, 82 Stat. 81; Pub. L. 95–598, title III, §331, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 100–430, §5, Sept. 13, 1988, 102 Stat. 1619.)

AMENDMENTS

1988—Subsec. (f). Pub. L. 100–430, §5(a), substituted "3606, or 3617" for "or 3606".

Subsecs. (h) to (o). Pub. L. 100–430, §5(b), added subsecs. (h) to (o).

1978—Subsec. (d). Pub. L. 95–598 substituted "trustees in cases under title 11" for "trustees in bankruptcy".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

TRANVESTISM

Section 6(b)(3) of Pub. L. 100–430 provided that: "For the purposes of this Act [see Short Title of 1988 Amendment note set out under section 3601 of this title] as well as chapter 16 of title 29 of the United States Code [29 U.S.C. 701 et seq.], neither the term 'individual with handicaps' nor the term 'handicap' shall apply to an individual solely because that individual is a transvestite."

§3603. Effective dates of certain prohibitions

(a) Application to certain described dwellings

Subject to the provisions of subsection (b) of this section and section 3607 of this title, the prohibitions against discrimination in the sale or rental of housing set forth in section 3604 of this title shall apply:

(1) Upon enactment of this subchapter, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to April 11, 1968;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b) of this section.

(b) Exemptions

Nothing in section 3604 of this title (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) Business of selling or renting dwellings defined

For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(Pub. L. 90–284, title VIII, §803, Apr. 11, 1968, 82 Stat. 82.)

§3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(A) that buyer or renter,¹

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes—

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be

necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.²

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that—

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term "covered multifamily dwellings" means—

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(Pub. L. 90–284, title VIII, §804, Apr. 11, 1968, 82 Stat. 83; Pub. L. 93–383, title VIII, §808(b)(1), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100–430, §§6(a)–(b)(2), (e), 15, Sept. 13, 1988, 102 Stat. 1620, 1622, 1623, 1636.)

AMENDMENTS

1988—Pub. L. 100–430, §6(e), inserted "and other prohibited practices" in section catchline.

Subsecs. (a), (b). Pub. L. 100–430, §6(b)(2), inserted "familial status," after "sex,".

Subsecs. (c) to (e). Pub. L. 100–430, §6(b)(1), inserted "handicap, familial status," after "sex,".

Subsec. (f). Pub. L. 100–430, §6(a), added subsec. (f).

Subsec. (f)(3)(A). Pub. L. 100–430, §15, which directed the substitution of "except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted." for the period at the end of subpar. (A) was executed by making the substitution for a semicolon as the probable intent of Congress because subpar. (A) ended with a semicolon, not a period.

1974—Pub. L. 93–383 inserted ", sex" after "religion" wherever appearing in cls. (a) to (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

¹ *So in original. The comma probably should be a semicolon.*

² *So in original. The period probably should be a semicolon.*

§3605. Discrimination in residential real estate-related transactions

(a) In general

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) "Residential real estate-related transaction" defined

As used in this section, the term "residential real estate-related transaction" means any of the following:

- (1) The making or purchasing of loans or providing other financial assistance—
 - (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - (B) secured by residential real estate.

- (2) The selling, brokering, or appraising of residential real property.

(c) Appraisal exemption

Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

(Pub. L. 90–284, title VIII, §805, Apr. 11, 1968, 82 Stat. 83; Pub. L. 93–383, title VIII, §808(b)(2), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100–430, §6(c), Sept. 13, 1988, 102 Stat. 1622.)

AMENDMENTS

1988—Pub. L. 100–430 amended section generally. Prior to amendment, section read as follows: "After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 3603(b) of this title."

1974—Pub. L. 93–383 inserted ", sex" after "religion".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

§3606. Discrimination in the provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

(Pub. L. 90–284, title VIII, §806, Apr. 11, 1968, 82 Stat. 84; Pub. L. 93–383, title VIII, §808(b)(3), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100–430, §6(b)(1), Sept. 13, 1988, 102 Stat. 1622.)

AMENDMENTS

1988—Pub. L. 100–430 inserted "handicap, familial status," after "sex,".

1974—Pub. L. 93–383 inserted ", sex" after "religion".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

§3607. Religious organization or private club exemption

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)(1) Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons.

(2) As used in this section, "housing for older persons" means housing—

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

- (C) intended and operated for occupancy by persons 55 years of age or older, and—
- (i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;
 - (ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and
 - (iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall—
 - (I) provide for verification by reliable surveys and affidavits; and
 - (II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

- (3) Housing shall not fail to meet the requirements for housing for older persons by reason of:
- (A) persons residing in such housing as of September 13, 1988, who do not meet the age requirements of subsections ¹(2)(B) or (C): *Provided*, That new occupants of such housing meet the age requirements of subsections ¹(2)(B) or (C); or
 - (B) unoccupied units: *Provided*, That such units are reserved for occupancy by persons who meet the age requirements of subsections ¹(2)(B) or (C).

(4) Nothing in this subchapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 802 of title 21.

(5)(A) A person shall not be held personally liable for monetary damages for a violation of this subchapter if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that—

- (i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and
- (ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

(Pub. L. 90–284, title VIII, §807, Apr. 11, 1968, 82 Stat. 84; Pub. L. 100–430, §6(d), Sept. 13, 1988, 102 Stat. 1622; Pub. L. 104–76, §§2, 3, Dec. 28, 1995, 109 Stat. 787.)

CODIFICATION

September 13, 1988, referred to in subsec. (b)(3)(A), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 100–430, which enacted subsec. (b) of this section, to reflect the probable intent of Congress.

AMENDMENTS

1995—Subsec. (b)(2)(C). Pub. L. 104–76, §2, amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

"(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

"(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

"(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older."

Subsec. (b)(5). Pub. L. 104–76, §3, added par. (5).

1988—Pub. L. 100–430 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

REGULATIONS

Pub. L. 102–550, title IX, §919, Oct. 28, 1992, 106 Stat. 3883, provided that: "The Secretary of Housing and Urban Development shall, not later than 180 days after the date of the enactment of this Act [Oct. 28, 1992], make rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act [42 U.S.C. 3607(b)(2)] to meet the definition of the term 'housing for older persons' in such section."

¹ *So in original. Probably should be "paragraph".*

§3608. Administration

(a) Authority and responsibility

The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary

The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review

The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining,

ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The person to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes

All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary

The Secretary of Housing and Urban Development shall—

- (1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;
- (2) publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Congress—
 - (A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this subchapter, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and
 - (B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which—
 - (i) investigations are not completed as required by section 3610(a)(1)(B) of this title;
 - (ii) determinations are not made within the time specified in section 3610(g) of this title;and
 - (iii) hearings are not commenced or findings and conclusions are not made as required by section 3612(g) of this title;
- (3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;
- (4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices;
- (5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter; and

(6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) of this section which apply to such programs (and in order to develop the data to be included and made available to the public under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).

(f) Provisions of law applicable to Department programs

The provisions of law and Executive orders to which subsection (e)(6) of this section applies are—

- (1) title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.];
- (2) this subchapter;
- (3) section 794 of title 29;
- (4) the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.];
- (5) the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.];
- (6) section 1982 of this title;
- (7) section 637(a) of title 15;
- (8) section 1735f–5 of title 12;
- (9) section 5309 of this title;
- (10) section 1701u of title 12;
- (11) Executive orders 11063, 11246, 11625, 12250, 12259, and 12432; and
- (12) any other provision of law which the Secretary specifies by publication in the Federal Register for the purpose of this subsection.

(Pub. L. 90–284, title VIII, §808, Apr. 11, 1968, 82 Stat. 84; Pub. L. 95–251, §3, Mar. 27, 1978, 92 Stat. 184; Pub. L. 95–454, title VIII, §801(a)(3)(J), Oct. 13, 1978, 92 Stat. 1222; Pub. L. 100–430, §7, Sept. 13, 1988, 102 Stat. 1623.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, known as the Civil Rights Act of 1968. For complete classification of this Act to the Code, see Tables.

The Civil Rights Act of 1964, referred to in subsec. (f)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (f)(4), is title III of Pub. L. 94–135, Nov. 28, 1975, 78 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Equal Credit Opportunity Act, referred to in subsec. (f)(5), is title VII of Pub. L. 90–321, as added by Pub. L. 93–495, title V, §503, Oct. 28, 1974, 88 Stat. 1521, as amended, which is classified generally to

subchapter IV (§1691 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Executive orders referred to in subsec. (f)(11) are set out as notes under sections of the Code as follows:

- Ex. Ord. No. 11063: 42 U.S.C. 1982,
- Ex. Ord. No. 11246: 42 U.S.C. 2000e,
- Ex. Ord. No. 11625: 15 U.S.C. 631,
- Ex. Ord. No. 12250: 42 U.S.C. 2000d-1, and
- Ex. Ord. No. 12432: 15 U.S.C. 631.

Ex. Ord. No. 12259, referred to in subsec. (f)(11), was set out below, prior to revocation by Ex. Ord. No. 12892, Jan. 17, 1994, 59 F.R. 2939, set out below.

CODIFICATION

The second sentence of subsec. (b) of this section has been omitted as it amended sections 3533(a) and 3535(c) of this title.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100-430, §7(a), inserted "(including any Federal agency having regulatory or supervisory authority over financial institutions)" after "urban development".

Subsec. (e)(2). Pub. L. 100-430, §7(b)(1)(A), inserted provisions relating to annual report to Congress.

Subsec. (e)(6). Pub. L. 100-430, §7(b)(1)(B)–(D), added par. (6).

Subsec. (f). Pub. L. 100-430, §7(b)(2), added subsec. (f).

1978—Subsec. (c). Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners".

Pub. L. 95-454 substituted "5372" for "5362".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as a note under section 3601 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4)(A) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of Title 5, Government Organization and Employees.

TREATMENT OF OCCUPANCY STANDARDS

Pub. L. 105-276, title V, §589, Oct. 21, 1998, 112 Stat. 2651, provided that:

"(a) ESTABLISHMENT OF POLICY.—Not later than 60 days after the date of the enactment of this Act [Oct. 21, 1998], the Secretary of Housing and Urban Development shall publish a notice in the Federal Register for effect that takes effect upon publication and provides that the specific and unmodified standards provided in the March 20, 1991, Memorandum from the General Counsel of the Department of Housing and Urban Development to all Regional Counsel shall be the policy of the Department of Housing and Urban Development with respect to complaints of discrimination under the Fair Housing Act (42 U.S.C. 3601 et seq.) on the basis of familial status which involve an occupancy standard established by a housing provider.

"(b) PROHIBITION OF NATIONAL STANDARD.—The Secretary of Housing and Urban Development shall not directly or indirectly establish a national occupancy standard."

EXECUTIVE ORDER NO. 12259

Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253, which related to leadership and coordination by Secretary of Housing and Urban Development of fair housing programs and activities in Federal programs, was revoked by Ex. Ord. No. 12892, §6–607, Jan. 17, 1994, 59 F.R. 2939, set out below.

EX. ORD. NO. 12892. LEADERSHIP AND COORDINATION OF FAIR HOUSING IN FEDERAL PROGRAMS: AFFIRMATIVELY FURTHERING FAIR HOUSING

Ex. Ord. No. 12892, Jan. 17, 1994, 59 F.R. 2939, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the Fair Housing Act, as amended (42 U.S.C. 3601 *et seq.*) ("Act"), in order to affirmatively further fair housing in all Federal programs and activities relating to housing and urban development throughout the United States, it is hereby ordered as follows:

SECTION 1. *Administration of Programs and Activities Relating to Housing and Urban Development.*

1–101. Section 808(d) of the Act, as amended [42 U.S.C. 3608(d)], provides that all executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of the Act and shall cooperate with the Secretary of Housing and Urban Development to further such purposes.

1–102. As used in this order, the phrase "programs and activities" shall include programs and activities operated, administered, or undertaken by the Federal Government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility (including regulatory or supervisory authority over financial institutions).

SEC. 2. *Responsibilities of Executive Agencies.*

2–201. The primary authority and responsibility for administering the programs and activities relating to housing and urban development affirmatively to further fair housing is vested in the Secretary of Housing and Urban Development.

2–202. The head of each executive agency is responsible for ensuring that its programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing as required by section 808 of the Act [42 U.S.C. 3608] and for cooperating with the Secretary of Housing and Urban Development, who shall be responsible for exercising leadership in furthering the purposes of the Act.

2–203. In carrying out the responsibilities in this order, the head of each executive agency shall take appropriate steps to require that all persons or other entities who are applicants for, or participants in, or who are supervised or regulated under, agency programs and activities relating to housing and urban development shall comply with this order.

2–204. Upon receipt of a complaint alleging facts that may constitute a violation of the Act or upon receipt of information from a consumer compliance examination or other information suggesting a violation of the Act, each executive agency shall forward such facts or information to the Secretary of Housing and Urban Development for processing under the Act. Where such facts or information indicate a possible pattern or practice of discrimination in violation of the Act, they also shall be forwarded to the Attorney General. The

authority of the Federal depository institution regulatory agencies to take appropriate action under their statutory authority remains unaffected.

SEC. 3. President's Fair Housing Council.

3-301. There is hereby established an advisory council entitled the "President's Fair Housing Council" ("Council"). The Council shall be chaired by the Secretary of Housing and Urban Development and shall consist of the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Education, the Secretary of Labor, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Veterans Affairs, the Secretary of the Treasury, the Attorney General, the Secretary of the Interior, the Chair of the Federal Reserve, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chair of the Federal Deposit Insurance Corporation, and such other officials of executive departments and agencies as the President may, from time to time, designate.

3-302. The President's Fair Housing Council shall review the design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing. The Council shall propose revisions to existing programs or activities, develop pilot programs and activities, and propose new programs and activities to achieve its goals.

3-303. In support of cooperative efforts among all executive agencies, the Secretary of Housing and Urban Development shall:

(a) cooperate with, and render assistance to, the heads of all executive agencies in the formulation of policies and procedures to implement this order and to provide information and guidance on the affirmative administration of programs and activities relating to housing and urban development and the protection of the rights accorded by the Act; and

(b) develop memoranda of understanding and any necessary implementing procedures among executive agencies designed to provide for consultation and the coordination of Federal efforts to further fair housing through the affirmative administration of programs and activities relating to housing and urban development, including coordination of the investigation of complaints or other information referred to the Secretary as required by section 2-204 of this order that would constitute a violation of the Act or, where relevant, other Federal laws. Existing memoranda of understanding shall remain in effect until superseded.

3-304. In connection with carrying out functions under this order, the Secretary of Housing and Urban Development is authorized to request from any executive agency such information and assistance as the Secretary deems necessary. Each agency shall furnish such information to the extent permitted by law and, to the extent practicable, provide assistance to the Secretary.

SEC. 4. Specific Responsibilities.

4-401. In implementing the responsibilities under sections 2-201, 2-202, 2-203, and section 3 of this order, the Secretary of Housing and Urban Development shall, to the extent permitted by law:

(a) promulgate regulations in consultation with the Department of Justice and Federal banking agencies regarding programs and activities of executive agencies related to housing and urban development that shall:

(1) describe the functions, organization, and operations of the President's Fair Housing Council;

(2) describe the types of programs and activities defined in section 1-102 of this order that are subject to the order;

(3) describe the responsibilities and obligations of executive agencies in ensuring that programs and activities are administered and executed in a manner that furthers fair housing;

(4) describe the responsibilities and obligations of applicants, participants, and other persons and entities involved in housing and urban development programs and activities affirmatively to further the goal

of fair housing; and

(5) describe a method to identify impediments in programs or activities that restrict fair housing choice and implement incentives that will maximize the achievement of practices that affirmatively further fair housing.

(b) coordinate executive agency implementation of the requirements of this order and issue standards and procedures regarding:

(1) the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing; and

(2) the cooperation of executive agencies in furtherance of the Secretary of Housing and Urban Development's authority and responsibility under the Act.

4-402. Within 180 days of the publication of final regulations by the Secretary of Housing and Urban Development under section 4-401 of this order, the head of each executive agency shall publish proposed regulations providing for the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing, consistent with the Secretary of Housing and Urban Development's regulations, and with the standards and procedures issued pursuant to section 4-401(b) of this order. As soon as practicable thereafter, each executive agency shall issue its final regulations. All executive agencies shall formally submit all such proposed and final regulations, and any related issuances or standards, to the Secretary of Housing and Urban Development at least 30 days prior to public announcement.

4-403. The Secretary of Housing and Urban Development shall review proposed regulations and standards prepared pursuant to section 4-402 of this order to ensure conformity with the purposes of the Act and consistency among the operations of the various executive agencies and shall provide comments to executive agencies with respect thereto on a timely basis.

4-404. In addition to promulgating the regulations described in section 4-401 of this order, the Secretary of Housing and Urban Development shall promulgate regulations describing the nature and scope of coverage and the conduct prohibited, including mortgage lending discrimination and property insurance discrimination.

SEC. 5. *Administrative Enforcement.*

5-501. The head of each executive agency shall be responsible for enforcement of this order and, unless prohibited by law, shall cooperate and provide records, data, and documentation in connection with any other agency's investigation of compliance with provisions of this order.

5-502. If any executive agency concludes that any person or entity (including any State or local public agency) applying for or participating in, or supervised or regulated under, a program or activity relating to housing and urban development has not complied with this order or any applicable rule, regulation, or procedure issued or adopted pursuant to this order, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion. An executive agency need not pursue informal resolution of matters where similar efforts made by another executive agency have been unsuccessful, except where otherwise required by law. In the event of failure of such informal means, the executive agency, in conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to section 4 of this order hereof, shall impose such sanctions as may be authorized by law. To the extent authorized by law, such sanctions may include:

(a) cancellation or termination of agreements or contracts with such person, entity, or any State or local public agency;

(b) refusal to extend any further aid under any program or activity administered by it and affected by this order until it is satisfied that the affected person, entity, or State or local public agency will comply with the

rules, regulations, and procedures issued or adopted pursuant to this order;

(c) refusal to grant supervisory or regulatory approval to such person, entity, or State or local public agency under any program or activity administered by it that is affected by this order or revoke such approval if previously given; and

(d) any other action as may be appropriate under law.

5-503. Findings of any violation under section 5-502 of this order shall be promptly reported by the head of each executive agency to the Secretary of Housing and Urban Development and the Attorney General. The Secretary of Housing and Urban Development shall forward this information to all other executive agencies.

5-504. Any executive agency shall also consider invoking appropriate sanctions against any person or entity where any other executive department or agency has initiated action against that person or entity pursuant to section 5-502 of this order, where the Secretary of Housing and Urban Development has issued a charge against such person or entity that has not been resolved, or where the Attorney General has filed a civil action in Federal Court against such person or entity.

5-505. Each executive agency shall consult with the Secretary of Housing and Urban Development, and the Attorney General where a civil action in Federal Court has been filed, regarding agency actions to invoke sanctions under the Act. The Department of Housing and Urban Development, the Department of Justice, and Federal banking agencies shall develop and coordinate appropriate policies and procedures for taking action under their respective authorities. Each decision to invoke sanctions and the reasons therefor shall be documented and shall be provided to the Secretary of Housing and Urban Development and, where appropriate, to the Attorney General in a timely manner.

SEC. 6. *General Provisions.*

6-601. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order No. 12250 [42 U.S.C. 2000d-1 note].

6-602. All provisions of regulations, guidelines, and procedures proposed to be issued by executive agencies pursuant to this order that implement nondiscrimination requirements of laws covered by Executive Order No. 12250 [42 U.S.C. 2000d-1 note] shall be submitted to the Attorney General for review in accordance with that Executive order. In addition, the Secretary shall consult with the Attorney General regarding all regulations and procedures proposed to be issued under sections 4-401 and 4-402 of this order to assure consistency with coordinated Federal efforts to enforce nondiscrimination requirements in programs of Federal financial assistance pursuant to Executive Order No. 12250.

6-603. Nothing in this order shall affect the authority and responsibility of the Attorney General to commence any civil action authorized by the Act.

6-604. (a) Part IV and sections 501 and 503 of Executive Order No. 11063 [42 U.S.C. 1982 note] are revoked. The activities and functions of the President's Committee on Equal Opportunity in Housing described in that Executive order shall be performed by the Secretary of Housing and Urban Development.

(b) Sections 101 and 502(a) of Executive Order No. 11063 are revised to apply to discrimination because of "race, color, religion (creed), sex, disability, familial status or national origin." All executive agencies shall revise regulations, guidelines, and procedures issued pursuant to Part II of Executive Order No. 11063 to reflect this amendment to coverage.

(c) Section 102 of Executive Order No. 11063 is revised by deleting the term "Housing and Home Finance Agency" and inserting in lieu thereof the term "Department of Housing and Urban Development."

6–605. Nothing in this order shall affect any requirement imposed under the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) or the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*).

6–606. Nothing in this order shall limit the authority of the Federal banking agencies to carry out their responsibilities under current law or regulations.

6–607. Executive Order No. 12259 is hereby revoked.

SEC. 7. Report.

7–701. The Secretary of Housing and Urban Development shall submit to the President an annual report commenting on the progress that the Department of Housing and Urban Development and other executive agencies have made in carrying out requirements and responsibilities under this Executive order. The annual report may be consolidated with the annual report on the state of fair housing required by section 808(e)(2) of the Act [42 U.S.C. 3608(e)(2)].

WILLIAM J. CLINTON.

FEDERAL LEADERSHIP OF FAIR HOUSING

Memorandum of President of the United States, Jan. 17, 1994, 59 F.R. 8513, provided:

Memorandum for the Heads of Executive Departments and Agencies

On April 11, 1968, one week after the assassination of the great civil rights leader Martin Luther King, Jr., the Fair Housing Act [42 U.S.C. 3601 *et seq.*] was enacted (1) to prohibit discrimination in housing, and (2) to direct the Secretary of Housing and Urban Development to affirmatively further fair housing in Federal housing and urban development programs. Twenty-five years later, despite a strengthening of the Fair Housing Act 5 years ago, hundreds of acts of housing discrimination occur in our Nation each day.

Americans of every income level, seeking to live where they choose, feel the weight of discrimination because of the color of their skin, their race, their religion, their gender, their country of origin, or because they are disabled or have children.

An increasing body of evidence indicates that barriers to fair housing are pervasive. Forty percent of all families move every 5 years. This statistic is significant given the results of a recent study, commissioned by the Department of Housing and Urban Development (HUD), which found that more than half of the African Americans and Latinos seeking to rent or buy a home are treated differently than whites with the same qualifications. Moreover, based upon Home Mortgage Disclosure Act [12 U.S.C. 2801 *et seq.*] data, the number of minority persons who are rejected when attempting to obtain loans to purchase homes is two to three times higher than it is for nonminorities in almost every metropolitan area of this country.

Racial and ethnic segregation, both in the private housing market and in public and assisted housing, has been well documented. Despite legislation (the Fair Housing Act) and Executive action (Executive Order No. 11063 [42 U.S.C. 1982 note]), the divisive impact of housing segregation persists in metropolitan areas all across this country. Too many lower income and minority Americans face barriers to housing outside of central cities. Segregation in housing and schools deprives too many of our children and youth of an opportunity to enter the marketplace or work on an equal footing. For too many families, our cities are no longer the launching pads for economic self-sufficiency and upward mobility that they have been for countless immigrants and minorities since the country's birth. And many Americans who are better off abandon the cities.

The resulting decline in the very heart of too many of our metropolitan areas threatens all of us: the health of our dynamic regional economies—the very lifeblood of future national economic growth and higher living

standards for all of us and all of our children—is placed at risk.

We can do better. We can start by making sure that our own Federal policies and programs across all of our agencies support the fair housing and equal opportunity goals to which all Americans are committed. If all of our executive agencies affirmatively further fair housing in the design of their policies and administration of their programs relating to housing and urban development, a truly nondiscriminatory housing market will be closer to achievement.

By an Executive Order [Ex. Ord. No. 12892, set out above] ("the Order") I am issuing today and this memorandum, I am addressing those needs. The Secretary of Housing and Urban Development and, where appropriate, the Attorney General—the officials with the primary responsibility for the enforcement of Federal fair housing laws—will take the lead in developing and coordinating measures to carry out the purposes of this Order.

Through this Order, I am first expanding Executive Order No. 11063 to provide protection against discrimination in programs of Federal insurance or guaranty to persons who are disabled and to families with children.

Second, I am revoking the old Executive Order No. 12259 entitled "Leadership and Coordination of Fair Housing in Federal Programs." The new Executive order reflects the expanded authority of the Secretary of Housing and Urban Development and I am directing him to take stronger measures to provide leadership and coordination in affirmatively furthering fair housing in Federal programs.

Third, I ask the heads of departments and agencies, including the Federal banking agencies, to cooperate with the Secretary of Housing and Urban Development in identifying ways to structure agency programs and activities to affirmatively further fair housing and to promptly negotiate memoranda of understanding with him to accomplish that goal.

Further, I direct the Secretary of Housing and Urban Development to review all of HUD's programs to assure that they truly provide equal opportunity and promote economic self-sufficiency for those who are beneficiaries and recipients of those programs.

I also direct the Secretary to review HUD's programs to assure that they contain the maximum incentives to affirmatively further fair housing and to eliminate barriers to free choice where they continue to exist. This review shall include Federally assisted housing, Federally insured housing and other housing and housing related programs, including those of the Government National Mortgage Association and the Federal Housing Administration.

Today, I am establishing a new Cabinet-level organization to focus the cooperative efforts of all agencies on fair housing. The President's Fair Housing Council will be chaired by the Secretary of Housing and Urban Development and will consist of the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Education, the Secretary of Labor, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Veterans Affairs, the Secretary of the Treasury, the Attorney General, the Secretary of the Interior, the Chair of the Federal Reserve, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Chair of the Federal Deposit Insurance Corporation.

The President's Fair Housing Council shall review the design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing. The Council shall propose revisions to existing programs or activities, develop pilot programs and activities, and propose new programs and activities to achieve its goals.

I direct the Secretary of Housing and Urban Development and the President's Fair Housing Council to develop a pilot program to be implemented in selected metropolitan areas. This initiative will promote fair

housing choice by helping inner-city families to move to suburban neighborhoods and by making the central city more attractive to those who have left it. I direct the members of the Council to undertake a demonstration program that will reinvent the way assisted housing is offered to applicants, will break down jurisdictional barriers in housing opportunities, and will promote the use of subsidies that diminish residential segregation, and will combine these initiatives with refined educational incentives aimed at improving the effectiveness of inner-city schools. I am directing that transportation alternatives be considered along with targeted social service and job training programs as part of the support necessary to create a one-stop, metropolitan area-wide fair housing opportunity pilot program that will effectively offer Federally assisted housing, Federally insured housing, and private market housing within a metropolitan area to all residents of the area. The pilot program should call upon realtors, mortgage lenders, housing providers, and local governments, among others, to assist in expanding housing choices.

To address the findings of recent studies, I hereby direct the Secretary of Housing and Urban Development and the Attorney General and, where appropriate, the heads of the Federal banking agencies to exercise national leadership to end discrimination in mortgage lending, the secondary mortgage market, and property insurance practices. The Secretary is directed to issue regulations to define discriminatory practices in these areas and the Secretary and the Attorney General are directed to aggressively enforce the laws prohibiting these practices.

In each of these areas, I direct the Secretary of Housing and Urban Development to take the lead with the other Federal agencies in working to gain the voluntary cooperation, participation, and expertise of all of those in private industry, the States and localities who can assist in achieving the Nation's fair housing goals.

The Secretary of Housing and Urban Development is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§3608a. Collection of certain data

(a) In general

To assess the extent of compliance with Federal fair housing requirements (including the requirements established under title VI of Public Law 88–352 [42 U.S.C. 2000d et seq.] and title VIII of Public Law 90–284 [42 U.S.C. 3601 et seq.]), the Secretary of Agriculture shall collect, not less than annually, data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefiting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by such Secretary. Such data shall be collected on a building by building basis if the Secretary determines such collection to be appropriate.

(b) Reports to Congress

The Secretary of Agriculture shall include in the annual report of such Secretary to the Congress a summary and evaluation of the data collected by such Secretary under subsection (a) of this section during the preceding year.

(Pub. L. 100–242, title V, §562, Feb. 5, 1988, 101 Stat. 1944; Pub. L. 104–66, title I, §1071(e), Dec. 21, 1995, 109 Stat. 720.)

REFERENCES IN TEXT

Public Law 88–352, referred to in subsec. (a), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Title VIII of Public Law 90–284, referred to in subsec. (a), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, known as the Fair Housing Act, which is classified principally to subchapter I (§3601 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of title VIII of Pub. L. 90–284, popularly known as the Fair Housing Act, which comprises this subchapter.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–66, §1071(e)(1), struck out "the Secretary of Housing and Urban Development and" before "the Secretary of Agriculture", "each" before "collect, not less than annually", and "involved" before "determines such collection".

Subsec. (b). Pub. L. 104–66, §1071(e)(2), substituted "The" for "The Secretary of Housing and Urban Development and the" before "Secretary of Agriculture" and struck out "each" before "include in the".

§3609. Education and conciliation; conferences and consultations; reports

Immediately after April 11, 1968, the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this subchapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this subchapter and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of title 5. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this subchapter. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

(Pub. L. 90–284, title VIII, §809, Apr. 11, 1968, 82 Stat. 85.)

§3610. Administrative enforcement; preliminary matters

(a) Complaints and answers

(1)(A)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such a complaint—

(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this subchapter;

(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this subchapter, together with a copy of the original complaint;

(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

(2)(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative report and conciliation

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this subchapter.

(5)(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing—

- (i) the names and dates of contacts with witnesses;
- (ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
- (iii) a summary description of other pertinent records;
- (iv) a summary of witness statements; and
- (v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to comply with conciliation agreement

Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 3614 of this title for the enforcement of such agreement.

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt judicial action

(1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this subchapter, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil

Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 3612 of this title.

(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any respondent under sections 3614(a) and 3614(c) of this title or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Referral for State or local proceedings

(1) Whenever a complaint alleges a discriminatory housing practice—

- (A) within the jurisdiction of a State or local public agency; and
- (B) as to which such agency has been certified by the Secretary under this subsection;

the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless—

- (A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;
- (B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or
- (C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

(3)(A) The Secretary may certify an agency under this subsection only if the Secretary determines that—

- (i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;
- (ii) the procedures followed by such agency;
- (iii) the remedies available to such agency; and
- (iv) the availability of judicial review of such agency's action;

are substantially equivalent to those created by and under this subchapter.

(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

(4) During the period which begins on September 13, 1988, and ends 40 months after September 13, 1988, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this subchapter on the day before September 13, 1988, shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on September 13, 1988. If the Secretary determines in an individual case that an

agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

(g) Reasonable cause determination and effect

(1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(2)(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 3612 of this title.

(B) Such charge —

(i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(ii) shall be based on the final investigative report; and

(iii) need not be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 3614 of this title, instead of issuing such charge.

(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The Secretary shall make public disclosure of each such dismissal.

(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(h) Service of copies of charge

After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section 3612(a) of this title and the effect of such an election, to be served—

- (1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and
- (2) on each aggrieved person on whose behalf the complaint was filed.

(Pub. L. 90–284, title VIII, §810, as added Pub. L. 100–430, §8(2), Sept. 13, 1988, 102 Stat. 1625.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (e)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

A prior section 3610, Pub. L. 90–284, title VIII, §810, Apr. 11, 1968, 82 Stat. 85, related to enforcement, prior to repeal by Pub. L. 100–430, §8(2).

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

§3611. Subpoenas; giving of evidence

(a) In general

The Secretary may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this subchapter. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the United States district court for the district in which the investigation is taking place.

(b) Witness fees

Witnesses summoned by a subpoena under this subchapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Secretary.

(c) Criminal penalties

(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a) of this section, shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this subchapter—

(A) makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a) of this section;

(B) willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(C) willfully mutilates, alters, or by any other means falsifies any documentary evidence;

shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

(Pub. L. 90–284, title VIII, §811, as added Pub. L. 100–430, §8(2), Sept. 13, 1988, 102 Stat. 1628.)

PRIOR PROVISIONS

A prior section 3611, Pub. L. 90–284, title VIII, §811, Apr. 11, 1968, 82 Stat. 87, related to evidence, prior to repeal by Pub. L. 100–430, §8(2).

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

§3612. Enforcement by Secretary

(a) Election of judicial determination

When a charge is filed under section 3610 of this title, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under section 3610(h) of this title or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative law judge hearing in absence of election

If an election is not made under subsection (a) of this section with respect to a charge filed under section 3610 of this title, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 3610 of this title. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of title 5. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of parties

At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 3611 of this title. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of

Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

(d) Expedited discovery and hearing

(1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The Secretary shall, not later than 180 days after September 13, 1988, issue rules to implement this subsection.

(e) Resolution of charge

Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) Effect of trial of civil action on administrative proceedings

An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(g) Hearings, findings and conclusions, and order

(1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent—

(A) in an amount not exceeding \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(B) in an amount not exceeding \$25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

(C) in an amount not exceeding \$50,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge;

except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this subchapter.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Secretary shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review)—

(A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

(B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Secretary shall send a copy of each such order to the Attorney General.

(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The Secretary shall make public disclosure of each such dismissal.

(h) Review by Secretary; service of final order

(1) The Secretary may review any finding, conclusion, or order issued under subsection (g) of this section. Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.

(2) The Secretary shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) Judicial review

(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of title 28.

(2) Notwithstanding such chapter, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred, and filing of the petition for review

shall be not later than 30 days after the order is entered.

(j) Court enforcement of administrative order upon petition by Secretary

(1) The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.

(2) The Secretary shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k) Relief which may be granted

(1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may—

(A) grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;

(B) affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(C) enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the administrative law judge may intervene in the court of appeals.

(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(l) Enforcement decree in absence of petition for review

If no petition for review is filed under subsection (i) of this section before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement—

(1) which is filed by the Secretary under subsection (j) of this section after the end of such day;

or

(2) under subsection (m) of this section.

(m) Court enforcement of administrative order upon petition of any person entitled to relief

If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i) of this section, and the Secretary has not sought enforcement of the order under subsection (j) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) Entry of decree

The clerk of the court of appeals in which a petition for enforcement is filed under subsection (l) or (m) of this section shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.

(o) Civil action for enforcement when election is made for such civil action

(1) If an election is made under subsection (a) of this section, the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of title 28.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 3613 of this title. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 3613 of this title shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) Attorney's fees

In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5 or by section 2412 of title 28.

(Pub. L. 90–284, title VIII, §812, as added Pub. L. 100–430, §8(2), Sept. 13, 1988, 102 Stat. 1629.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

A prior section 3612, Pub. L. 90–284, title VIII, §812, Apr. 11, 1968, 82 Stat. 88, related to enforcement by private persons, prior to repeal by Pub. L. 100–430, §8(2).

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

§3613. Enforcement by private persons

(a) Civil action

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 3610(a) of this title and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

(b) Appointment of attorney by court

Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may—

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) of this section without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) Relief which may be granted

(1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a) of this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States

shall be liable for such fees and costs to the same extent as a private person.

(d) Effect on certain sales, encumbrances, and rentals

Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this subchapter.

(e) Intervention by Attorney General

Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 3614(e) of this title in a civil action to which such section applies.

(Pub. L. 90–284, title VIII, §813, as added Pub. L. 100–430, §8(2), Sept. 13, 1988, 102 Stat. 1633.)

PRIOR PROVISIONS

A prior section 3613, Pub. L. 90–284, title VIII, §813, Apr. 11, 1968, 82 Stat. 88, related to enforcement by Attorney General by bringing civil action requesting preventive relief, prior to repeal by Pub. L. 100–430, §8(2).

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

§3614. Enforcement by Attorney General

(a) Pattern or practice cases

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(b) On referral of discriminatory housing practice or conciliation agreement for enforcement

(1)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 3610(g) of this title.

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the

Attorney General by the Secretary under section 3610(c) of this title.

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 3610(c) of this title.

(c) Enforcement of subpoenas

The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this subchapter, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d) Relief which may be granted in civil actions under subsections (a) and (b)

(1) In a civil action under subsection (a) or (b) of this section, the court—

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter;

(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

(i) in an amount not exceeding \$50,000, for a first violation; and

(ii) in an amount not exceeding \$100,000, for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28.

(e) Intervention in civil actions

Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 3613 of this title.

(Pub. L. 90–284, title VIII, §814, as added Pub. L. 100–430, §8(2), Sept. 13, 1988, 102 Stat. 1634.)

PRIOR PROVISIONS

A prior section 3614, Pub. L. 90–284, title VIII, §814, Apr. 11, 1968, 82 Stat. 88, related to expedition of court proceedings under section 3612 or 3613 of this title, prior to repeal by Pub. L. 98–620, title IV, §402(40), Nov. 8, 1984, 98 Stat. 3360.

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

§3614–1. Incentives for self-testing and self-correction

(a) Privileged information

(1) Conditions for privilege

A report or result of a self-test (as that term is defined by regulation of the Secretary) shall be considered to be privileged under paragraph (2) if any person—

(A) conducts, or authorizes an independent third party to conduct, a self-test of any aspect of a residential real estate related lending transaction of that person, or any part of that transaction, in order to determine the level or effectiveness of compliance with this subchapter by that person; and

(B) has identified any possible violation of this subchapter by that person and has taken, or is taking, appropriate corrective action to address any such possible violation.

(2) Privileged self-test

If a person meets the conditions specified in subparagraphs (A) and (B) of paragraph (1) with respect to a self-test described in that paragraph, any report or results of that self-test—

(A) shall be privileged; and

(B) may not be obtained or used by any applicant, department, or agency in any—

(i) proceeding or civil action in which one or more violations of this subchapter are alleged; or

(ii) examination or investigation relating to compliance with this subchapter.

(b) Results of self-testing

(1) In general

No provision of this section may be construed to prevent an aggrieved person, complainant, department, or agency from obtaining or using a report or results of any self-test in any proceeding or civil action in which a violation of this subchapter is alleged, or in any examination or investigation of compliance with this subchapter if—

(A) the person to whom the self-test relates or any person with lawful access to the report or the results—

(i) voluntarily releases or discloses all, or any part of, the report or results to the aggrieved person, complainant, department, or agency, or to the general public; or

(ii) refers to or describes the report or results as a defense to charges of violations of this subchapter against the person to whom the self-test relates; or

(B) the report or results are sought in conjunction with an adjudication or admission of a violation of this subchapter for the sole purpose of determining an appropriate penalty or remedy.

(2) Disclosure for determination of penalty or remedy

- Any report or results of a self-test that are disclosed for the purpose specified in paragraph (1) (B)—
- (A) shall be used only for the particular proceeding in which the adjudication or admission referred to in paragraph (1)(B) is made; and
 - (B) may not be used in any other action or proceeding.

(c) Adjudication

An aggrieved person, complainant, department, or agency that challenges a privilege asserted under this section may seek a determination of the existence and application of that privilege in—

- (1) a court of competent jurisdiction; or
- (2) an administrative law proceeding with appropriate jurisdiction.

(Pub. L. 90–284, title VIII, §814A, as added Pub. L. 104–208, div. A, title II, §2302(b)(1), Sept. 30, 1996, 110 Stat. 3009–421.)

EFFECTIVE DATE

Privilege provided for in this section applicable to self-test conducted before, on, or after effective date of regulations prescribed under section 2302(b)(2) of Pub. L. 104–208, set out below, with certain exception, see section 2302(c) of Pub. L. 104–208, set out as a note under section 1691c–1 of Title 15, Commerce and Trade.

REGULATIONS

Pub. L. 104–208, div. A, title II, §2302(b)(2), Sept. 30, 1996, 110 Stat. 3009–423, provided that:

"(A) **IN GENERAL.**—Not later than 6 months after the date of enactment of this Act [Sept. 30, 1996], in consultation with the Board and after providing notice and an opportunity for public comment, the Secretary of Housing and Urban Development shall prescribe final regulations to implement section 814A of the Fair Housing Act [42 U.S.C. 3614–1], as added by this section.

"(B) **SELF-TEST.**—

"(i) **DEFINITION.**—The regulations prescribed by the Secretary under subparagraph (A) shall include a definition of the term "self-test" for purposes of section 814A of the Fair Housing Act, as added by this section.

"(ii) **REQUIREMENT FOR SELF-TEST.**—The regulations prescribed by the Secretary under subparagraph (A) shall specify that a self-test shall be sufficiently extensive to constitute a determination of the level and effectiveness of the compliance by a person engaged in residential real estate related lending activities with the Fair Housing Act [42 U.S.C. 3601 et seq.].

"(iii) **SUBSTANTIAL SIMILARITY TO CERTAIN EQUAL CREDIT OPPORTUNITY ACT REGULATIONS.**—The regulations prescribed under subparagraph (A) shall be substantially similar to the regulations prescribed by the Board to carry out section 704A of the Equal Credit Opportunity Act [15 U.S.C. 1691c–1], as added by this section."

§3614a. Rules to implement subchapter

The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this subchapter. The Secretary shall give public notice and opportunity

for comment with respect to all rules made under this section.

(Pub. L. 90–284, title VIII, §815, as added Pub. L. 100–430, §8(2), Sept. 13, 1988, 102 Stat. 1635.)

PRIOR PROVISIONS

A prior section 815 of Pub. L. 90–284 was renumbered section 816 and is classified to section 3615 of this title.

EFFECTIVE DATE

Section effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

INITIAL RULEMAKING

Secretary to issue rules to implement this subchapter as amended by Pub. L. 100–430 not later than the 180th day after Sept. 13, 1988, see section 13(b) of Pub. L. 100–430, set out as a note under section 3601 of this title.

§3615. Effect on State laws

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid. (Pub. L. 90–284, title VIII, §816, formerly §815, Apr. 11, 1968, 82 Stat. 89; renumbered §816, Pub. L. 100–430, §8(1), Sept. 13, 1988, 102 Stat. 1625.)

PRIOR PROVISIONS

A prior section 816 of Pub. L. 90–284 was renumbered section 817 and is classified to section 3616 of this title.

§3616. Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in Federal Register

The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

(Pub. L. 90–284, title VIII, §817, formerly §816, Apr. 11, 1968, 82 Stat. 89; renumbered §817, Pub. L. 100–430, §8(1), Sept. 13, 1988, 102 Stat. 1625.)

PRIOR PROVISIONS

A prior section 817 of Pub. L. 90–284 was renumbered section 818 and is classified to section 3617 of this title.

FAIR HOUSING INITIATIVES PROGRAM

Pub. L. 100–242, title V, §561, Feb. 5, 1988, 101 Stat. 1942, as amended, which established a demonstration program on fair housing initiatives and was formerly set out as a note under this section, was transferred to section 3616a of this title.

§3616a. Fair housing initiatives program

(a) In general

The Secretary of Housing and Urban Development (in this section referred to as the "Secretary") may make grants to, or (to the extent of amounts provided in appropriation Acts) enter into contracts or cooperative agreements with, State or local governments or their agencies, public or private nonprofit organizations or institutions, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, to develop, implement, carry out, or coordinate—

- (1) programs or activities designed to obtain enforcement of the rights granted by title VIII of the Act of April 11, 1968 [42 U.S.C. 3601 et seq.] (commonly referred to as the Civil Rights Act of 1968), or by State or local laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in such title VIII, through such appropriate judicial or administrative proceedings (including informal methods of conference, conciliation, and persuasion) as are available therefor; and
- (2) education and outreach programs designed to inform the public concerning rights and obligations under the laws referred to in paragraph (1).

(b) Private enforcement initiatives

(1) In general

The Secretary shall use funds made available under this subsection to conduct, through contracts with private nonprofit fair housing enforcement organizations, investigations of violations of the rights granted under title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], and such enforcement activities as appropriate to remedy such violations. The Secretary may enter into multiyear contracts and take such other action as is appropriate to enhance the effectiveness of such investigations and enforcement activities.

(2) Activities

The Secretary shall use funds made available under this subsection to conduct, through contracts with private nonprofit fair housing enforcement organizations, a range of investigative and enforcement activities designed to—

(A) carry out testing and other investigative activities in accordance with subsection (b)(1) of this section, including building the capacity for housing investigative activities in unserved or underserved areas;

(B) discover and remedy discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans or the provision of other financial assistance sales and rentals of housing and housing advertising;

(C) carry out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.];

(D) provide technical assistance to local fair housing organizations, and assist in the formation and development of new fair housing organizations; and

(E) provide funds for the costs and expenses of litigation, including expert witness fees.

(c) Funding of fair housing organizations

(1) In general

The Secretary shall use funds made available under this section to enter into contracts or cooperative agreements with qualified fair housing enforcement organizations, other private nonprofit fair housing enforcement organizations, and nonprofit groups organizing to build their capacity to provide fair housing enforcement, for the purpose of supporting the continued development or implementation of initiatives which enforce the rights granted under title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], as amended. Contracts or cooperative agreements may not provide more than 50 percent of the operating budget of the recipient organization for any one year.

(2) Capacity enhancement

The Secretary shall use funds made available under this section to help establish, organize, and build the capacity of fair housing enforcement organizations, particularly in those areas of the country which are currently underserved by fair housing enforcement organizations as well as those areas where large concentrations of protected classes exist. For purposes of meeting the objectives of this paragraph, the Secretary may enter into contracts or cooperative agreements with qualified fair housing enforcement organizations. The Secretary shall establish annual goals which reflect the national need for private fair housing enforcement organizations.

(d) Education and outreach

(1) In general

The Secretary, through contracts with one or more qualified fair housing enforcement organizations, other fair housing enforcement organizations, and other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968 [42

U.S.C. 3601 et seq.], shall establish a national education and outreach program. The national program shall be designed to provide a centralized, coordinated effort for the development and dissemination of fair housing media products, including—

- (A) public service announcements, both audio and video;
- (B) television, radio and print advertisements;
- (C) posters; and
- (D) pamphlets and brochures.

The Secretary shall designate a portion of the amounts provided in subsection (g)(4) of this section for a national program specifically for activities related to the annual national fair housing month. The Secretary shall encourage cooperation with real estate industry organizations in the national education and outreach program. The Secretary shall also encourage the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Act Amendments of 1988.

(2) Regional and local programs

The Secretary, through contracts with fair housing enforcement organizations, other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], State and local agencies certified by the Secretary under section 810(f) of the Fair Housing Act [42 U.S.C. 3610(f)], or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, shall establish or support education and outreach programs at the regional and local levels.

(3) Community-based programs

The Secretary shall provide funding to fair housing organizations and other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, to support community-based education and outreach activities, including school, church, and community presentations, conferences, and other educational activities.

(e) Program administration

(1) Not less than 30 days before providing a grant or entering into any contract or cooperative agreement to carry out activities authorized by this section, the Secretary shall submit notification of such proposed grant, contract, or cooperative agreement (including a description of the geographical distribution of such contracts) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(2) Repealed. Pub. L. 104–66, title I, §1071(d), Dec. 21, 1995, 109 Stat. 720.

(f) Regulations

(1) The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section.

(2) The Secretary shall, for use during the demonstration authorized in this section, establish guidelines for testing activities funded under the private enforcement initiative of the fair housing initiatives program. The purpose of such guidelines shall be to ensure that investigations in support of fair housing enforcement efforts described in subsection (a)(1) of this section shall develop credible and objective evidence of discriminatory housing practices. Such guidelines shall apply only to activities funded under this section, shall not be construed to limit or otherwise restrict the use of facts secured through testing not funded under this section in any legal proceeding under Federal fair housing laws, and shall not be used to restrict individuals or entities, including those participating in the fair housing initiatives program, from pursuing any right or remedy guaranteed by Federal law.

Not later than 6 months after the end of the demonstration period authorized in this section,¹ the Secretary shall submit to Congress the evaluation of the Secretary of the effectiveness of such guidelines in achieving the purposes of this section.

(3) Such regulations shall include provisions governing applications for assistance under this section, and shall require each such application to contain—

(A) a description of the assisted activities proposed to be undertaken by the applicant, together with the estimated costs and schedule for completion of such activities;

(B) a description of the experience of the applicant in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(C) available information, including studies made by or available to the applicant, indicating the nature and extent of discriminatory housing practices occurring in the general location where the applicant proposes to conduct its assisted activities, and the relationship of such activities to such practices;

(D) an estimate of such other public or private resources as may be available to assist the proposed activities;

(E) a description of proposed procedures to be used by the applicant for monitoring conduct and evaluating results of the proposed activities; and

(F) any additional information required by the Secretary.

(4) Regulations issued under this subsection shall not become effective prior to the expiration of 90 days after the Secretary transmits such regulations, in the form such regulations are intended to be published, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(5) The Secretary shall not obligate or expend any amount under this section before the effective date of the regulations required under this subsection.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this section,² \$21,000,000 for fiscal year 1993 and \$26,000,000 for fiscal year 1994, of which—

(1) not less than \$3,820,000 for fiscal year 1993 and \$8,500,000 for fiscal year 1994 shall be for private enforcement initiatives authorized under subsection (b) of this section, divided equally

between activities specified under subsection (b)(1) of this section and those specified under subsection (b)(2) of this section;

(2) not less than \$2,230,000 for fiscal year 1993 and \$8,500,000 for fiscal year 1994 shall be for qualified fair housing enforcement organizations authorized under subsection (c)(1) of this section;

(3) not less than \$2,010,000 for fiscal year 1993 and \$4,000,000 for fiscal year 1994 shall be for the creation of new fair housing enforcement organizations authorized under subsection (c)(2) of this section; and

(4) not less than \$2,540,000 for fiscal year 1993 and \$5,000,000 for fiscal year 1994 shall be for education and outreach programs authorized under subsection (d) of this section, to be divided equally between activities specified under subsection (d)(1) of this section and those specified under subsections (d)(2) and (d)(3) of this section.

Any amount appropriated under this section shall remain available until expended.

(h) Qualified fair housing enforcement organization

(1) The term "qualified fair housing enforcement organization" means any organization that—

(A) is organized as a private, tax-exempt, nonprofit, charitable organization;

(B) has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(C) is engaged in all the activities listed in paragraph (1)(B) at the time of application for assistance under this section.

An organization which is not solely engaged in fair housing enforcement activities may qualify as a qualified fair housing enforcement organization, provided that the organization is actively engaged in each of the activities listed in subparagraph (B).

(2) The term "fair housing enforcement organization" means any organization that—

(A) meets the requirements specified in paragraph (1)(A);

(B) is currently engaged in the activities specified in paragraph (1)(B);

(C) upon the receipt of funds under this section will become engaged in all of the activities specified in paragraph (1)(B); and

(D) for purposes of funding under subsection (b) of this section, has at least 1 year of experience in the activities specified in paragraph (1)(B).

(i) Prohibition on use of funds

None of the funds authorized under this section may be used by the Secretary for purposes of settling claims, satisfying judgments or fulfilling court orders in any litigation action involving either the Department or housing providers funded by the Department. None of the funds authorized under this section may be used by the Department for administrative costs.

(j) Reporting requirements

Not later than 180 days after the close of each fiscal year in which assistance under this section is furnished, the Secretary shall prepare and submit to the Congress a comprehensive report which shall

contain—

- (1) a description of the progress made in accomplishing the objectives of this section;
- (2) a summary of all the private enforcement activities carried out under this section and the use of such funds during the preceding fiscal year;
- (3) a list of all fair housing enforcement organizations funded under this section during the preceding fiscal year, identified on a State-by-State basis;
- (4) a summary of all education and outreach activities funded under this section and the use of such funds during the preceding fiscal year; and
- (5) any findings, conclusions, or recommendations of the Secretary as a result of the funded activities.

(Pub. L. 100–242, title V, §561, Feb. 5, 1988, 101 Stat. 1942; Pub. L. 101–625, title IX, §953, Nov. 28, 1990, 104 Stat. 4419; Pub. L. 102–550, title IX, §905(b), Oct. 28, 1992, 106 Stat. 3869; Pub. L. 104–66, title I, §1071(d), Dec. 21, 1995, 109 Stat. 720.)

REFERENCES IN TEXT

The Civil Rights Act of 1968, referred to in subsecs. (a)(1), (b)(1), (2)(C), (c)(1), and (d), is Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, as amended. Title VIII of the Act, known as the Fair Housing Act, is classified principally to subchapter I (§3601 et seq.) of this chapter. For complete classification of these Acts to the Code, see Short Title notes set out under section 3601 of this title and Tables.

The Fair Housing Act Amendments of 1988, referred to in subsec. (d)(1), probably means the Fair Housing Amendments Act of 1988, Pub. L. 100–430, Sept. 13, 1988, 102 Stat. 1619, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 3601 of this title and Tables.

The phrase "Not later than 6 months after the end of the demonstration period authorized in this section", referred to in subsec. (f)(2), probably means the end of the demonstration period pursuant to former subsec. (e) of this section, which provided that such period was to end Sept. 30, 1992. However, subsec. (e) was redesignated (h) and struck out by Pub. L. 102–550. See 1992 Amendment notes below.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of title VIII of Pub. L. 90–284, known as the Fair Housing Act, which comprises this subchapter.

Section was formerly set out as a note under section 3616 of this title.

AMENDMENTS

1995—Subsec. (e)(2). Pub. L. 104–66 struck out par. (2) which read as follows: "The Secretary shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a quarterly report that summarizes the activities funded under this section and describes the geographical distribution of grants, contracts, or cooperative agreements funded under this section."

1992—Subsecs. (b) to (f). Pub. L. 102–550, §905(b)(1), (2), added subsecs. (b) to (d) and redesignated former subsecs. (b) and (c) as (e) and (f), respectively.

Subsec. (g). Pub. L. 102–550, §905(b)(1), (3), redesignated subsec. (d) as (g) and, in first sentence, substituted "\$21,000,000 for fiscal year 1993 and \$26,000,000 for fiscal year 1994, of which—" and pars. (1)

to (4) for "including any program evaluations, \$6,000,000 for fiscal year 1991 and \$6,300,000 for fiscal year 1992, of which not more than \$3,000,000 in each year shall be for the private enforcement initiative demonstration."

Subsec. (h). Pub. L. 102–550, §905(b)(4), added subsec. (h) and struck out former subsec. (h) which provided that the demonstration period authorized by this section would end Sept. 30, 1992.

Pub. L. 102–550, §905(b)(1), redesignated subsec. (e) as (h).

Subsecs. (i), (j). Pub. L. 102–550, §905(b)(4), added subsecs. (i) and (j).

1990—Subsec. (d). Pub. L. 101–625, §953(a), amended first sentence generally. Prior to amendment, first sentence read as follows: "There are authorized to be appropriated to carry out the provisions of this section, including any program evaluations, \$5,000,000 for fiscal year 1988, and \$5,000,000 for fiscal year 1989, of which not more than \$3,000,000 in each year shall be for the private enforcement initiative demonstration."

Subsec. (e). Pub. L. 101–625, §953(b), substituted "1992" for "1989".

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

CONGRESSIONAL FINDINGS

Pub. L. 102–550, title IX, §905(a), Oct. 28, 1992, 106 Stat. 3868, provided that: "The Congress finds that—

"(1) in the past half decade, there have been major legislative and administrative changes in Federal fair housing and fair lending laws and substantial improvements in the Nation's understanding of discrimination in the housing markets;

"(2) in response to evidence of continuing housing discrimination, the Congress passed the Fair Housing Act Amendments of 1988 [probably should be the Fair Housing Amendments Act of 1988, Pub. L. 100–430, see Short Title of 1988 Amendment note set out under section 3601 of this title], to provide for more effective enforcement of fair housing rights through judicial and administrative avenues and to expand the number of protected classes covered under Federal fair housing laws;

"(3) in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 [Pub. L. 101–73, see Short Title of 1989 Amendment note set out under 12 U.S.C. 1811], the Congress expanded the disclosure provisions under the Home Mortgage Disclosure Act [probably should be the Home Mortgage Disclosure Act of 1975; 12 U.S.C. 2801 et seq.] to provide increased information on the mortgage lending patterns of financial institutions;

"(4) in the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], the Congress provided a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

"(5) in 1991, data collected under the Home Mortgage Disclosure Act disclosed evidence of pervasive discrimination in the Nation's mortgage lending markets;

"(6) the Housing Discrimination Survey, released by the Department of Housing and Urban Development in 1991, found that Hispanic and African-American homeseekers experience some form of

discrimination in at least half of their encounters with sales and rental agents;

"(7) the Fair Housing Initiatives Program should be revised and expanded to reflect the significant changes in the fair housing and fair lending area that have taken place since the Program's initial authorization in the Housing and Community Development Act of 1987 [Pub. L. 100–242, see Short Title of 1988 Amendment note under section 5301 of this title];

"(8) continuing educational efforts by the real estate industry are a useful way to increase understanding by the public of their fair housing rights and responsibilities; and

"(9) the proven efficacy of private nonprofit fair housing enforcement organizations and community-based efforts makes support for these organizations a necessary component of the fair housing enforcement system."

¹ [*See References in Text note below.*](#)

² [*So in original. The comma probably should not appear.*](#)

§3617. Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

(Pub. L. 90–284, title VIII, §818, formerly §817, Apr. 11, 1968, 82 Stat. 89; renumbered §818 and amended Pub. L. 100–430, §§8(1), 10, Sept. 13, 1988, 102 Stat. 1625, 1635.)

PRIOR PROVISIONS

A prior section 818 of Pub. L. 90–284 was renumbered section 819 and is classified to section 3618 of this title.

AMENDMENTS

1988—Pub. L. 100–430 struck out at end "This section may be enforced by appropriate civil action."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of this title.

§3618. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subchapter.

(Pub. L. 90–284, title VIII, §819, formerly §818, Apr. 11, 1968, 82 Stat. 89; renumbered §819, Pub. L. 100–430, §8(1), Sept. 13, 1988, 102 Stat. 1625.)

PRIOR PROVISIONS

A prior section 819 of Pub. L. 90–284 was renumbered section 820 and is classified to section 3619 of this title.

§3619. Separability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the remainder of the subchapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Pub. L. 90–284, title VIII, §820, formerly §819, Apr. 11, 1968, 82 Stat. 89; renumbered §820, Pub. L. 100–430, §8(1), Sept. 13, 1988, 102 Stat. 1625.)