

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 7

[Docket No. FR 4929-F-01]

RIN 2501-AD04

Update to Equal Employment Opportunity Policy

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule updates HUD's regulations that govern equal employment opportunity to make HUD's requirements for equal employment opportunity plans consistent with a recently issued Equal Employment Opportunity Commission (EEOC) management directive.

DATES: *Effective Date:* November 22, 2004.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: HUD's regulations governing the Department's equal employment opportunity (EEO) policies, procedures, and programs are located at 24 CFR part 7. This final rule revises and updates the Department's current EEO regulations that concern equal employment opportunity plans. This regulatory change will make HUD's EEO provisions at 24 CFR part 7 consistent with the recently issued EEOC governmentwide management directive (MD-715, effective October 1, 2003). This final rule also makes conforming changes to part 7 to remove obsolete terms.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-17) and the Rehabilitation Act of 1973 (29 U.S.C. 791 *et seq.*) mandate that all federal personnel decisions be made free of discrimination on the basis of race, color, religion, sex, national origin, reprisal, or disability. The statutes also require that federal agencies establish a program of equal employment opportunity for all federal employees and job applicants. MD-715 provides policy guidance and standards for federal agencies in establishing and maintaining effective affirmative programs of equal employment

opportunity. The directive places responsibility on agency heads to provide current guidance for the development of program plans for all components, establish agencywide objectives, develop and submit program plans, and prepare accomplishment reports and plan updates for timely submission to EEOC.

This final rule revises 24 CFR part 7 to make HUD's EEO policies consistent with MD-715. The new directive no longer requires federal agencies to submit data, accomplishment reports, or plans concerning the underrepresentation of women and minorities. Accordingly, HUD is removing from 24 CFR 7.4, any reference to such requirement. In addition, the directive no longer uses the terms "affirmative employment" or "AE" in reference to the plans that federal agencies are required to submit to EEOC. Therefore, this final rule removes all references to "affirmative employment" and "AE."

Findings and Certifications

Justification for Final Rulemaking

HUD's regulations at 24 CFR 10.1 state that notice and public procedure may be omitted with respect to statements of policy, interpretative rules, rules governing the Department's organization or its own internal practices or procedures. This rule is limited to updating the Department's internal procedures as described in the regulations at 24 CFR part 7, to reflect current practices.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes changes to regulations that affect only the Department's own internal procedures and will not have any effect on small entities.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from

the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Other Matters

Because this rule is limited to internal agency practices and procedures, this rule does not impose unfunded mandates within the meaning of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) or have federalism implications within the meaning of Executive Order 13132 (Federalism).

List of Subjects in 24 CFR Part 7

Administrative practice and procedure, Equal employment opportunity, Organization and functions (Government agencies).

■ For the reasons stated in the preamble, HUD amends 24 CFR part 7 as follows:

PART 7—EQUAL EMPLOYMENT OPPORTUNITY; POLICY, PROCEDURES AND PROGRAMS

■ 1. The authority citation for 24 CFR part 7 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794; 42 U.S.C. 2000e note, 2000e-16, 42 U.S.C. 3535(d); E.O. 11478 of Aug. 8, 1969; 34 FR 19285, Aug. 12, 1969; E.O. 10577, 3 CFR 1954-1958; E.O. 11222, 3 CFR 1964-1965.

■ 2. Revise § 7.1 to read as follows:

§ 7.1 Policy.

The Department's equal employment opportunity policy conforms with the policies expressed in Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4); the Civil Rights Act of 1991 (Pub. L. 102-166, approved November 21, 1991); Executive Order 11478 of 1969 (34 FR 12985, 3 CFR 1966-1970 Comp., p. 803); the Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. 621 *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206d); sections 501 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794); the Civil Service Reform Act of 1978 (5 U.S.C. 1101 *et seq.*); Executive Order 13087 of 1998 (63 FR 30097); and the EEOC's implementing regulations, codified at 29 CFR part 1614. It is HUD's policy to provide equality of opportunity in employment in the Department for all persons; to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, or disability in all aspects of its personnel policies, programs, practices, and operations and in all its working conditions and relationships with current or former employees and applicants for employment; to prohibit discrimination against any employee because he or she has made a charge,

testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning an equal employment opportunity complaint; and to promote the full realization of equal opportunity in employment through continuing programs of equal employment opportunity at every level within the Department. Procedures for filing EEO claims are found in the EEOC regulations at 29 CFR part 1614. HUD is committed to promoting equal employment opportunity through the removal of barriers and by positive actions at every level, including the early resolution of EEO disputes.

■ 3. In § 7.2, remove the definition of "AE" and revise the definition of "EEO Officer Pro Tem" to read as follows:

§ 7.2 Definitions.

* * * * *

EEO Officer Pro Tem means the Chief of Staff or an official at a neutral federal agency designated to process an EEO claim that would be a conflict of interest for the Director of EEO or the Deputy Director of EEO or both. EEO Officer Pro Tem also refers to the Assistant Secretary or the Assistant Secretary-comparable designated by the Director of EEO to serve as the EEO Officer for an EEO claim that would be a conflict of interest for a responding Assistant Secretary or Assistant Secretary-comparable.

* * * * *

■ 4. Revise § 7.4 to read as follows:

§ 7.4 Equal employment opportunity programs.

The Secretary, each Assistant Secretary, the General Counsel, the Inspector General, the President of the Government National Mortgage Association, the Chief Financial Officer, the Director of Healthy Homes and Lead Hazard Control, the Director of the Office of Departmental Operations and Coordination, and other HUD officials who may be determined by the Secretary for purposes of this part to be comparable to an Assistant Secretary, shall establish, maintain, and carry out a plan of equal employment opportunity to promote equal opportunity in every aspect of employment policy and practice. Each plan must be consistent with 29 CFR part 1614 and EEOC Management Directive 715. A copy of the EEOC Management Directive 715 is available at <http://www.eeoc.gov>.

■ 5. In § 7.10, revise paragraphs (a), (b), (c), and (e) to read as follows:

§ 7.10 Responsibilities of the Director of EEO.

* * * * *

(a) Advising the Secretary with respect to the preparation of plans, procedures, regulations, reports, and other matters pertaining to the government's equal employment opportunity policy and the Department's EEO/ADR programs;

(b) Developing and maintaining plans, procedures, and regulations necessary to carry out the Department's EEO programs;

(c) Evaluating, at least annually, the sufficiency of each organizational unit's EEO/ADR program and providing reports thereon to the Secretary with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibility;

* * * * *

(e) Making changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO/ADR programs;

* * * * *

■ 6. In § 7.11, revise paragraphs (a), (b), (c), (g), and (i) to read as follows:

§ 7.11 Responsibilities of the EEO Officers.

* * * * *

(a) Advising the Director of EEO on matters affecting the implementation of the Department's EEO/ADR policies and programs in the organizational unit;

(b) Developing and maintaining a program of equal employment opportunity for the organizational unit and ensuring that the program is carried out in an exemplary manner;

(c) Publicizing to all employees of the organizational unit the name and address of the Director of EEO, the EEO Officer(s), and the EEO Counselor(s), the EEO Discrimination Complaint Manager(s), the Diversity Program Manager, ADR Officials, and the EEO complaint procedures;

* * * * *

(g) Designating a senior-level manager in Headquarters responsible for providing advice and guidance to managers and supervisors in removing barriers to EEO/ADR and in implementing all of their EEO responsibilities; and reviewing recruitment and personnel actions taken by managers and supervisors to ensure the achievement of EEO standards;

* * * * *

(i) Ensuring the successful operation of the EEO/ADR Program by requiring management's support;

* * * * *

■ 7. In § 7.13, paragraphs (a), (g), and (i) are revised to read as follows:

§ 7.13 Responsibilities of the Assistant Secretary for Administration.

* * * * *

(a) Provide leadership in developing and maintaining personnel management policies, programs, automated systems, and procedures that will promote and ensure equal opportunity in the recruitment, selection, placement, training, awards, recognition, and promotion of employees, including an applicant flow tracking system to track information reflecting characteristics of the pool of individuals applying for an employment opportunity.

* * * * *

(g) Designate a senior-level Disability Program Manager to promote EEO/ADR for persons with disabilities; to assure the accessibility of all HUD facilities and programs; and to manage the resources for providing reasonable accommodation;

* * * * *

(i) Provide and coordinate mandatory supervisors' and managers' EEO/ADR training;

* * * * *

■ 8. In § 7.14, revise paragraphs (e), (g), (h)(4), (i), and (l) to read as follows:

§ 7.14 Responsibilities of the Office of Human Resources.

* * * * *

(e) Ensure that new employee orientation programs contain appropriate references to the Department's EEO/ADR policies, procedures, and programs and accomplishment of EEO standards under the Department's Performance Accountability and Communications System (PACS), or other Departmental performance appraisal system;

* * * * *

(g) In coordination with the HUD official charged with training responsibilities, develop an ongoing training program for supervisors and managers to ensure understanding of the Departmental EEO/ADR programs, policies, and other requirements that foster effective teamwork and high morale;

(h) * * *

(4) EEOC's regulations and policy guidance concerning EEO and ADR;

* * * * *

(i) In coordination with the HUD official charged with training responsibilities, the Office of General Counsel, the Office of Administration, and the Director of EEO, the Department may enter into agreements to have EEO/ADR mandatory annual supervisory and management training provided by other federal agencies or other resources;

* * * * *

(l) Track applicant flow data that reflects characteristics of the pool of individuals applying for an employment opportunity and promptly take or recommend appropriate action to overcome any impediment to achieving the standards of the EEO/ADR programs and accomplishing the EEO standards under the applicable HUD performance appraisal system;

* * * * *

■ 9. In § 7.15, revise paragraphs (a), (b), and (f) to read as follows:

§ 7.15 Responsibilities of managers and supervisors.

* * * * *

- (a) Removing barriers to EEO and ensuring that EEO standards are accomplished in their areas of responsibility;
- (b) Evaluating and documenting subordinate managers and supervisors

on their performance of EEO/ADR responsibilities;

* * * * *

- (f) Being proactive in addressing EEO/ADR issues, and maintaining work environments that encourage and support complaint avoidance through sound management and personnel practices;

* * * * *

■ 10. In § 7.16, revise paragraphs (a) and (d) to read as follows:

§ 7.16 Responsibilities of employees.

* * * * *

- (a) Being informed as to the Department's EEO/ADR programs;
- (d) Providing assistance to supervisors and managers in carrying out their responsibilities in the EEO/ADR programs; and

* * * * *

■ 11. Revise § 7.45(a) to read as follows:

§ 7.45 EEO group statistics and reports.

- (a) The Department shall establish a system to collect and maintain accurate employment information on the race, national origin, sex, and disability of all its employees and applicants in accordance with 29 CFR 1614.601 through 29 CFR 1614.602, and the Department shall report to the EEOC on employment by race, national origin, sex, and disability, in the form and at such times as the EEOC may require.

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Dated: October 18, 2004.
Alphonso Jackson,
Secretary.
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