
CHAPTER 5. HOW TO DETERMINE IF CERTIFICATIONS ARE UNACCEPTABLE

5-1. OVERVIEW.

This chapter describes the civil rights certifications; provides guidelines for determining if these certifications are unacceptable, and establishes procedures for securing certifications that are satisfactory to the Secretary where the certifications are initially determined unacceptable.

5-2. CIVIL RIGHTS REQUIREMENTS COVERED BY THE CERTIFICATIONS.

- a. The Governor or other authorized official certifies that with respect to units of general local government in non-entitlement areas, the State shall among other things:
 - (1) conduct and administer the grant in conformity with the Civil Rights Act of 1964 (Title VI) and the Civil Rights Act of 1968 (Title VIII); and that it will affirmatively further fair housing; and
 - (2) comply with Title I of the HCD Act and all other applicable laws.
- b. Before a unit of general local government receives CDBG funds, it must certify to the State that among other things its program will be conducted and administered in conformity with the Civil Rights Act of 1964 (Title VI) and the Civil Rights Act of 1968 (Title VIII), and that it will affirmatively further fair housing.

5-3. MEANING OF THE CIVIL RIGHTS CERTIFICATIONS.

In certifying, the State commits itself to carry out its responsibilities in a way that conforms with these laws. For example:

- a. Records kept by the State and recordkeeping requirements established by the State for recipients, must include data and information demonstrating that the program is being carried out in accordance with the civil rights certifications.
- b. In reviewing the performance of recipients, a State must determine whether they are conforming with applicable civil rights and equal opportunity requirements.

5-4. GUIDELINES FOR FHEO REVIEW OF CERTIFICATIONS

The State receives a grant to administer the CDBG program only if its certifications are satisfactory to HUD. Each year FHEO staff should document its determination regarding acceptability of the State's civil rights certifications. When recommending that one or more certifications not be accepted FHEO must document clearly the reasons for that determination.

- a. Certifications are accepted unless there is independent evidence which tends to challenge the certifications in a substantial manner. The independent evidence may, but need not be, based upon performance reviews and audits of a State's CDBG program. Additional information or specific assurances may be required in some instances in order for HUD to find the State's certifications satisfactory.
- b. A challenge by HUD to a State's certifications must be based upon independent evidence that is supportable by facts and data which tend to question statements in the certification. Examples of independent evidence which could challenge a State's civil rights certification include:
 - (1) information developed by the Department of Justice or other executive agencies or Departments in connection with civil actions pending against a recipient or the State involving civil rights matters;
 - (2) data from performance reviews and audits which show that the State has not satisfied one or more civil rights related assurances on contract conditions placed upon previous grants;
 - (3) court findings/orders under an applicable civil rights law; and
 - (4) outstanding unresolved preliminary findings of noncompliance with civil rights requirements involving the State or evidence of a failure to carry out the provisions of an approved civil rights compliance agreement.
- c. In making a determination, contact the Regional Office of FHEO, Compliance Division, for information regarding the status of complaints and compliance review findings, if any, in the State and its funded localities.

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- (5-4c.) (1) The existence of a civil rights complaint or information gained from a compliance review in and of itself does not constitute evidence sufficient to challenge a certification. The facts in each such case, may or may not be germane to the certification under review. FHEO staff must consider the type and severity of any complaint or compliance finding and steps taken to correct or resolve such finding through negotiation/conciliation.
- (2) Where there is a preliminary finding of noncompliance based upon a complaint investigation or compliance review, give the State an opportunity to voluntarily comply. However, where the State or local recipient refuses to do so, such denial may serve as substantial evidence for challenging the certification.

5-5. HOW TO RESOLVE CHALLENGES TO A CERTIFICATION

- a. Contact CPD staff for the anticipated starting date for each State's program. HUD makes grant awards any time from October 1 to March 31 of the fiscal year. Where FHEO staff intends to challenge a certification, HUD must notify the State at least 60 days before the next year's grant award.
- b. Follow the procedures outlined in paragraph 6-10 for responding to deficient performance. Headquarters FHEO and CPD must concur with plans to notify the State of the unacceptability of the certification without additional information or assurances.

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- c. Do not question a State's civil rights certification based solely upon poor performance of a locality under the HUD-administered Small Cities Program. Where a Title VI/Section 109 compliance review or litigation have revealed unresolved violations of civil rights laws, HUD may request additional assurance from the State regarding actions it will take to assure compliance in any grant awarded by the State. FHEO staff may inform States of localities that demonstrated poor performance under the HUD-administered program. A State has the discretion to use such information obtained from FHEO (or other HUD) staff as it deems appropriate. The State may:
- (1) target such localities for technical assistance and/or monitoring.
- (2) require such localities to submit a civil rights

certification or a specific assurance of compliance with one or more civil rights laws; or

- (3) disregard the information in its funding or management decisions.

- d. Where a review, or other independent evidence, indicates deficient performance by the State, or a funded locality, with respect to one or more civil rights requirements, FHEO recommend to the HUD Office Manager that the certification not be accepted by HUD and that the Department take one or more actions to correct and prevent recurrence of the deficiency. Paragraph 5-6 outlines the steps that must be followed and possible actions that may be taken where there is a finding of deficient performance, based on which FHEO believes the certification should be questioned.