



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

OFFICE OF THE ASSISTANT SECRETARY  
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

**Special Attention of:**

**Notice FHEO: 2002-01**

FHEO Office Directors  
FHEO Hub Directors  
FHEO Program Center Directors  
FHEO Lead Equal Opportunity Specialists  
FHEO Office of Enforcement  
and Programs

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**Cross References:**

HUD Handbook 1840.1, Rev-3 "Departmental Management Control Program; Monitoring Desk Guide; Handbooks 8004.1 "Consolidated Civil Rights Monitoring Requirements, Public Housing Agency, Section 8 Existing and Lower Income Public Housing Programs; 8003.2, "Fair Housing and Equal Opportunity Monitoring of Community Development Programs;" and 8025.1, "Implementation of Affirmative Fair Housing Marketing Requirements Handbook."

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Subject: Office of Fair Housing and Equal Opportunity (FHEO) Risk Analysis Guidance

**Section 1: Introduction**

I. Background.

- A. One of the primary goals of the HUD Management Reform Plan is to restore public confidence in the Department's program management and monitoring operations. Therefore, in FY 2000, the Department announced the Compliance and Monitoring Initiative (CMI) that was designed to move the Department toward the development and implementation of a comprehensive approach to program monitoring and compliance. One of the goals of CMI is to establish and utilize clear and consistent guidelines for risk assessment and program management for determining when Remote (off-site) Monitoring vs. On-site Monitoring should be used. The purpose of this guidance is to establish standards for field staff of the Office of Fair Housing and Equal Opportunity (FHEO) in conducting risk analysis. This notice sets priorities and provides guidance on how best to manage identified risks with available resources consistent with HUD Headquarters policy and guidance in the Monitoring Desk Guide and HUD Handbook 1840.1 Rev-3, Departmental Management Control Program.

- B. In managing risk in the Fair Housing Initiatives Program (FHIP) and Fair Housing Assistance Program (FHAP), FHEO staff should consider risk of fraud, waste, abuse, mismanagement, and failure to accomplish funded activities. In managing risk regarding Community Planning and Development (CPD), Public and Indian Housing (PIH), or Housing recipients, FHEO staff should consider only civil rights related risk.
- C. HUD Handbook 1840.1 Rev-3, Chapter 7, states that the risk-based monitoring process requires involvement by all management levels. The major steps for implementing risk-based monitoring (outlined in Section 7-3 of this Handbook) include:
1. Identifying program missions, goals, risks and monitoring objectives to determine what is to be monitored. The foundation for oversight activities will consist of appropriate management controls for achieving program mission and goals. This is largely accomplished through the Department's Management Control Program. Identified risks are analyzed, and monitoring objectives are set based on this analysis.
  2. Developing methods to rate risk participants, programs and functions, including assessing the Department's exposure to fraud, waste, and mismanagement. Some risks are specific to particular types of participants or programs. Criteria should be developed for establishing risk profiles. These risk profiles will also be effective in assessing the level of resources required to execute risk-based monitoring activities.
  3. Developing and communicating strategies and plans for oversight of identified risks. The oversight strategies for managing risk, as articulated in HUD directives and plans, address priority objectives to be achieved in areas such as:
    - a. Timely risk-based monitoring;
    - b. Current program monitoring guidance;
    - c. Properly trained staff; and
    - d. Appropriate resource allocations for risk-based participant monitoring and program execution.
  4. Selecting programs/program participants for monitoring within available resources, based on monitoring objectives and risk profiles established by program areas.
  5. Assuring that effective and efficient risk-based monitoring activities are performed, including identifying whether follow-up corrective actions are necessary and the use of sanctions.
  6. Documenting the process and recording the rationale for choosing participants.

## II. Purpose, Objective, and Intended Audience.

- A. The following outline provides for FHEO monitoring and compliance review. Selection for monitoring and/or compliance review should be made by field FHEO management at the lowest appropriate level - Hub, Program Center, Branch, or Local Site, as determined within

each Hub. FHEO risk management includes program and financial risk for FHIP and FHAP recipients and civil rights risk for CPD, PIH, and Housing recipients. FHEO staff is thus required to perform risk management for an extremely large universe of recipients, and this workload makes it impossible to perform numerical risk rating and ranking of all recipients in this universe. In addition, the necessity to address serious civil rights problems as they appear requires an extremely flexible risk management system that is also tightly focused on tracking and addressing these problems. Therefore, risk management should be performed as discussed below.

- B. The overall objective of the risk-based monitoring process is to allocate a larger share of monitoring resources to those program functions posing the highest risk. To ensure adequate oversight, monitoring reviews and resources are to be adjusted through a risk weighing process that will determine both the entities and activities to be reviewed. This provides a rationale for why some functional areas or program participants are more closely monitored than others.
- C. This process described in this notice is to be used consistently by all FHEO offices in performing risk management and in making selections for monitoring and compliance review.

### III. Definitions.

Current Civil Rights Related Problems - civil rights related problems reported in the current fiscal year or in the fiscal year immediately preceding the current year.

FHEO Compliance Review - a review performed by FHEO staff to determine if a grantee has complied with specific federal civil rights laws or specific HUD civil rights regulations.

FHEO Monitoring Review - a review performed by FHEO staff to determine if a grantee has conducted its HUD-funded activities in accordance with HUD's civil rights related program requirements (CRRPRs). Monitoring review findings are confined to findings of fact. A monitoring letter will be issued to address the problems identified and negotiations may begin to resolve the problems. [The findings of noncompliance on CRRPRs and issuance of sanctions are activities for a compliance review.](#) A monitoring review may be on-site or remote.

FHEO On-site Monitoring - a monitoring review that involves a visit to the grantee's location.

FHEO Remote Monitoring - a monitoring review done without a visit to the grantee's location.

Grantee - a state or local government, unit of state or local government, public housing agency (PHA), private non-profit organization, or private profit-making company, that receives HUD financial assistance.

Recipient - grantee.

Risk - a chance that something will go wrong or a factor in a recipient's policies, program, or activities that increases the probability that something will go wrong in a manner that can result in fraud, waste, abuse, mismanagement or failure to comply with civil rights related program requirements.

Unresolved - a charge, finding, or DOJ lawsuit for which there is no settlement agreement or Voluntary Compliance Agreement (VCA).

## **Section 2: Fiscal Year Planning**

- I. Management Plan. During the first quarter of the fiscal year, once the Headquarters-required goals are available and no later than December 30, each FHEO office should develop a plan showing the recipients for which it plans to conduct:
  - A. FHIP monitoring
  - B. FHAP monitoring
  - C. Program On-site Monitoring
  - D. Program Remote Monitoring
  - E. Compliance Review
- II. Management Plan should:
  - A. Specify numbers of planned monitoring and compliance reviews, by program category and type (compliance review, on-site monitoring, or remote monitoring), any local criteria used for selection and the rationale for the local criteria, and the list of recipients to be monitored or reviewed, with planned monitoring dates and resources needed. Grantees on the list should be selected according to the selection methodology provided below.
  - B. Be flexible, so that it can be amended based on identified local needs. The plan should be updated at least quarterly, and it may be updated more frequently if local needs require it. Local selection criteria may also be changed during the fiscal year, as necessary due to problems identified.
  - C. Include all monitoring and compliance reviews necessary to meet Headquarters as well as local goals. Whenever an office uses local criteria for selection of on-site Monitoring visits and/or compliance reviews, it must document the local criteria, the reasons for their use, and how each recipient selected for on-site monitoring or compliance review fits the local criteria. Whenever an office changes its local criteria during the course of a fiscal year, it must document the reasons for the change.
- III. Copies of the plan should be provided to the FHEO Hub Director, to FHEO Headquarters, and to all CPD, PIH, and Housing Offices whose recipients are reviewed by staff of the FHEO

office. Each FHEO office should keep a copy of its fiscal year plan, with information on all local criteria and all modifications, in a central location accessible to all FHEO office staff.

### **Section 3: Fair Housing Initiatives Program/Fair Housing Assistance Program**

- I. **FHIP and FHAP Risks.** Currently, FHIP and FHAP agencies are both integral parts of HUD's fair housing program and receive funding directly from FHEO. [The bases for program monitoring are the current grant agreement, and/or cooperative agreement, including all their attachments and addenda.](#) The risk criteria identified under II below are designed to assess risk that:
- A. The recipient will fail to accomplish the activities for which HUD funding is provided.
  - B. HUD funds will be stolen, wasted, or misspent.
  - C. The recipient will fail to comply with HUD's program regulations or requirements.
  - D. The recipient will fail to comply with HUD's financial regulations or requirements.
- II. **FHIP and FHAP Risk Profile.** By the end of the first quarter of each fiscal year, each FHIP and FHAP Government Technical Representative (GTR), with the assistance of Government Technical Monitors (GTMs) will prepare a risk profile for each active FHIP and FHAP recipient, using the Risk Profile forms provided as attachments A and B.

GTRs and GTMs will rely on the following sources of information in preparing FHAP and FHIP Risk Profiles:

#### A. FHAP

1. The current Cooperative Agreement, including all attachments and addenda;
2. Case closure and case review documentation;
3. Payment reviews or other activity tracking documentation;
4. The most recent monitoring report and any follow-up correspondence; and
5. ~~4-~~Any documentation of technical assistance on file.
6. Documentation supporting grantee attendance at HUD sponsored/required training.
7. [Most recent audit report.](#)

#### B. FHIP

1. Current Grant Agreement(s), including all attachments and addenda;
2. Quarterly reports and submissions, including financial reports, narrative reports, and other documentation;
3. Payment reviews or other activity tracking documentation;
4. The last, most recent monitoring report and any follow-up correspondence; and
5. Any documentation of technical assistance on file.
6. Documentation supporting grantee attendance at HUD sponsored/required training.

7. [Most recent audit report.](#)

III. FHIP and FHAP Monitoring.

A. FHEO's goal is to monitor all FHIP and FHAP recipients on-site.

B. [If resources are not available to conduct on-site monitoring of all high risk recipients, the determining factors will be the first three criteria listed in Attachments A and B.](#) FHEO offices should select recipients for monitoring as follows:

1. FHEO's goal is to select all high-risk recipients for On-site Monitoring.
2. Select as many moderate-risk recipients for On-site Monitoring as possible, selecting in order by point totals.
3. ~~If workload allows, select low risk recipients for On-site Monitoring in order by point totals.~~ [A limited number of low-risk participants should be selected for monitoring, in order by point totals, per the guidance in the Departmental Management Control Program Handbook 1840.1, Rev-3, Section 7-6, B.](#)
4. Perform Remote Monitoring for all other FHIPs and FHAPs.

#### **Section 4: Civil Rights Related Risks in CPD, PIH, and Housing Programs**

##### I. Recipients Covered under the Civil Rights-Related Program Requirements (CRRPRs).

- A. Recipients receiving HUD grants or loans from Community Planning and Development (CPD), Public and Indian Housing (PIH), or Housing. For such recipients, FHEO may perform:
1. Remote program monitoring;
  2. On-site program monitoring; or
  3. Compliance review governed by civil rights and fair housing statutes and regulations (see Section 5).
- B. In monitoring or reviewing these recipients, FHEO is concerned only with civil rights related risks. Issues such as financial status and age of program, while relevant to risk management by CPD, PIH, and Housing, are generally irrelevant to risk assessment by FHEO of CPD, PIH, and Housing program recipients.

Recipient red flags are the criteria for assessing:

1. Risk exposure to the Department;
2. The likelihood that a recipient has failed or refuses to comply with program requirements; or
3. The recipient has performed unacceptably.

##### C. Civil Rights Related Risks in CPD, PIH, and Housing Programs

1. Serious problems likely to cause discrimination in the recipient's program activities. Examples of such serious problems include, but are not limited to: adoption of a local preference that significantly disadvantages members of a protected class, opening a waiting list in a manner that effectively prevents a substantial percentage of eligible minorities or persons with disabilities from applying, and use or adoption of a policy requiring that residents be able to live independently.
2. Serious failure to comply with HUD's civil rights related requirements. Examples of a serious failure include, but are not limited to: failure of a CDBG or HOME recipient to develop an Analysis of Impediments to Fair Housing Choice (AI), failure of a CDBG or HOME recipient to develop and implement a plan to address fair housing impediments, and failure of a Housing recipient covered by Affirmative Fair Housing Marketing regulations to develop the required Affirmative Fair Housing Marketing Plan (AFHMP).

3. Minor, technical failure to comply with HUD's civil rights related requirements.  
Examples of a minor failure include, but are not limited to: failure by project management to have the project's approved AFHMP available on-site, failure to include the Equal Housing Opportunity logo or slogan in project advertising or signs, and failure to display HUD's Equal Housing Opportunity poster.
- D. Determination of the existence of civil rights problems should be based on careful tracking of the following data by FHEO staff:
1. Results of monitoring and front-end reviews (checklists) performed by CPD, PIH, and Housing staff or contractors.
  2. Consolidated Plans, Annual Actions Plans, Consolidated Annual Performance and Evaluation Reports (CAPERs), AIs, Public Housing Agency (PHA) Plans, and other program documents submitted to FHEO staff.
  3. Unresolved issues from prior-year FHEO monitoring.
  4. Informal complaints brought to the attention of FHEO directly or via CPD, PIH, and Housing staff.
  5. Charges and findings of noncompliance based on formal fair housing and civil rights complaints filed against HUD recipients.
  6. Private civil rights law suits filed against HUD recipients and brought to the attention of FHEO staff.
  7. Equal opportunity issues brought to the attention of FHEO staff by other means, such as newspaper reports or reports from outside civil rights or community organizations.
- E. An essential tool in identifying and tracking civil rights related problems is the review of Civil Rights Front-End checklists submitted to FHEO by CPD, PIH, and Housing, or their contractors. HUD provides Civil Rights Front-End checklists for use by:
1. CPD - CDBG Entitlement Community monitoring, State CDBG monitoring, HOME monitoring, and Section 504 monitoring for all CPD recipients.
  2. PIH - Low Rent Public Housing and Rental Assistance Program monitoring, Section 504, data Public Information Center and Multi-tenant Characteristics System, and PHA Plan review.
  3. Housing - Affirmative Fair Housing Marketing Plan (AFHMP) review and project monitoring and Section 504 limited monitoring.
- F. FHEO has provided training for CPD, PIH, and Housing staff in the use of these Front-End checklists. HUD requires that CPD, PIH, Housing, and contractor staff report identified

civil rights problems to FHEO and forward to FHEO all completed Civil Rights Front-End checklists. FHEO staff must review the checklists, track identified civil rights problems, and select recipients for remote or on-site FHEO program monitoring or compliance review, as appropriate, based on the problems identified.

- G. FHEO offices will track problems using a computer database. FHEO Headquarters will provide a database template under separate cover. A copy of the database template will be posted on the FHEO website. The database should track all FHEO Program Operations activity regarding CPD, PIH, and Housing recipients, including all information regarding problems reported on Front-End checklists by CPD, PIH, Housing, and their contract reviewers, other reports of grantee civil rights problems, review of Consolidated Plans, AIs, CAPERs, PHA Plans, and other documents submitted to FHEO staff, FHEO participation in consultation meetings, technical assistance provided in person or by mail, and FHEO monitoring, and include space for providing details of problems, actions taken by FHEO to address these problems with the recipients, and follow-up. The database should also track Fair Housing Act charges and conciliated charges involving grantees, and Title VI and Section 504 findings and VCAs. Until this program operations database is implemented, FHEO field staff offices may continue to use their own tracking systems in maintaining information that will assist them in conducting risk analyses.

## II. Selection Methodology for CRRPRs.

- A. FHEO offices should select all high-risk and moderate risk-recipients for compliance review (see Section 5 below), On-site Monitoring, or Remote Monitoring as appropriate, in accordance with the methodology provided in this Subsection. You should identify high-risk and moderate risk grantees using the risk factors provided in ~~Subsection 34~~.III. below.
- B. FHEO offices may also select low-risk recipients (those for which FHEO has no currently identified civil rights problems) for focused Remote Monitoring on a specific issue, for On-site Monitoring, or for compliance review, through the use of local selection criteria as discussed below. For all other low-risk recipients not so selected, FHEO staff will perform only limited Remote Monitoring through review of Consolidated Plans, Annual Action Plans, and CAPERs for CPD recipients, and through review of Civil Rights Front-End checklists for all recipients.
- C. Selection for On-site FHEO Program Monitoring. Annually during the first quarter of the fiscal year, each FHEO office should query ~~its~~the program operations database to produce a list of grantees with risk factors and analyze this list in accordance with ~~Subsection 34~~.III. below to identify high-risk and moderate-risk grantees. This list should be updated by a new database query at least once each quarter, and more often if necessary.
  1. Each FHEO office should consider for possible compliance review (see Section 5 below) any high-risk grantee for which an existing problem presents the possibility that the grantee is in violation of federal civil rights law or implementing regulation.
  2. Each FHEO office should perform On-site Monitoring of as many of its high-risk recipients not selected for compliance review as possible. If On-site Monitoring of all high-risk recipients is not possible, select for On-site Monitoring among high-risk recipients in the following priority order, starting with category (a):
    - a. Monitoring visits necessary to track compliance with court orders or Voluntary Compliance Agreements;
    - b. Visits necessary to address the problems of high-risk recipients (document the reasons for the necessity of each On-site Monitoring planned on this basis); and/or
    - c. Visits necessary to collect information regarding current or potential civil rights problems, because volume or complexity of information needed makes it difficult to collect through Remote Monitoring, or because recipient is not responsive to requests for information needed to conduct Remote Monitoring. (Document the reasons for the necessity of each visit planned on this basis.)

3. Selection for Remote FHEO Program Monitoring. You should select for remote monitoring all high-risk and moderate-risk recipients not selected for On-site Monitoring or for compliance review. ~~FHEO staff should conduct Remote Monitoring of any high-risk recipients not selected for On-site Monitoring.~~

4.4. Once all high-risk recipients have been monitored, and if workload permits, you may select for On-site Monitoring visits among moderate-risk recipients by use of local criteria (see below for examples of local criteria).

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5.5. If workload permits, you may select low-risk participants (no problems reported) for additional on-site monitoring visits by use of local criteria.

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6.6. When making selections for monitoring of moderate or low risk recipients based on the use of local criteria, document the local criteria used, the reasons for the choice of those specific local criteria, and how the recipients selected for monitoring fit the local criteria.

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7.7. Examples of local criteria include but are not limited to:

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- a. Size of recipient programs and number of persons potentially adversely affected by reported problems.
- b. A decision to focus on a particular geographic area and a particular type of recipient because of complaints received or other identified issues, such as:
  - 1) An FHEO office may decide to monitor a particular metropolitan area's CDBG entitlement cities on-site for AI implementation because it has received a number of reports that CDBG Entitlement Cities in that area are not implementing their AIs. ~~using unallowable selection factors~~
  - 2) An FHEO office may decide to monitor a particular housing market area's assisted multifamily housing developments for accessibility to persons with disabilities because commercial redevelopment underway will soon create increased demand for housing in that area. ~~Selection for Remote FHEO Program Monitoring.~~

D. For detail guidance on monitoring of HUD programs for CRRPRs, please refer to HUD Handbooks 8004.1, "Consolidated Civil Rights Monitoring Requirements, Public Housing Agency, Section 8 Existing and Lower Income Public Housing Programs;" 8003.2, "Fair Housing and Equal Opportunity Monitoring of Community Development Programs; and 8025.1, "Implementation of Affirmative Fair Housing Marketing Requirements Handbook."

~~You should select for remote monitoring all high-risk and moderate-risk recipients not selected for On-site Monitoring or for compliance review.~~

III. Identification of High, Moderate, and Low-Risk Recipients. All factors listed under high risk have equal weight, and all factors listed under moderate risk have equal weight.

#### A. Community Planning and Development Recipients

1. High-risk recipients include, but are not limited to, recipients for which FHEO is informed of any one of the following current problems:

- a. An outstanding unresolved Fair Housing Act charge;
  - b. An outstanding unresolved Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination;
  - c. An outstanding unresolved letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, or other federal civil rights law;
  - d. An outstanding unresolved court finding of violation of the Fair Housing Act, Title VI, Section 504, or the Americans with Disabilities Act (ADA);
  - e. Failure to conduct an Analysis of Impediments (for new grantees, failure to conduct an AI within two years of first receiving CDBG and/or HOME funding);
  - f. Failure to develop a plan of action to address identified impediments (for new grantees, failure to develop a plan of action within a year after first completing an AI);
  - g. Failure to take appropriate actions to address any identified impediments to fair housing choice, in accordance with the certifications required by HUD regulations at 24 CFR Part 91 and 24 CFR 570.601 (or for new grantees, failure to engage in such actions within a year after first completing an AI);
  - h. Failure to engage in affirmative outreach to eligible members of protected classes;
  - i. Selection policies or practices that adversely impact members of protected classes;
  - j. Discriminatory selection of beneficiaries;
  - k. Failure to provide modifications and accommodations necessary to make programs and facilities accessible to persons with disabilities;
  - l. Failure to correct serious civil rights related problems identified by CPD or FHEO in prior years; and/or
  - m. An existing civil rights VCA or court order for which HUD has not yet confirmed that all required actions have been completed.
2. Moderate-risk recipients include, but are not limited to, recipients for which FHEO is informed of any one of the following current problems:
    - a. Failure to keep records of the race and ethnicity of beneficiaries as required by HUD regulation 24 CFR 1.6(b);

- b. Failure to keep records of actions taken to address identified impediments to fair housing choice as required by HUD regulations in 24 CFR Part 91;
  - c. Failure to maintain a current Analysis of Impediments (AI) to Fair Housing Choice, updated annually where necessary, in accordance with the instructions provided in the joint CPD-FHEO memorandum of February 14, 2000;
  - d. Failure to maintain a current fair housing action plan to address identified impediments to fair housing choice and to affirmatively further fair housing in accordance with the instructions provided in the joint CPD-FHEO memorandum of February 14, 2000;
  - e. Failure to include an existing plan of action to further fair housing in the Annual Action Plan submission;
  - f. Failure to include a report of fair housing actions taken in the Consolidated Annual Performance and Evaluation Report (CAPER); or
  - g. Failure to correct minor civil rights related problems (including but not limited to failure to display HUD's Equal Housing Opportunity poster and failure to include the Equal Housing Opportunity logo or slogan in advertising or signs) identified by CPD or FHEO in prior years.
3. Low-risk recipients are all CPD recipients (within the jurisdiction of the FHEO office) with no reported problems.

#### B. Public and Indian Housing Recipients

- 1. High-risk recipients include, but are not limited to, recipients for which FHEO is informed of any one of the following current problems:
  - a. An outstanding unresolved Fair Housing Act charge;
  - b. An outstanding unresolved Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination;
  - c. An outstanding unresolved letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, or other federal civil rights law;
  - d. An outstanding unresolved court finding of violation of the Fair Housing Act, Title VI, Section 504, or the Americans with Disabilities Act (ADA);

- e. Impermissible eligibility policies, such as a requirement that tenants be able to live independently;
  - f. Impermissible waiting list management policies or practices, such as a practice of placing applicants with disabilities on a waiting list for accessible units without also placing such applicants on the general waiting list;
  - g. Adoption of a local preference that significantly disadvantages members of protected class;
  - h. Waiting list management or tenant selection policies or practices that adversely impact members of protected classes, such as a practice of opening the waiting list for one day only and requiring all applicants to appear at the Housing Authority office on that day;
  - i. Residency requirements;
  - j. Subjective tenant selection policies (based on somebody's opinions or feelings rather than on facts or evidence) that appear likely to permit selection decisions to be made based on information relating to race, color, religion, national origin, sex, disability, or familial status;
  - k. Failure to engage in affirmative outreach to eligible members of protected classes;
  - l. Discriminatory tenant selection;
  - m. Failure to provide modifications and accommodations necessary to make programs and facilities accessible to persons with disabilities;
  - n. Failure to correct serious civil rights related problems identified by PIH or FHEO in prior years; and/or
  - o. An existing civil rights VCA or court order for which HUD has not yet confirmed that all required actions have been completed.
2. Moderate-risk recipients include, but are not limited to, recipients for which FHEO is informed of any one of the following current problems:
- a. Failure to keep records of the race and ethnicity of beneficiaries as required by HUD regulations 24 CFR 1.6(b);
  - b. Failure to keep records of actions to further fair housing, in accordance with HUD regulation 24 CFR 903.7(o); and
  - c. Failure to correct minor civil rights related problems (including but not limited to failure to display HUD's Equal Housing Opportunity poster and failure to include

the Equal Housing Opportunity logo or slogan in advertising or signs) identified by PIH or FHEO in prior years.

3. Low-risk recipients are all PIH recipients (within the jurisdiction of the FHEO office) with no reported problems.

### C. Housing Recipients

1. High-risk recipients include, but are not limited to, recipients for which FHEO is informed of any one of the following current problems:
  - a. An outstanding unresolved Fair Housing Act charge;
  - b. An outstanding unresolved Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination;
  - c. An outstanding unresolved letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, or other federal civil rights law;
  - d. An outstanding unresolved court finding of violation of the Fair Housing Act, Title VI, Section 504, or the Americans with Disabilities Act (ADA);
  - e. Conduct of initial marketing and tenant selection for a new development covered by HUD's AFHMP regulations, without a HUD-approved AFHMP;\
  - f. Impermissible eligibility policies, such as a requirement that tenants be able to live independently;
  - g. Impermissible waiting list management policies or practices, such as a practice of placing applicants with disabilities on a waiting list for accessible units without also placing such applicants on the general waiting list;
  - h. Subjective tenant selection policies (based on somebody's opinions or feelings rather than on facts or evidence) that appear likely to permit selection decisions to be made based on information relating to race, color, religion, national origin, sex, disability, or familial status;
  - i. Failure to engage in affirmative outreach to those groups least likely to apply;
  - j. Opening a waiting list in a manner that effectively prevents a substantial percentage of eligible minorities or persons with disabilities from applying;
  - k. Neighborhood residency preferences or other residency preferences that adversely impact members of protected classes;

1. Discriminatory tenant selection;
  - m. Failure to provide modifications and accommodations necessary to make programs and facilities accessible to persons with disabilities;
  - n. Failure to correct serious civil rights related problems identified by Housing or FHEO in prior years; and/or
  - o. An existing civil rights VCA or court order for which HUD has not yet confirmed that all required actions have been completed.
  
2. Moderate-risk recipients include, but are not limited to, recipients for which FHEO is informed of any one of the following current problems:
  - a. Failure to keep records of the race and ethnicity of beneficiaries as required by HUD regulation 24 CFR Part 1.6(b);
  - b. Failure to update an AFHMP that is more than 10 years old;
  - c. Failure to submit a revised AFHMP for HUD approval as required;
  - d. Failure to keep an approved AFHMP available for inspection on-site;
  - e. Failure to adhere to the procedures specified in an approved AFHMP;
  - f. Use of a residency preference when such preference has not been approved by HUD;
  - g. Failure to keep records of affirmative outreach as specified in HUD Handbook 8025,1 REV-2, paragraph 4-5; and/or
  - h. Failure to correct ~~all~~ minor civil rights related problems (including but not limited to failure to display HUD's Equal Housing Opportunity poster and failure to include the Equal Housing Opportunity logo or slogan in advertising or signs) identified by Housing or FHEO in prior years.
  
3. Low-risk recipients are all Housing recipients (within the jurisdiction of the FHEO Office per HUD's Real Estate Management System - REMS) with no reported problems.

### **Section 5: Compliance Review**

- I. FHEO offices should conduct a compliance review when necessary to determine whether a recipient is in violation of civil rights laws or HUD's implementing regulations, in accordance with FHEO Headquarters guidance and management goals. HUD regulations provide for the following types of civil rights compliance review:

- A. Section 504 of the Rehabilitation Act of 1973 (disability), implementing regulations at 24 CFR Part 8 (such a review would also cover compliance with applicable provisions of Title II of the American with Disabilities Act);
- B. The Architectural Barriers Act of 1968 (disability), implementing regulations at 24 CFR Part 40 and 24 CFR Part 41;
- C. Title VI of the Civil Rights Act of 1964 (race, color, national origin), implementing regulations at 24 CFR Part 1;
- D. Executive Order 11063 (race, color, religion, sex, or national origin in federally-owned or HUD-assisted residential property), implementing regulations at 24 CFR Part 107;
- E. Affirmative Fair Housing Marketing requirements under the Department of Housing and Urban Development Act of 1965 and the Fair Housing Act, implementing regulations at 24 CFR Part 108 and 24 CFR § 200.600;
- F. The Age Discrimination Act of 1975 (age discrimination), implementing regulations at 24 CFR Part 146;
- G. Section 109 of Title I of the Housing and Community Development Act of 1974 (race, color, national origin, religion, sex, in programs funded under Title I of the 1974 Act), implementing regulations at 24 CFR Part 6; and/or
- H. Section 3 of the Housing and Urban Development Act of 1968 (economic opportunity for low-income persons), implementing regulations at 24 CFR Part 135.

II. FHEO offices should perform all compliance reviews necessary:

- A. Because an existing civil rights problem (recorded in the FHEO office database and/or identified by a program office, by earlier FHEO monitoring, or as the result of a complaint or through the news media) presents the possibility that the recipient is in violation of federal civil rights law or implementing regulation as stated ~~above~~; or
- B. Under FHEO Headquarters management goals, specific recipients should be selected for review under Headquarters goals either on the basis of Headquarters-specified criteria or on the basis of local criteria, as appropriate. Examples of local criteria include but are not limited to:
  - 1. A decision to focus on a particular geographic area and a particular type of recipient because of complaints received or other identified issues, such as: ~~An FHEO office may decide to perform Title VI compliance reviews of a particular metropolitan area's small PHAs, focusing on tenant selection because it has received repeated reports of small housing agencies in that area using unallowable selection factors in managing their waiting lists.~~

b)a. An FHEO office may decide to perform Section 504 compliance reviews of a particular housing market area's assisted multifamily housing developments, focusing on accessibility to persons with disabilities because commercial redevelopment underway will soon create increased demand for housing in that area.

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e)b. An FHEO office may decide to perform Title VI and Section 504 compliance reviews of a large PHA in a particular state, because during the previous fiscal year it had not performed any compliance reviews of PHAs in that state.

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2. Size of recipient programs, number of persons potentially adversely affected by reported problems, and/or significant racial or ethnic imbalance between a Public Housing Agency's waiting lists and beneficiaries or among a PHA's individual developments. These factors may be analyzed by using data provided by HUD's Multifamily Tenant Characteristics System (MTCS) and/or PIH Information Center (PIC).

C. When making selections for compliance review based on the use of local criteria, document the local criteria used, the reasons for the choice of those specific local criteria, and how the recipients selected for compliance review fit the local criteria.

D. FHEO local offices should refer recipients to the appropriate FHEO Hub or Program Center to be considered for possible compliance review whenever an existing problem presents the possibility that the recipient is in violation of federal civil rights law or HUD implementing regulation.

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Kenneth L. Marcus  
 General Deputy Assistant Secretary  
 Office of Fair Housing and Equal  
 Opportunity

FHAP AGENCY - ANNUAL RISK PROFILE

ATTACHMENT A

Agency Name: \_\_\_\_\_

Active Cooperative Agreement Number \_\_\_\_\_

**Any agency that falls within a particular criterion receives the full number of points for that criterion.**

<b>CRITERION [points]</b>	<b>P OINTS</b>
<b>Open audit finding(s) [30]</b>	
<b>More than 80% of open cases are aged (more than 100 days old) [30]</b>	
<b>More than 10% of cases submitted for payment during the past year (July 1 - June 30) were rejected or required additional information for acceptance [30]</b>	
<b>During the past year (July 1 - June 30) more than 25% of case closures have been submitted more than 30 days after closure [15]</b>	
<b>Fair housing supervisor has left the agency within the past year or two or more investigators have left the agency within the past year (July 1 - June 30) [15]</b>	
<b>FHAP in the first year of capacity-building funding [15]</b>	
<b>FHAP in the third year of capacity-building funding, required to switch to contributions funding in the following year [12]</b>	
<b>No audit for past 3 years [10]</b>	
<b>Record-keeping problems persisting for two or more years [5]</b>	
<b>No on-site FHEO monitoring in past 3 years [5] (not new recipient)</b>	
<b>No agency staff or commissioners attended the most recent HUD-required training [5]</b>	
<b>POINT TOTAL</b>	

POINT TOTAL      RISK RATING (check one)

30 or more      High risk      \_\_\_\_\_

10 - 29      Moderate risk      \_\_\_\_\_

under 10      Low risk      \_\_\_\_\_

GTM \_\_\_\_\_

Date \_\_\_\_\_

Signed:

GTR \_\_\_\_\_

Date \_\_\_\_\_

FHIP GRANTEE - ANNUAL RISK PROFILE

ATTACHMENT B

Grantee Name: \_\_\_\_\_

Active Grant Numbers (Component) \_\_\_\_\_  
 \_\_\_\_\_

**Any grantee that falls within a particular criterion receives the full number of points for that criterion.**

<b>CRITERION [points]</b>	<b>P OINTS</b>
<b>Open audit finding(s) [30]</b>	
<b>Persistent performance problems (extending over two or more quarters in the past year), including but not limited to failure to complete tasks according to the schedule provided in the Statement of Work [30]</b>	
<b>Existing financial problems requiring on-site follow-up [30]</b>	
<b>New FHIP never monitored on-site by FHEO [15]</b>	
<b>Key staff have left the grantee within the past year [15]</b>	
<b>FHIP that has been monitored by FHEO under past grants but has not been monitored on-site under current grant(s) [12]</b>	
<b>Funds drawdown substantially behind schedule and/or project submissions substantially behind schedule [12]</b>	
<b>No audit for past 3 years [10]</b>	
<b>Record-keeping problems persisting for a year or more [5]</b>	
<b>No on-site FHEO monitoring of grantee in past 3 years [5] (not new recipient)</b>	
<b>No grantee staff attended the most recent HUD-required training [5]</b>	
<b>POINT TOTAL</b>	

POINT TOTAL      RISK RATING (check one)

30 or more      High risk      \_\_\_\_\_

10 - 29      Moderate risk      \_\_\_\_\_

under 10      Low risk      \_\_\_\_\_

GTM \_\_\_\_\_ Date \_\_\_\_\_

Signed:

GTR \_\_\_\_\_ Date \_\_\_\_\_