

2009 ADDENDUM TO THE MEMORANDUM OF UNDERSTANDING BETWEEN
2009
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AND

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

I. PURPOSES

The purpose of this 2009 Addendum to the Memorandum of Understanding (hereinafter "2009 Addendum") is to extend and update the Memorandum of Understanding between the Department of Housing and Urban Development and the California Department of Fair Employment and Housing (DFEH).

II. AUTHORITY

The federal Fair Housing Act, at Section 810(f)(5), requires that "not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification." The implementing regulation, at 24 C.F.R. Section 115.208(a), states that "if the Assistant Secretary affirmatively concludes that the agency's law and performance have complied with the requirements of this part in each of the five years of certification, the Assistant Secretary may renew the certification of the agency."

On March 11, 2009, the agency certified that California Department of Fair Employment and Housing (DFEH), both "on its face" and "in operation" continues to provide substantive rights, procedures, remedies and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the federal Fair Housing Act. During the five years of certification, the Department's regional office has conducted performance assessments of the agency.

In accordance with 24 C.F.R. Section 115.208, a determination of continued certification is based on the performance assessments and the agency certification.

III. EXTENSION OF EFFECTIVE DATE

The Memorandum of Understanding (MOU) between the Department and DFEH expired on April 1, 2002. A 2004 Addendum between DFEH and the Department was executed on April 20, 2004 and extended certification until April 20, 2009. This 2009 Addendum extends the MOU for five years from the date it is signed by all appropriate signatories.

IV. UPDATES

The MOU is updated as follows:

Any and all references in the MOU to 24 C.F.R. 115.207 are changed to 24 C.F.R. 115.203.

Any and all references in the MOU to 24 CFR 103.40(b) are changed to 24 C.F.R. 103.25 and 103.30.

Any and all references to 24 C.F.R. 115.4 are changed to 24 C.F.R. 115.206.

Section IV(A)(1) in the MOU now reads:

Complaints first received by HUD. When a complaint is filed with HUD and alleges a discriminatory housing practice that is within the jurisdiction of the Agency, the Field Office will *refer the complaint by TEAPOTS to the Agency*. The Department will take no action with respect to the complaint, except for reactivation as set forth in Section V of this MOU.

Additionally, a referral does not prohibit the Department from taking appropriate action to review or investigate matters in the complaint that raise issues cognizable under other civil rights authorities applicable to HUD programs. If possible, the Department will include in the transmittal of the complaint, information as to whether other civil rights authorities are applicable. If the Department cannot make a determination that other civil rights authorities apply within three days of the receipt of the complaint, the Department will forward the complaint and provide such additional information as soon as it is determined.

The following is added as Section IV (K):

Initial Contact Date

- (I) The Agency must use the Initial Contact Date field in TEAPOTS to record the actual date on which the complainant first contacts the Agency or FHEO to inquire about filing a housing discrimination complaint, or to report an alleged discriminatory housing practice. The Agency will be required to comply with the following procedures with respect to documenting a complainant's initial contact. For cases initially filed with the Agency, the Agency must:
 - a. Maintain records of each complainant's initial contact with the Agency, including records of all telephone, e-mail, letters, and in-person contacts;
 - b. Place the original record of a complainant's initial contact, or a copy of that record, in the case file under the complainant's evidence section of the file, consistent with the requirements of Chapter 10 of the Title VIII Manual; and
 - c. Ensure that the Initial Contact Date field in TEAPOTS reflects the earliest date of contact referenced in the case file.

- (2) For complaints initially filed with FHEO, the Agency:
 - a. Must ensure that the Initial Contact Date field in TEAPOTS reflects the earliest date of contact referenced in the case file referred to the Agency by FHEO.
 - b. Must not change the date that FHEO entered in the Initial Contact Date field in TEAPOTS even if records contained in the case file received from FHEO reflect a later date of contact by the complainant. If FHEO has entered an initial date of contact in TEAPOTS that is earlier than any contact date referenced in the case file, the Agency must contact the Field Office to obtain any records of contact that may have been omitted from the case file.

The Agency's Cooperative Agreement will be modified to require compliance with these requirements, and FHEO Field Office Staff will evaluate compliance with these requirements during performance assessments of the Agency. Test calls will periodically be made to determine whether the Agency is maintaining appropriate documentation of complainants' initial telephone inquiries. Failure to comply with these requirements for accurately documenting initial contact data in TEAPOTS may result in reductions in the payments that the Agency receives for investigating complaints. Entering correct initial contact data in the TEAPOTS system is essential to FHEO's ability to monitor the timeliness of the Agency's investigations.

IX. TRAINING now reads:

The Agency must send staff to mandatory training sponsored by HUD, including, but not necessarily limited to, the National Fair Housing Training Academy and the National Fair Housing Policy Conference. The HUD Government Technical Representative assigned to the Agency will monitor, and assist the Agency in determining the appropriate staff and number of persons to attend training.

XVI. EFFECTIVE DATE now reads:

The MOU is extended for five years from the date it is signed by all appropriate signatories.

V. STATEMENT OF INTENTION

In order to maintain its certification, the DFEH agrees to comply with all aspects of the revised 24 C.F.R. Part 115, published in the Federal Register on April 16, 2007. In addition, the DFEH hereby specifically agrees to comply with the following provisions:

§115.208(b)(2) "Procedures for renewal of certification"

In determining whether to renew the certification of an agency, the Assistant Secretary's review may include, but is not limited to:

(2) The agency's own certification that the State or local fair housing law continues to be substantially equivalent both "on its face" and "in operation;" (*i.e.*, there have been no amendments to the State or local fair housing law, adoption of rules or procedures concerning the fair housing law, or judicial or other authoritative interpretations of the fair housing law that limit the effectiveness of the agency's fair housing law).

§115.211(a)(1) – (3) "Changes limiting effectiveness of agency's law; Corrective actions; Suspension; Withdrawal; Consequences of repeal; changes not limiting effectiveness"

(1) If a State or local fair housing law that HUD has previously deemed substantially equivalent to the Act is amended; or rules or procedures concerning the fair housing law are adopted; or judicial or other authoritative interpretations of the fair housing law are issued, the certified agency must inform the Assistant Secretary of such amendment, adoption, or interpretation within 60 days of its discovery.

(2) The requirements of this section shall apply equally to the amendment, adoption, or interpretation or any related law that bears on any aspect of the effectiveness of the agency's fair housing law.

(3) The Assistant Secretary may conduct a review to determine if the amendment, adoption, or interpretation limits the effectiveness of the certified agency's fair housing law.

§115.310 "FHAP and the First Amendment"

None of the funding made available under the FHAP may be used to investigate or prosecute any agency engaged in by one or more persons, including the filing or maintaining of a non-frivolous legal action that may be protected by the First Amendment of the United States constitution. HUD guidance is available that sets forth the procedures HUD will follow when it is asked to accept and dual-file a case that may implicate the First Amendment of the United States constitution.

VI. LIAISON

The signatories agree to name a specific individual as well as an alternate, to serve as the principal contact person for each and all communications between them. The individuals so designated are:

For the Department:	Liaison Charles E. Hauptman, Director/Coop Agmt Officer 415/489-6536
	Alternate M. Jeffrey Jackson, Chief, Pgm Comp Br/GTR 415/489-6538
For the Agency:	Liaison Beth Rosen-Prinz 213/439-6703 Deputy Director
	Alternate Susan Sheftel 510/622-2945 District Administrator

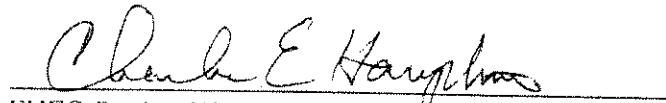
VII. SIGNATURES

Executed by the undersigned on the dates shown below, pursuant to the respective authorizations of the U.S. Department of Housing and Urban Development and the DFEH.




General Deputy Assistant Secretary for Fair
Housing and Equal Opportunity

7/7/2009
Date



FHEO Region IX Director

7/20/2009
Date



Deputy Director, California Department of Fair
Employment and Housing

7/16/2009
Date