

Assistance Award/Amendment

U.S. Department of Housing and Urban Development Office of Administration

1. Assistance Instrument <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Grant		2. Type of Action <input type="checkbox"/> Award <input type="checkbox"/> Amendment	
3. Instrument Number	4. Amendment Number	5. Effective Date of this Action	6. Control Number
7. Name and Address of Recipient		8. HUD Administering Office	
		8a. Name of Administrator	8b. Telephone Number
10. Recipient Project Manager		9. HUD Government Technical Representative	
11. Assistance Arrangement <input type="checkbox"/> Cost Reimbursement <input type="checkbox"/> Cost Sharing <input type="checkbox"/> Fixed Price	12. Payment Method <input type="checkbox"/> Treasury Check Reimbursement <input type="checkbox"/> Advance Check <input type="checkbox"/> Automated Clearinghouse	13. HUD Payment Office	
14. Assistance Amount		15. HUD Accounting and Appropriation Data	
Previous HUD Amount	\$	15a. Appropriation Number	15b. Reservation Number
HUD Amount this action	\$		
Total HUD Amount	\$	Amount Previously Obligated	\$
Recipient Amount	\$	Obligation by this action	\$
Total Instrument Amount	\$	Total Obligation	\$
16. Description			

17. <input type="checkbox"/> Recipient is required to sign and return three (3) copies of this document to the HUD Administering Office		18. <input type="checkbox"/> Recipient is not required to sign this document.	
19. Recipient (By Name)		20. HUD (By Name)	
Signature & Title	Date (mm/dd/yyyy)	Signature & Title	Date (mm/dd/yyyy)



U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity

Fair Housing Assistance Program (FHAP) 2017 Enforcement Fund Guidance

This guidance contains important details regarding the operation of the FHAP Enforcement Fund, which is being provided under the existing Special Enforcement Efforts authority set forth at 24 C.F.R. § 115.305. This guidance covers the operation of the Enforcement Fund only during the effective term of the FY2017 FHAP Fund Guidance.

I. Establishment and Purpose

In order to provide an enhanced level of meaningful support to jurisdictions that have undertaken ongoing litigation to enforce their substantially equivalent fair housing laws, HUD is providing an Enforcement Fund of up to \$200,000.00 utilizing its existing authority for Special Enforcement Efforts (SEE). Consistent with the purpose of the FHAP program to form coordinated, intergovernmental enforcement partnerships, distributions from the Enforcement Fund are not intended to cover 100 percent of the costs of state and local litigation; rather, they are intended to assist FHAP agencies by defraying a portion of the costs of engaging in ongoing or complex litigation on behalf of an aggrieved person(s).

NOTE: the Enforcement Fund is limited to supporting ongoing litigation that is complex or protracted; it is not meant to supplement routine litigation. In most routine cases, the post-cause supplemental payment provided by HUD to support administrative or judicial enforcement – when combined with the jurisdiction’s own resources – should provide sufficient support.

While some FHAP agencies have the ability to litigate on their own, many rely on a separate entity within the jurisdiction’s governmental structure to bring cases in court. The establishment of the Enforcement Fund is in recognition of the fact that, in either case, challenging fiscal environments can create hardships in terms of the costs associated with litigation. Unlike the post-cause supplemental payment, which is also intended to ease this financial burden in routine cases, the Enforcement Fund is meant to provide support for protracted or complex litigation that may require a higher level of resources due to complexity or the need to hire experts (*e.g.*, psychiatric testimony, design and construction expertise, *etc.*).

II. Enforcement Fund Eligibility

SEE funds are funds that HUD may provide to an agency to enhance enforcement activities of an agency’s fair housing law. Because the Enforcement Fund is funded under the existing SEE fund authority, the eligibility requirements of 24 C.F.R. § 115.305(a) and (b) apply. Thus, an agency requesting a distribution of funds from the Enforcement Fund must meet at least three of the six baseline eligibility criteria set forth at § 115.305(a)(1) – (6).

Regardless of whether an agency meets the baseline eligibility criteria set forth at 24 C.F.R. § 115.305 (a), it will nonetheless be ineligible for a distribution from the Enforcement

Fund if either of the following conditions exists:

- (1) 20 percent or more of an agency's fair housing complaints in the current case processing period have resulted in administrative closures; or
- (2) The agency is currently on a performance improvement plan (PIP), or its interim certification or certification has been suspended during the federal fiscal year in which funds are sought.

An agency contemplating making a request for a distribution from the Enforcement Fund should contact the FHAP Division in headquarters as early as possible to discuss their baseline eligibility. **To be considered, applications for Enforcement Funds must be received by the Department on or before August 1, 2017. An application for funds received after August 1, 2017, will not be considered.**

III. Waiver of 20 Percent SEE Fund Limit

Pursuant to the authority set forth at 42 U.S.C. § 3535(q), the Assistant Secretary for Fair Housing and Equal Opportunity has waived the 20 percent limitation on SEE funds (see 24 C.F.R. § 115.305(a)) for FHAP agencies whose total FHAP cooperative agreement for the previous contract year (including partnership funds) was less than \$300,000.00. An agency seeking a distribution from the Enforcement Fund that meets the terms of the waiver need not make a separate request for the waiver.

IV. Enforcement Fund Request Process

Applications for a distribution of funds must be signed by the principal official of the agency requesting funds. **Applications signed by anyone other than the principal official of the agency will not be considered.** Enforcement Fund requests may be sent by electronic mail to the FHAP Director in Headquarters, at Joseph.A.Pelletier@hud.gov, with a copy to the FHEO Region Director. **A hard copy of the request must also be sent to the FHAP Division in FHEO Headquarters at the following address:**

Joseph A. Pelletier, Director
Fair Housing Assistance Division
U.S. Department of Housing and Urban Development
451 Seventh Street, SW Room 5206
Washington, DC 20410

Requests must include all of the following (incomplete requests **will not** be considered):

- 1) A narrative description of each case for which funds are sought, including a detailed discussion of the following for each case:
 - a brief statement as to why the case is complex or in protracted litigation
 - the amount of time the case has been in litigation
 - the amount of time the litigation is reasonably expected to continue

- the reasons for the delay in final disposition (if applicable)
 - the type/number of experts needed to provide testimony (if applicable)
- 2) A description of the resources available to the agency to maintain the litigation and a statement of why Enforcement Funds are needed in order to maintain the litigation for each case, including specifically:
 - The dollar amount of funds dedicated to litigation in the agency's annual budget
 - The dollar amount of post-cause supplemental payments anticipated from HUD under the FY2017 FHAP Guidance
 - 3) A specific statement of the precise dollar amount of Enforcement Funds requested.
 - 4) A certification that the agency meets at least three of the criteria set forth at 24 C.F.R. §115.305(a).
 - 5) A certification that less than 20 percent of the agency's fair housing complaints for the current case processing period have resulted in administrative closures **and** that the agency is not currently on a PIP and has not had its certification suspended during FY2017.

Requests shall be considered on a case-by-case basis by the FHEO Office of Enforcement, Fair Housing Assistance Division. Distributions from the Enforcement Fund shall be made in HUD's sole discretion. FHAP agencies are reminded that requests should be based solely upon costs related to litigation activity; a request to fund a litigation position (*i.e.*, filling an attorney vacancy) will be denied.

V. Distribution and Control of Funds

In cases where a request for funds is approved, awards from the Enforcement Fund will be distributed through the established FHAP payment process, as set forth in the current FHAP Funds Control Plan.

All funds awarded under this FY2017 Enforcement Fund are intended exclusively for litigation activities conducted during FY2017 (October 1, 2016 – September 30, 2017). FHAP agencies may not request funds for litigation incurred during any other period, including future litigation expenses.

All funds awarded under the Enforcement Fund will be paid at the end-of-year payment (*i.e.*, when agencies normally receive case processing, training, and administrative funds), and must be fully obligated on or before September 30, 2017.

Use and control of these funds must comply with the FHAP governing regulation at 24 C.F.R. § 115.305 and the *Uniform Administrative Requirements for Federal Awards* at 2 C.F.R. part 200.