

§ 180.105

20024. Telephone numbers are (202) 708-5004 and FAX (202) 708-5014.

Complaint means a complaint filed under the statutes covered by this part.

Complainant means the person (including the Assistant Secretary) who filed a complaint under the statutes covered by this part.

Fair Housing Act matters refers to proceedings under this part pursuant to the Fair Housing Act and the implementing regulations at 24 CFR parts 100 and 103.

Federal financial assistance has the meaning provided in 24 CFR 1.2, 6.3, 8.3, or 146.7, as applicable.

Hearing means a trial-type proceeding that involves the submission of evidence, either by oral presentation or written submission, and briefs and oral arguments on the evidence and applicable law.

Intervenor is a person entitled by law or permitted by the ALJ to participate as a party.

Non-Fair Housing Act matters refers to proceedings under this part pursuant to:

(1) Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000d-1) and the implementing regulations at 24 CFR part 1;

(2) Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(3) The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6103) and the implementing regulations at 24 CFR part 146; or

(4) Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301-5321) and the implementing regulations at 24 CFR part 6.

Notice of Proposed Adverse Action is the statement of facts issued pursuant to a non-Fair Housing Act matter upon which HUD has found reason to terminate or refuse to grant or continue Federal financial assistance.

Party is a person who has full participation rights in a proceeding under this part.

Prevailing party has the same meaning as the term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

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Recipient has the meaning provided in 24 CFR 1.2, 6.3, 8.3, or 146.7, as applicable.

Respondent means the person accused of violating one of the statutes covered by this part, including a recipient.

Secretary means the Secretary of HUD, or to the extent of any delegation of authority by the Secretary to act under any of the statutory authorities listed in §180.105(a), any other HUD official to whom the Secretary may hereafter delegate such authority.

[61 FR 52218, Oct. 4, 1996, as amended at 64 FR 3801, Jan. 25, 1999]

§ 180.105 Scope of rules.

(a) This part contains the rules of practice and procedure applicable to administrative proceedings before an ALJ under the following authorities:

(1) The Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations at 24 CFR parts 100 and 103, where no election to proceed in federal district court has been made;

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), and the implementing regulations at 24 CFR part 1;

(3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the implementing regulations at 24 CFR part 8;

(4) The Age Discrimination Act of 1975 (42 U.S.C. 6103), and the implementing regulations at 24 CFR part 146; and

(5) Section 109 of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5321) and implementing regulations at 24 CFR part 6.

(b) In the absence of a specific provision, the Federal Rules of Civil Procedure shall serve as a general guide.

(c) Hearings under this part shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(d) Except to the extent that a waiver would otherwise be contrary to law, the ALJ may, after adequate notice to all interested persons, modify or waive any of the rules in this part upon a determination that no person will be prejudiced and that the ends of justice will be served.

(e) All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in any proceeding may be inspected in the Chief Docket Clerk's office during regular business hours.

[61 FR 52218, Oct. 4, 1996, as amended at 64 FR 3801, Jan. 25, 1999]

Subpart B—Administrative Law Judge

§ 180.200 Designation.

Proceedings under this part shall be presided over by an ALJ appointed under 5 U.S.C. 3105. HUD's Chief ALJ shall designate the presiding ALJ.

§ 180.205 Authority.

The ALJ shall have all powers necessary to conduct fair, expeditious and impartial hearings, including the power to:

- (a) Administer oaths and affirmations and examine witnesses;
- (b) Rule on offers of proof and receive evidence;
- (c) Take depositions or have depositions taken when the ends of justice would be served;
- (d) Regulate the course of the hearing and the conduct of persons at the hearing;
- (e) Hold conferences for the settlement or simplification of the issues by consent of the parties;
- (f) Rule on motions, procedural requests, and similar matters;
- (g) Make and issue initial decisions;
- (h) Impose appropriate sanctions against any person failing to obey an order, refusing to adhere to reasonable standards of orderly and ethical conduct, or refusing to act in good faith;
- (i) Issue subpoenas if authorized by law; and
- (j) Exercise any other powers necessary and appropriate for the purpose and conduct of the proceeding as authorized by the rules in this part or in conformance with statute, including 5 U.S.C. 551-59.

§ 180.210 Withdrawal or disqualification of ALJ.

(a) *Disqualification.* If an ALJ finds that there is a basis for his/her disqualification in a proceeding, the ALJ

shall withdraw from the proceeding. Withdrawal is accomplished by entering a notice in the record and providing a copy of the notice to the Chief ALJ.

(b) *Motion for recusal.* If a party believes that the presiding ALJ should be disqualified for any reason, the party may file a motion to recuse with the ALJ. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The ALJ shall rule on the motion, stating the grounds therefor.

(c) *Redesignation of ALJ.* If an ALJ is disqualified, the Chief ALJ shall designate another ALJ to preside over further proceedings.

§ 180.215 Ex parte communications.

(a) An ex parte communication is any direct or indirect communication concerning the merits of a pending proceeding, made by a party in the absence of any other party, to the presiding ALJ, and which was neither on the record nor on reasonable prior notice to all parties. Ex parte communications do not include communications made for the sole purpose of scheduling hearings, requesting extensions of time, or requesting information on the status of cases.

(b) Ex parte communications are prohibited.

(c) If the ALJ receives an ex parte communication that the ALJ knows or has reason to believe is prohibited, the ALJ shall promptly place the communication, or a written statement of the substance of the communication, in the record and shall furnish copies to all parties. Unauthorized communications shall not be taken into consideration in deciding any matter in issue. Any party making a prohibited ex parte communication may be subject to sanctions including, but not limited to, exclusion from the proceeding and an adverse ruling on the issue that is the subject of the prohibited communication.

§ 180.220 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative, conciliatory, or prosecutorial functions in connection with the proceeding shall, in