

§ 180.410

(e) *Untimely filing.* The ALJ may refuse to consider any motion or other document that is not filed in a timely fashion.

§ 180.410 Charges under the Fair Housing Act.

(a) *Filing and service.* Within three days after the issuance of a charge, the General Counsel shall file the charge with the Chief Docket Clerk and serve copies (with the additional information required under paragraph (b) of this section) on all respondents and aggrieved persons.

(b) *Contents.* The charge shall consist of a short and plain written statement of the facts upon which reasonable cause has been found to believe that a discriminatory housing practice has occurred or is about to occur. A notification shall be served with the charge containing the following information:

(1) Any complainant, respondent, or aggrieved person may elect to have the claims asserted in the charge decided in a civil action under 42 U.S.C. 3612(o), in lieu of an administrative proceeding under this part.

(2) Such election must be made not later than 20 days after receipt of service of the charge by serving written notice of such on the Chief Docket Clerk, each respondent, each aggrieved person on whose behalf the charge was issued, the Assistant Secretary, and the General Counsel.

(3) If no person timely elects to have the claims asserted in the charge decided in a civil action under 42 U.S.C. 3612(o), an administrative proceeding will be conducted under this part.

(4) If an administrative hearing is conducted:

(i) The hearing will be held at a date and place specified.

(ii) The respondent will have an opportunity to file an answer to the charge within 30 days after service of the charge.

(iii) The aggrieved person may participate as a party to the administrative proceeding by filing a request for intervention within 50 days after service of the charge.

(iv) All discovery must be concluded 15 days before the date set for hearing.

(v) The rules in this part will govern the proceeding.

24 CFR Subtitle B, Ch. I (4-1-04 Edition)

(5) If, at any time following service of the charge on the respondent, the respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of the charge, the respondent must provide a copy of the charge to such person before the respondent and the person enter into the contract, sale, encumbrance or lease.

(c) *Election of judicial determination.* If the complainant, the respondent, or the aggrieved person on whose behalf a complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under 42 U.S.C. 3612(o), the Chief ALJ shall dismiss the administrative proceeding.

(d) *Effect of a civil action on administrative proceeding.* An ALJ may not continue an administrative proceeding under the Fair Housing Act after the beginning of the trial of a civil action commenced by the aggrieved person under an act of Congress or a State law seeking relief with respect to that discriminatory housing practice. If such a trial is commenced, the ALJ shall dismiss the administrative proceeding. The commencement and maintenance of a civil action for appropriate temporary or preliminary relief under 42 U.S.C. 3610(e) or 42 U.S.C. 3613 does not affect administrative proceedings under this part.

§ 180.415 Notice of proposed adverse action regarding Federal financial assistance in non-Fair Housing Act matters.

(a) *Filing and service.* Within 10 days after a Recipient/applicant has requested a hearing, as provided for in 24 CFR parts 1, 6, 8, or 146, the General Counsel shall file a notice of proposed adverse action with the Chief Docket Clerk and serve copies (with the additional information required under paragraph (b) of this section) on all respondents and complainants.

(b) *Contents.* The notice of proposed adverse action shall consist of a short and plain written statement of the facts and legal authority upon which the proposed action is based. A notification shall be served with the notice containing the following information:

(1) That an administrative hearing will be held at a date and place specified.

(2) That the respondent will have an opportunity to file an answer to the notice of adverse action within 30 days after its service.

(3) That the complainant may participate as an amicus curiae by filing a timely request to do so.

(4) That discovery must be concluded by a date specified.

(5) That the rules specified in this part shall govern the proceeding.

(c) *Consolidation.* The ALJ may provide for non-Fair Housing Act proceedings at HUD to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequent to service of the notice of proposed adverse action shall be promptly served with notice of such consolidation.

[61 FR 52218, Oct. 4, 1996, as amended at 64 FR 3802, Jan. 25, 1999]

§ 180.420 Answer.

(a) Within 30 days after service of the charge or notice of proposed adverse action, a respondent may file an answer. The answer shall include:

(1) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny, each allegation made. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed to be admitted.

(2) A statement of each affirmative defense and a statement of facts supporting each affirmative defense.

(b) Failure to file an answer within the 30-day period following service of the charge or notice of proposed adverse action shall be deemed an admission of all matters of fact recited therein and may result in the entry of a default decision.

§ 180.425 Amendments to pleadings.

(a) *By right.* HUD may amend the charge or notice of proposed adverse action once as a matter of right prior to the filing of the answer.

(b) *By leave.* Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the ALJ may allow amendments to pleadings upon a motion of a party.

(c) *Conformance to the evidence.* When issues not raised by the pleadings are reasonably within the scope of the original charge or notice of proposed adverse action and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings, and amendments may be made as necessary to make the pleading conform to evidence.

(d) *Supplemental pleadings.* The ALJ may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or been discovered since the date of the pleadings and which are relevant to any of the issues involved.

§ 180.430 Motions.

(a) *Motions.* Any application for an order or other request shall be made by a motion which, unless made during an appearance before the ALJ, shall be in writing and shall state the specific relief requested and the basis therefor. Motions made during an appearance before the ALJ shall be stated orally and made a part of the transcript. All parties shall be given a reasonable opportunity to respond to written or oral motions or requests.

(b) *Responses to written motions.* Within seven calendar days after a written motion is served, any party to the proceeding may file a response in support of, or in opposition to, the motion. Unless otherwise ordered by the ALJ, no further responsive documents may be filed. Failure to file a response within the response period constitutes a waiver of any objection to the granting of the motion.

(c) *Oral argument.* The ALJ may order oral argument on any motion.

§ 180.435 Prehearing statements.

(a) Before the commencement of the hearing, the ALJ may direct the parties to file prehearing statements.

(b) The prehearing statement must state the name of the party presenting