

(5) Discovery may be conducted with no one present other than persons designated by the ALJ;

(6) A trade secret or other confidential research, development or commercial information may not be disclosed, or may be disclosed only in a designated way; or

(7) The party or other person from whom discovery is sought may file specified documents or information under seal to be opened as directed by the ALJ.

(b) The ALJ may permit a party or other person from whom discovery is sought, who is seeking a protective order, to make all or part of the showing of good cause in camera. If such a showing is made, upon motion of the party or other person from whom discovery is sought, an in camera record of the proceedings may be made. If the ALJ enters a protective order, any in camera record of such showing shall be sealed and preserved and made available to the ALJ or, in the event of appeal, to the Secretary or a court.

**§ 180.540 Motion to compel discovery.**

(a) If a deponent fails to answer a question propounded, or a party upon whom a discovery request has been made fails to respond adequately, objects to a request, or fails to produce documents or other inspection as requested, the discovering party may move the ALJ for an order compelling discovery in accordance with the request. The motion shall:

(1) State the nature of the request;

(2) Set forth the response or objection of the deponent or party upon whom the request was served;

(3) Present arguments supporting the motion; and

(4) Attach copies of all relevant discovery requests and responses.

(b) For the purposes of this section, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

(c) In ruling on a motion under this section, the ALJ may enter an order compelling a response in accordance with the request, may issue sanctions under paragraph (d) of this section, or may enter a protective order under § 180.535.

(d) *Sanctions.* If a party fails to provide or permit discovery, the ALJ may take such action as is just, including but not limited to the following:

(1) Inferring that the admission, testimony, document, or other evidence would have been adverse to the party;

(2) Ordering that, for purposes of the adjudication, the matters regarding which the order was made or any other designated facts shall be taken to be established in accordance with the claim of the party obtaining the order;

(3) Prohibiting the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, documents or other evidence withheld;

(4) Ordering that the party withholding discovery not introduce into evidence, or otherwise use in the hearing, information obtained in discovery;

(5) Permitting the requesting party to introduce secondary evidence concerning the information sought;

(6) Striking any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or

(7) Taking such other action as may be appropriate.

**§ 180.545 Subpoenas.**

(a) This section governs the issuance of subpoenas in administrative proceedings under the Fair Housing Act. Except for time periods stated in the rules in this section, to the extent that this section conflicts with procedures for the issuance of subpoenas in civil actions in the United States District Court for the District in which the investigation of the discriminatory housing practice took place, the rules of the United States District Court apply.

(b) *Issuance of subpoena.* Upon the written request of a party, the Chief ALJ or the presiding ALJ may issue a subpoena requiring the attendance of a witness for the purpose of giving testimony at a deposition or hearing and requiring the production of relevant books, papers, documents or tangible things.

(c) *Time of request.* Requests for subpoenas in aid of discovery must be submitted in time to permit the conclusion of discovery 15 days before the

## § 180.600

date scheduled for the hearing. If a request for subpoenas of a witness for testimony at a hearing is submitted three days or less before the hearing, the subpoena shall be issued at the discretion of the Chief ALJ or the presiding ALJ, as appropriate.

(d) *Service.* A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service on a person shall be made by delivering a copy of the subpoena to the person and by tendering witness fees and mileage to that person. When the subpoena is issued on behalf of HUD, witness fees and mileage need not be tendered with the subpoena.

(e) *Amount of witness fees and mileage.* A witness summoned by a subpoena issued under this part is entitled to the same witness and mileage fees as a witness in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena shall be paid by the party requesting the issuance of the subpoena, or where the ALJ determines that a party is unable to pay the fees, the fees shall be paid by HUD.

(f) *Motion to quash or limit subpoena.* Upon a motion by the person served with a subpoena or by a party, made within five days after service of the subpoena (but in any event not less than the time specified in the subpoena for compliance), the ALJ may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; or

(2) Condition denial of the motion upon the advancement, by the party on whose behalf the subpoena was issued, of the reasonable cost of producing subpoenaed books, papers or documents. Where circumstances require, the ALJ may act upon such a motion at any time after a copy of the motion has been served upon the party on whose behalf the subpoena was issued.

(g) *Failure to comply with subpoena.* If a person fails to comply with a subpoena issued under this section, the party requesting the subpoena may refer the matter to the Attorney General for enforcement in appropriate proceedings under 42 U.S.C. 3614(c).

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

### Subpart F—Procedures at Hearing

#### § 180.600 Date and place of hearing.

(a) *For Fair Housing Act Cases—(1) Time.* The hearing shall commence not later than 120 days after the issuance of the charge, unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the ALJ shall notify in writing all parties, aggrieved persons, amici, and the Assistant Secretary of the reasons for the delay.

(2) *Place.* The hearing will be conducted at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(b) *For Non-Fair Housing Matters.* Hearings shall be held in Washington, DC, unless the ALJ determines that the convenience of the respondent or HUD requires that another place be selected.

(c) The ALJ may change the time, date or place of the hearing, or may temporarily adjourn or continue a hearing for good cause shown.

#### § 180.605 Conduct of hearings.

The hearing shall be conducted in accordance with the Administrative Procedure Act (5 U.S.C. 551-559).

#### § 180.610 Waiver of right to appear.

If all parties waive their right to appear before the ALJ, the ALJ need not conduct an oral hearing. Such waivers shall be in writing and filed with the ALJ. The ALJ shall make a record of the pleadings and relevant written evidence submitted by the parties. These documents may constitute the evidence in the proceeding, and the decision may be based upon this evidence.

#### § 180.615 Failure of party to appear.

A default decision may be entered against a party failing to appear at a hearing unless such party shows good cause for such failure.

#### § 180.620 Evidence.

The Federal Rules of Evidence apply to the presentation of evidence in hearings under this part.