

civil penalties, as provided under this section, may be assessed against each respondent.

[64 FR 6754, Feb. 10, 1999, as amended at 68 FR 12788, Mar. 17, 2003]

**§ 180.675 Petitions for review.**

(a) The Secretary may affirm, modify or set aside, in whole or in part, the initial decision, or remand the initial decision for further proceedings.

(b) Any party adversely affected by the ALJ's initial decision may file a motion with the Secretary explaining how and why the initial decision should be modified, set aside, in whole or in part, or remanded for further proceedings. Such petition shall be based only on the following grounds:

(1) A finding of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law, duly promulgated rules of HUD, or legal precedent; or

(4) A prejudicial error of procedure was committed.

(c) Each issue shall be plainly and concisely stated and shall be supported by citations to the record when assignments of error are based on the record, statutes, regulations, cases, or other authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law not presented to the ALJ.

(d) Such petitions must be received by the Secretary within 15 days after issuance of the initial decision.

(e) A statement in opposition to the petition for review may be filed. Such opposition must be received by the Secretary within 22 days after issuance of the initial decision.

(f) A petition not granted within 30 days after the issuance of the initial decision is deemed denied.

(g) If the Secretary remands the decision for further proceedings, the ALJ shall issue an initial decision on remand within 60 days after the date of issuance of the Secretary's decision, unless it is impracticable to do so. If the ALJ is unable to issue the initial decision within this time period (or within any succeeding 60-day period following the initial 60-day period), the

ALJ shall notify in writing the parties, the aggrieved person on whose behalf the charge was filed, any amicus curiae and the Assistant Secretary, of the reasons for the delay.

**§ 180.680 Final decisions.**

(a) *Public disclosure.* HUD shall make public disclosure of each final decision.

(b) *Where initial decision does not provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance—(1) Issuance of final decision by Secretary.* The Secretary may review any finding of fact, conclusion of law, or order contained in the initial decision of the ALJ and issue a final decision in the proceeding. The Secretary shall serve the final decision on all parties no later than 30 days after the date of issuance of the initial decision.

(2) *No final decision by Secretary.* If the Secretary does not serve a final decision within the time period described in paragraph (b)(1) of this section, the initial decision of the ALJ will become the final agency decision. For the purposes of this part, such a final decision will be considered to have been issued 30 days after the date of issuance of the initial decision.

(c) *Where initial decision provides for suspension or termination of, or refusal to grant or continue, Federal financial assistance.* When the initial decision provides for the suspension or termination of, or the refusal to grant or continue, Federal financial assistance, or the imposition of any other sanction, such decision shall not constitute an order or final agency action until approved by the Secretary. Further, in the case of proceedings under title VI of the Civil Rights Act of 1964, no order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until the requirements of 24 CFR 1.8(c) have been met.

**Subpart G—Post-Final Decision in Fair Housing Cases**

**§ 180.700 Action upon issuance of a final decision in Fair Housing Act cases.**

(a) *Licensed or regulated businesses.* (1) If a final decision includes a finding

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that a respondent has engaged or is about to engage in a discriminatory housing practice in the course of a business that is subject to licensing or regulation by a Federal, State or local governmental agency, the Assistant Secretary will notify the governmental agency of the decision by:

(i) Sending copies of the findings of fact, conclusions of law and final decision to the governmental agency by certified mail; and

(ii) Recommending appropriate disciplinary action to the governmental agency, including, where appropriate, the suspension or revocation of the respondent's license.

(2) The Assistant Secretary will notify the appropriate governmental agencies within 30 days after the date of issuance of the final decision, unless a petition for judicial review of the final decision as described in § 180.710 of this part has been filed before the issuance of the notification of the agency. If such a petition has been filed, the Assistant Secretary will provide the notification to the governmental agency within 30 days after the date that the final decision is affirmed upon review. If a petition for judicial review is timely filed following the notification of the governmental agency, the Assistant Secretary will promptly notify the governmental agency of the petition and withdraw his or her recommendation.

(b) *Notification to the Attorney General.* If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice and another final decision including such a finding was issued under this part within the five years preceding the date of issuance of the final decision, the General Counsel will notify the Attorney General of the decisions by sending a copy of each final decision.

### § 180.705 Attorney's fees and costs.

Following the issuance of the final decision, any prevailing party, except HUD, may apply for attorney's fees and costs. The ALJ will issue an initial decision awarding or denying such fees and costs. The initial decision will become HUD's final decision unless the Secretary reviews the initial decision

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and issues a final decision on fees and costs within 30 days. The recovery of reasonable attorney's fees and costs will be permitted as follows:

(a) If the respondent is the prevailing party, HUD will be liable for reasonable attorney's fees and costs to the extent provided under the Equal Access to Justice Act (5 U.S.C. 504) and HUD's regulations at 24 CFR part 14, and an intervenor will be liable for reasonable attorney's fees and costs only to the extent that the intervenor's participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

(b) To the extent that an intervenor is a prevailing party, the respondent will be liable for reasonable attorney's fees unless special circumstances make the recovery of such fees and costs unjust.

### § 180.710 Judicial review of final decision.

(a) Any party adversely affected by a final decision may file a petition in the appropriate United States Court of Appeals for review of the decision under 42 U.S.C. 3612(i). The petition must be filed within 30 days after the date of issuance of the final decision.

(b) If no petition for review is filed under paragraph (a) of this section within 45 days after the date of issuance of the final decision, the findings of facts and final decision shall be conclusive in connection with any petition for enforcement.

### § 180.715 Enforcement of final decision.

(a) *Enforcement by HUD.* Following the issuance of a final decision, the General Counsel may petition the appropriate United States Court of Appeals for the enforcement of the final decision and for appropriate temporary relief or restraining order in accordance with 42 U.S.C. 3612(j).

(b) *Enforcement by others.* If no petition for review has been filed within 60 days after the date of issuance, and the General Counsel has not sought enforcement of the final decision as described in paragraph (a) of this section, any person entitled to relief under the final decision may petition the appropriate United States Court of Appeals