

§ 15f.16

§ 15f.16 Although I request a hearing, may I request the ALJ to issue a decision without a hearing?

(a) At any time after the parties have been notified of your hearing request, you may file a request with the ALJ to make a determination based on the written record. With your request, you should file any other arguments or evidence that you wish the ALJ to consider. The agency and OCR will have 35 days after you file your request to file any additional information, arguments, or evidence for the consideration of the ALJ. The ALJ may recommend dismissal of your complaint on the basis of a finding that it is not an eligible complaint; recommend denial of your eligible complaint on the merits; or make a proposed finding of discrimination on your eligible complaint and recommend to award you such relief as would be afforded under the applicable statute or regulation under which the eligible complaint was filed. The ALJ will make a proposed determination on your complaint based on the original complaint, the Section 741 Complaint Request, the OCR report, and any other evidence or written documents filed by the parties. The proposed determination will become the final determination 35 days after it is filed unless you request review of the proposed determination by the ASCR. The ASCR also may review the proposed determination on his or her own initiative. If the ASCR reviews the decision, he or she will allow the parties a reasonable opportunity to file briefs in support of or opposition to the proposed determination, and afterwards will issue a final determination within 35 days after you request review of the proposed determination.

(b) To the maximum extent practicable, a final determination will be made within 180 days of your filing of the Section 741 Complaint Request.

[63 FR 67394, Dec. 4, 1998, as amended at 68 FR 27449, May 20, 2003]

§ 15f.17 What happens before the hearing?

(a) *Do I need to file another answer or pre-hearing brief?* You may file a pre-hearing brief in support of your complaint.

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(b) *Will there be a pre-hearing conference?* The ALJ may hold a pre-hearing conference. If such a conference is to be held, the notice of the pre-hearing conference also will contain a notice to the parties of a time and date for the pre-hearing conference. Pre-hearing conferences normally will be held by telephone. Issues that may be addressed at the pre-hearing conference may include: simplification of the issues; the possibility of obtaining stipulations of fact and of the authenticity of documents; limitation of the number of witnesses; exchange of copies of hearing exhibits; negotiation, compromise or settlement of issues; identification of documents of which official notice will be requested; a schedule for completion of the actions decided upon at the conference; and any other matters that may aid and expedite the conclusion of the proceeding. No transcript of the pre-hearing conference will be made but the ALJ will issue a written memorandum summarizing the results of the pre-hearing conference.

(c) *What else may the ALJ ask for before the hearing?* Prior to the hearing, the ALJ may require each of the parties to furnish any or all of the following: an outline of a party's position with respect to the complaint, the facts upon which the party intends to rely, the legal theories upon which the party intends to rely, copies of or a list of the documents and exhibits which the party anticipates on introducing at the hearing, and a list of anticipated witnesses.

§ 15f.18 May I depose potential witnesses?

(a) A party may request an order from the ALJ to take the testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence. The application for the order must specify the reason and need for taking testimony by deposition.

(b) The time, place, and manner of taking depositions will be as mutually agreed by the parties, or failing agreement, by order of the ALJ.

(c) No testimony taken by depositions will be considered as part of the evidence in the hearing until such testimony is offered and received in evidence at the hearing, and ordinarily it will not be received into evidence if the deponent is present and can testify at the hearing. However, when the deponent is present and can testify, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. Where you have requested a final determination by the ALJ based on the written record without a hearing, the ALJ, in his or her discretion, may receive depositions to supplement the record.

(d) Each party will bear its own expenses associated with the taking of any deposition.

§ 15f.19 Other than myself, OCR, and the agency, may any other interested party participate in the proceeding?

In most cases, there will be no parties to a proceeding under these rules, other than the complainant, OCR, and, and if it so desires, the agency. However, if there are circumstances in which additional parties have an interest in the proceeding, such as a bank which participated in a case involving a guaranteed loan, such other interested parties may be permitted to participate in the proceeding at the discretion of the ALJ.

§ 15f.20 May I subpoena witnesses to the hearings?

No. USDA has no statutory authority to subpoena witnesses to testify at the hearing.

§ 15f.21 What rules are applicable to the actual conduct of the hearing?

(a) *Who may appear at the hearing?* You may appear at the hearing in person or through your attorney. OCR or the agency will appear through a designated representative, which may include a USDA attorney. Any person who appears as counsel must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(b) *What happens if I fail to show up?* If, after having received notice of the hearing under § 15f.14, you fail to ap-

pear at the hearing without good cause, you will have waived your right to a hearing in the proceeding and the ALJ may proceed to issue a final determination based on the written record as provided for under § 15f.16.

(c) *Which party presents its case first at the hearing?* You, as the complainant, will proceed first at the proceeding, unless otherwise determined by the ALJ.

(d) *What kind of evidence will be admitted and how will it be handled?* (1) *In general.* The hearing will be conducted by the ALJ in the manner he or she determines most likely to obtain the facts relevant to the matter or matters at issue. The ALJ may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. Each party will have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the party's position; controvert evidence relied on by any other party; and question all witnesses. The testimony of witnesses at a hearing will be on oath or affirmation and will be subject to cross-examination. Any evidence may be received by the ALJ without regard to whether that evidence could be admitted in judicial proceedings. Upon a finding of good cause, the ALJ may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(2) *Objections.* (i) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to any other ruling of the ALJ, the party must state briefly the grounds of such objection.

(ii) Only objections made before the ALJ may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness will be admitted in the manner provided in and subject to the provisions of § 15f.18(c) of these rules.

(4) *Exhibits.* Unless the ALJ finds that the furnishing of copies is impracticable, two copies of each exhibit must be filed with the ALJ. A party submitting an exhibit must provide every other party (except interested parties)