

§ 26.27

that there were reasonable grounds for the failure to present such evidence at the hearing, the Secretary or designee shall remand the matter to the hearing officer for reconsideration in light of the additional evidence.

(k) *Ex parte communications.* The prohibitions of ex parte communications in § 26.3 shall apply to contacts with the Secretary or the Secretary's designee.

(l) *Determination.* The Secretary or designee may affirm, modify, reverse, remand, reduce, compromise, or settle any determination made or action ordered in the initial determination or order. The Secretary or designee shall consider, and include in any final determination, such factors as may be set forth in applicable statutes or regulations.

(m) *Written determination.* Where a request for Secretarial review has been timely made, the Secretary, or designee, shall issue a written determination within 30 days after receipt of the request for review, and shall serve it upon the parties to the hearing and the hearing officer. The Secretary, or designee, may extend the time in which a written determination must be issued by an additional 60 days for good cause shown in a written justification issued to the parties. The written determination of the Secretary shall be final. If the Secretary, or designee, does not act upon the request for review of a determination within 90 days of service of the request, then the initial determination shall be the final agency action.

§ 26.27 Interlocutory rulings.

(a) *Interlocutory rulings by the hearing officer.* A party seeking review of an interlocutory ruling shall file a motion with the hearing officer within 10 days of the ruling requesting certification of the ruling for review by the Secretary, or in cases arising under 2 CFR part 2424, with the Debarring Official. Certification may be granted if the hearing officer believes that:

(1) It involves an important issue of law or policy as to which there is substantial ground for difference of opinion; and

(2) An immediate appeal from the order may materially advance the ultimate termination of the litigation.

24 CFR Subtitle A (4-1-12 Edition)

(b) *Petition for review.* Any party may file a petition for review of an interlocutory ruling within 10 days of the hearing officer's determination regarding certification.

(c) *Secretarial review.* The Secretary, or designee, or Debarring Official shall review a certified ruling. The Secretary, designee, or Debarring Official has the discretion to grant or deny a petition for review from an uncertified ruling.

(d) *Continuation of hearing.* Unless otherwise ordered by the hearing officer or the Secretary, designee, or Debarring Official, the hearing shall proceed pending the determination of any interlocutory appeal, and the order or ruling of the hearing officer shall be effective pending review.

Subpart B—Hearings Pursuant to the Administrative Procedure Act

§ 26.28 Purpose and scope.

Unless otherwise specified in this title, the rules in this subpart B of this part apply to hearings that HUD is required by statute to conduct pursuant to the Administrative Procedure Act (5 U.S.C. 554 *et seq.*)

§ 26.29 Definitions.

The following definitions apply to subpart B of this part:

Complaint means the notice from HUD alleging violations of a HUD statute and/or regulation, citing the legal authority upon which it is issued, stating the relief HUD seeks, and informing a respondent of his or her right to submit a response to a designated office and to request an opportunity for a hearing before an Administrative Law Judge.

Docket Clerk means the Docket Clerk of the Office of Administrative Law Judges, located at the following address—409 Third Street, SW., Second Floor, Washington, DC 20024; mailing address is 451 7th Street, SW., Room B-133, Washington, DC 20410.

Respondent, unless otherwise identified by other governing statute, rule, or regulation, is the party against whom the administrative action is taken.

Response means the written response to a complaint, admitting or denying