

§ 26.1

- 26.47 Evidence.
- 26.48 Posthearing briefs.
- 26.49 The record.
- 26.50 Initial decision.
- 26.51 Interlocutory rulings.
- 26.52 Appeal to the Secretary.
- 26.53 Exhaustion of administrative remedies.
- 26.54 Judicial review.
- 26.55 Collection of civil penalties and assessments.
- 26.56 Right to administrative offset.

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 73 FR 76833, Dec. 17, 2008, unless otherwise noted.

Subpart A—Hearings Before Hearing Officers

§ 26.1 Purpose and scope.

This part sets forth rules of procedure in certain proceedings of the Department of Housing and Urban Development presided over by a hearing officer. These rules of procedure apply to administrative sanction hearings pursuant to 2 CFR part 2424 and to hearings with respect to determinations by the Multifamily Participation Review Committee pursuant to 24 CFR part 200, subpart H, to the extent that these regulations are not inconsistent and unless these regulations provide otherwise. They also apply in any other case where a hearing is required by statute or regulation, to the extent that rules adopted under such statute or regulation are not inconsistent.

HEARING OFFICER

§ 26.2 Hearing officer, powers, and duties.

(a) *Hearing officer.* Proceedings conducted under these rules shall be presided over by a hearing officer who shall be an Administrative Law Judge or Office of Appeals Administrative Judge authorized by the Secretary or designee to conduct proceedings under this part.

(b) *Time and place of hearing.* The hearing officer shall set the time and place of any hearing and shall give reasonable notice to the parties.

(c) *Powers of hearing officers.* The hearing officer shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain

24 CFR Subtitle A (4–1–16 Edition)

order. The hearing officer shall have all powers necessary to those ends, including, but not limited to, the power:

(1) To administer oaths and affirmations;

(2) To cause subpoenas to be issued as authorized by law;

(3) To rule upon offers of proof and receive evidence;

(4) To order or limit discovery as the interests of justice may require;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To consider and rule upon all procedural and other motions appropriate in adjudicative proceedings;

(8) To take notice of any material fact not appearing in evidence in the record that is properly a matter of judicial notice;

(9) To make and file determinations; and

(10) To exercise such other authority as is necessary to carry out the responsibilities of the hearing officer under subpart A of this part.

§ 26.3 *Ex parte* communications.

(a) *Definition.* An *ex parte* communication is any communication with a hearing officer, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding that is made by a party in the absence of any other party.

(b) *Prohibition of ex parte communications.* *Ex parte* communications are prohibited except where:

(1) The purpose and content of the communication have been disclosed in advance or simultaneously to all parties; or

(2) The communication is a request for information concerning the status of the case.

(c) *Procedure after receipt of ex parte communication.* Any hearing officer who receives an *ex parte* communication that the hearing officer knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized *ex parte* communications shall not be