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Subpart A—Hearings Before Hearing Officers

§ 26.1 Purpose.

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 hearings with respect to determinations by the Multifamily Participation Review Committee pursuant to 24 CFR part 200, subpart H, to hearings conducted pursuant to referrals by debarring or suspending officials under 24 CFR part 24, and to hearings conducted pursuant to referrals by a hearing official under 24 CFR part 25, unless such regulations at 24 CFR parts 24, 25, or 200, 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.

[48 FR 43304, Sept. 23, 1983, as amended at 60 FR 39239, Aug. 1, 1995]

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 Board of Contract Appeals 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 proceeding and to maintain

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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 which is properly a matter of judicial notice; and
- (9) To make and file determinations.

§ 26.3 Failure to comply with an order of the hearing officer.

If a party refuses or fails to comply with an order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party.

§ 26.4 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 of procedures of any pending proceeding which 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 which 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 taken into consideration in deciding any matter in issue.

[48 FR 43304, Sept. 23, 1983; 48 FR 46980, Oct. 17, 1983]

§ 26.5 Disqualification of hearing officer.

When a hearing officer believes there is a basis for disqualification in a particular proceeding, the hearing officer shall withdraw by notice on the record and shall notify the Secretary and the official initiating the action under appeal. Whenever any party believes that the hearing officer should be disqualified from presiding in a particular proceeding, the party may file a motion with the hearing officer requesting the hearing officer to withdraw from presiding over the proceedings. This motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the hearing officer does not withdraw, a written statement of his or her reasons shall be incorporated in the record and the hearing shall proceed.

REPRESENTATION OF THE PARTIES

§ 26.6 Department representative.

In each case heard before a hearing officer under this part, the Department shall be represented by the General Counsel or designee.

§ 26.7 Respondent's representative.

The party against whom the administrative action is taken may be represented at hearing as follows:

- (a) Individuals may appear on their own behalf;
- (b) A member of a partnership or joint venture may appear on behalf of the partnership or joint venture;
- (c) A bona fide officer may appear on behalf of a corporation or association upon a showing of adequate authorization;
- (d) An attorney who files a notice of appearance with the hearing officer may represent any party. For purposes