

§ 81.85

the United States and may seek reasonable expenses and attorneys fees in any court having jurisdiction of any proceeding instituted under this section. Such expenses and fees shall be paid by the GSE or from its assets.

(g) *Failure to appear.* If a GSE fails to appear at a hearing through a duly authorized representative, the GSE shall be deemed to have consented to the issuance of the cease-and-desist order, the imposition of the penalty, or the disapproval of the new program, whichever is applicable.

(h) *Public hearings.* (1) All hearings shall be open to the public, unless the ALJ determines that an open hearing would be contrary to the public interest. Where a party makes a timely motion to close a hearing and the ALJ denies the motion, such party may file with the Secretary within 5 working days a request for a closed hearing, and any party may file a reply to such a request within 5 working days of service of such a motion. Such motions, requests, and replies are governed by § 26.38 of this title. When a request for a closed hearing has been filed with the Secretary under this paragraph (h)(1), the hearing shall be stayed until the Secretary has advised the parties and the ALJ, in writing, of the Secretary's decision on whether the hearing should be closed.

(2) Failure to file a timely motion, request or reply is deemed a waiver of any objection regarding whether the hearing will be public or closed. A party must file any motion for a closed hearing within 10 days after:

(i) Service of the notice of charges under § 81.82;

(ii) Service of the Notice of Intent to Impose Civil Money Penalt(ies) under § 81.83; or

(iii) Filing of a request for a hearing under § 81.54(b).

(i) *Decision of ALJ.* After each hearing, the ALJ shall issue an initial decision and serve the initial decision on the GSE, the Secretary, any other parties, and the HUD General Counsel. This service will constitute notification that the case has been submitted to the Secretary.

(j) *Review of initial decision—(1) Secretary's discretion.* The Secretary, in the

24 CFR Subtitle A (4-1-04 Edition)

Secretary's discretion, may review any initial decision.

(2) *Requested by a party.* Any party may file a notice of appeal of an initial decision to the Secretary in accordance with § 26.51(c) of this title. Any waiver of the limitations contained in § 26.51(f) of this title on the number of pages for notices of appeal and responses, of the time limitation in § 26.51(c) of this title for filing a notice of appeal of the initial decision, or any other waivers under this subpart shall not be subject to the publication requirements in 42 U.S.C. 3535(q).

(k) *Final decision.* (1) The initial decision will become the final decision unless the Secretary issues a final decision within 90 days after the initial decision is served on the Secretary.

(2) *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 may issue a final decision in the proceeding. Any decision shall include findings of fact upon which the decision is predicated. The Secretary may affirm, modify, or set aside, in whole or in part, the initial decision or may remand the initial decision for further proceedings. The final decision shall be served on all parties and the ALJ.

(l) *Decisions on remand.* If the initial decision is remanded for further proceedings, the ALJ shall issue an initial decision on remand within 60 days of the date of issuance of the decision to remand, unless it is impractical to do so.

(m) *Modification.* The Secretary may modify, terminate, or set aside any order in accordance with 12 U.S.C. 4582(b)(2).

[60 FR 61888, Dec. 1, 1995, as amended at 61 FR 50219 Sept. 24, 1996]

§ 81.85 Public disclosure of final orders and agreements.

(a) *Disclosure.* Except as provided in paragraph (b) of this section, the Secretary shall make available to the public final orders; written agreements and statements; and modifications and terminations of those orders, agreements, and statements, as set forth in 12 U.S.C. 4586(a) and the implementing

regulations in this subpart G. The retention of records of these orders, agreements, and statements, and their modifications and terminations, are governed by 12 U.S.C. 4586(e).

(b) *Exceptions to disclosure.* Exceptions to disclosure will be determined in accordance with 12 U.S.C. 4586 (c), (d), and (f) and paragraph (c) of this section.

(c) *Filing documents under seal*—(1) *Request by party.* Upon the denial by the ALJ of a motion for a protective order, any party may request the Secretary to file any document or part of a document under seal if the party believes that disclosure of the document would be contrary to the public interest. Any other party may file with the Secretary a reply to such a request within 5 working days after a request is made or some other time to be determined by the Secretary. Such requests and replies are governed by § 26.38 of this title.

(2) *Effect of request.* A document or part of a document that is the subject of a timely request to the Secretary to file under seal will not be disclosed under this section until the Secretary has advised the parties and the ALJ, in writing, of the Secretary's decision on whether the document or part of a document should be filed under seal. The ALJ shall take all appropriate steps to preserve the confidentiality of such documents or parts of documents, including closing portions of the hearing to the public.

(3) *Time of request.* Failure to file with the Secretary a timely request or a reply is deemed a waiver of any objection regarding the decision on whether a document is to be disclosed. A party must make its request to file a document under seal at least 10 days before the commencement of the hearing. A request may be filed at any other time before or during the course of the hearing, but the requesting party's obligation to produce the document or parts of the document will not be affected by the party's pending request to the Secretary, unless the Secretary expressly directs the ALJ to treat the document as protected from disclosure until the Secretary makes a final written decision on whether the document should be filed under seal. If the Secretary's

direction to the ALJ is made orally, that direction must be reduced to writing and filed with the ALJ within 3 working days of the making of the oral order or the document will then be subject to disclosure pending the Secretary's final written decision on disclosure.

[60 FR 61888, Dec. 1, 1995, as amended at 61 FR 50219 Sept. 24, 1996]

§ 81.86 Enforcement and jurisdiction.

If a GSE fails to comply with a final decision, the Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of the notice or order. Such request may be made:

(a) *For a cease-and-desist order:*

(1) Upon expiration of the 30-day period beginning on the service of the order on the GSE; or

(2) Upon the effective time specified in an order issued upon consent; and

(b) *For a civil money penalty,* when the order imposing the penalty is no longer subject to review under 12 U.S.C. 4582 and 4583 and the implementing regulations at §§ 81.84 and 81.87.

§ 81.87 Judicial review.

(a) *Commencement.* In a proceeding under 12 U.S.C. 4581 or 4585, as implemented by §§ 81.82 or 81.83, a GSE that is a party to the proceeding may obtain review of any final order issued under § 81.84 by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Secretary be modified, terminated, or set aside.

(b) *Filing of record.* Upon receiving a copy of a petition, the Chief Docket Clerk, Office of Administrative Law Judges, shall file in the court the record in the proceeding, as provided in 28 U.S.C. 2112.

(c) *No automatic stay.* The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Secretary.