

## Federal Housing Enterprise Oversight

## § 1780.8

(8) Regulate the scope and timing of discovery;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive, exclude, limit, or otherwise rule on evidence;

(12) Upon motion of a party, take official notice of facts;

(13) Recuse himself upon motion made by a party or on his own motion;

(14) Prepare and present to the Director a recommended decision as provided in this part;

(15) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(16) Do all other things necessary and appropriate to discharge the duties of a presiding officer.

### § 1780.6 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Director, in his discretion, determines that holding an open hearing would be contrary to the public interest. The Director may make such determination *sua sponte* at any time by written notice to all parties.

(b) *Motion for closed hearing.* Within 20 days of service of the notice of charges, any party may file with the presiding officer a motion for a private hearing and any party may file a pleading in reply to the motion. The presiding officer shall forward the motion and any reply, together with a recommended decision on the motion, to the Director, who shall make a final determination. Such motions and replies are governed by §1780.25.

(c) *Filing documents under seal.* OFHEO's counsel of record, in his discretion, may file any document or part of a document under seal if such counsel makes a written determination that disclosure of the document would be contrary to the public interest. The presiding officer shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

### § 1780.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice by the Director shall be signed by at least one representative of record in his individual name and shall state that representative's address and telephone number and the names, addresses and telephone numbers of all other representatives of record for the person making the filing or submission.

(b) *Effect of signature.* (1) By signing a document, the representative of record or party certifies that—

(i) The representative of record or party has read the filing or submission of record;

(ii) To the best of his knowledge, information and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith, nonfrivolous argument for the extension, modification, or reversal of existing law; and

(iii) The filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the presiding officer shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any representative or party shall constitute a certification that to the best of his knowledge, information, and belief, formed after reasonable inquiry, his statements are well-grounded in fact and are warranted by existing law or a good faith, nonfrivolous argument for the extension, modification, or reversal of existing law and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

### § 1780.8 Ex parte communications.

(a) *Definition.* (1) Ex parte communication means any material oral or written communication relevant to the merits of an adjudicatory proceeding

## § 1780.9

## 12 CFR Ch. XVII (1–1–06 Edition)

that was neither on the record nor on reasonable prior notice to all parties that takes place between—

(i) An interested person outside OFHEO (including the person's representative); and

(ii) The presiding officer handling that proceeding, the Director, a decisional employee assigned to that proceeding, or any other person who is or may reasonably be expected to be involved in the decisional process.

(2) A communication that does not concern the merits of an adjudicatory proceeding, such as a request for status of the proceeding, does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice commencing the proceeding is issued by the Director until the date that the Director issues his final decision pursuant to §1780.55, no person referred to in paragraph (a)(1)(i) of this section shall knowingly make or cause to be made an ex parte communication. The Director, presiding officer, or a decisional employee shall not knowingly make or cause to be made an ex parte communication.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by any person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or representative for a party who makes an ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Director or the presiding officer, including, but not limited to, exclusion from the proceedings and an adverse ruling on the

issue that is the subject of the prohibited communication.

(e) *Consultations by presiding officer.* Except to the extent required for the disposition of ex parte matters as authorized by law, the presiding officer may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate.

(f) *Separation of functions.* An employee or agent engaged in the performance of investigative or prosecuting functions for OFHEO in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or Director review under §1780.55 of the recommended decision, except as witness or counsel in public proceedings.

### § 1780.9 Filing of papers.

(a) *Filing.* Any papers required to be filed shall be addressed to the presiding officer and filed with OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

(b) *Manner of filing.* Unless otherwise specified by the Director or the presiding officer, filing shall be accomplished by:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized by and upon any conditions specified by the Director or the presiding officer. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed—*(1) *Form.* All papers must set forth the name, address and telephone number of the representative or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½×11-inch paper and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in §1780.7.