

§ 146.41

§ 146.41 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

- (a) Attempts to assert a right protected by this part; or
- (b) Cooperates in any mediation, investigation, hearing, or other part of HUD's investigation, settlement, and enforcement process.

§ 146.43 Hearings, decisions, post-termination proceedings.

The provisions of 24 CFR part 180 apply to HUD enforcement of this part. [61 FR 52218, Oct. 4, 1996]

§ 146.45 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and HUD had made no finding with regard to the complaint; or

(2) HUD issues any finding in favor of the recipient.

(b) If HUD fails to make a finding within 180 days or issues a finding in favor of the recipient, HUD shall:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That he or she may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action, the complainant must give 30 days' notice by registered mail to the Secretary of HUD, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act, the relief requested, the court in which the com-

24 CFR Subtitle B, Ch. I (4-1-99 Edition)

plainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

§ 146.47 Remedial and affirmative action by recipients.

(a) Where the Secretary finds that a recipient has unlawfully discriminated on the basis of age, the recipient shall take any action that the Secretary may require to overcome the effects of the discrimination. If another recipient exercises control over a subrecipient that has unlawfully discriminated, the Secretary may require both recipients to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient operating a program which serves the elderly or children in addition to persons of other ages provides special benefits to the elderly or children, the provision of those benefits shall be presumed to be voluntary affirmative action, provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 146.49 Alternate funds disbursement procedure.

(a) Except as otherwise provided in this paragraph and to the extent authorized by law, the Secretary may re-disburse funds withheld or terminated under this part directly to an alternate recipient, including any public or non-profit private organization or agency, State or political subdivision of the State. Under title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301, funds withheld because of a reduction or withdrawal of a recipient's Community Development Block Grant must be reallocated in the succeeding fiscal year, in accordance with the applicable regulations governing that program.

(b) The Secretary shall require the alternate recipient to demonstrate:

(1) The ability to comply with the regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

Subpart A—General Information

Sec.

- 180.100 Definitions.
180.105 Scope of rules.

Subpart B—Administrative Law Judge

- 180.200 Designation.
180.205 Authority.
180.210 Withdrawal or disqualification of ALJ.
180.215 Ex Parte communications.
180.220 Separation of functions.

Subpart C—Parties

- 180.300 Rights of parties.
180.305 Representation.
180.310 Parties.
180.315 Standards of conduct.

Subpart D—Proceedings Prior to Hearing

- 180.400 Service and filing.
180.405 Time computations.
180.410 Charges under the Fair Housing Act.
180.415 Notice of proposed adverse action regarding Federal financial assistance in non-Fair Housing Act matters.
180.420 Answer.
180.425 Amendments to pleadings.
180.430 Motions.
180.435 Prehearing statements.
180.440 Prehearing conferences.
180.445 Settlement negotiations before a settlement judge.
180.450 Resolution of charge or notice of proposed adverse action.

Subpart E—Discovery

- 180.500 Discovery.
180.505 Supplementation of responses.
180.510 Interrogatories.
180.515 Depositions.
180.520 Use of deposition at hearings.
180.525 Requests for production of documents or things for inspection or other purposes, including physical and mental examinations.
180.530 Requests for admissions.
180.535 Protective orders.
180.540 Motion to compel discovery.

- 180.545 Subpoenas.

Subpart F—Procedures at Hearing

- 180.600 Date and place of hearing.
180.605 Conduct of hearings.
180.610 Waiver of right to appear.
180.615 Failure of party to appear.
180.620 Evidence.
180.625 Record of hearing.
180.630 Stipulations.
180.635 Written testimony.
180.640 In camera and protective orders.
180.645 Exhibits.
180.650 Public document items.
180.655 Witnesses.
180.660 Closing of record.
180.665 Arguments and briefs.
180.670 Initial decision of ALJ.
180.671 Assessing civil penalties for Fair Housing Act cases.
180.675 Petitions for review.
180.680 Final decisions.

Subpart G—Post-Final Decision in Fair Housing Cases

- 180.700 Action upon issuance of a final decision in Fair Housing Act cases.
180.705 Attorney's fees and costs.
180.710 Judicial review of final decision.
180.715 Enforcement of final decision.

Subpart H—Post-Final Decision in Non-Fair Housing Act Matters

- 180.800 Post-termination proceedings.
180.805 Judicial review of final decision.
AUTHORITY: 29 U.S.C. 794; 42 U.S.C. 2000d-1 3535(d), 3601-3619; 5301-5320, and 6103.
SOURCE: 61 FR 52218, Oct. 4, 1996, unless otherwise noted.

Subpart A—General Information

§ 180.100 Definitions.

As used in this part:

(a) The terms *ALJ*, *Department*, *Fair Housing Act*, *General Counsel*, and *HUD* are defined in 24 CFR part 5, subpart A.

(b) The terms *Aggrieved Person*, *Assistant Secretary*, *Attorney General*, *Discriminatory Housing Practice*, *Person*, and *State* are defined in 24 CFR part 103, subpart A.

(c) Other terms used in this part are defined as follows:

Agency has the same meaning as *HUD*.

Applicant and *Application* have the meanings provided in 24 CFR 1.2 or 24 CFR 8.3, as applicable.