

§ 14.300

the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Subpart C—Procedures for Considering Applications

§ 14.300 Jurisdiction of adjudicative officer.

Any provision in the Department's rules and regulations other than this part which limits or terminates the jurisdiction of an adjudicative officer upon the effective date of his or her decision in the underlying proceeding shall not in any way affect his or her jurisdiction to render a decision under this part.

§ 14.305 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 14.205(c) for confidential financial information.

§ 14.310 Answer to application.

(a) Within 30 days after service of an application, agency counsel may file an answer to the application. Agency counsel may request an extension of time for filing. If agency counsel fails to answer or otherwise fails to contest or settle the application, the adjudicative officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's fees and other expenses under the Act.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts

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not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 14.325.

§ 14.315 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 14.320 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the settlement procedure applicable to the underlying proceeding. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 14.325 Extensions of time and further proceedings.

(a) The adjudicative officer on motion and for good cause shown may grant extensions of time other than for filing an application for fees and expenses after final disposition in the adversary adjudication.

(b) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full

and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(c) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 14.330 Decision.

The adjudicative officer shall issue an initial decision on the application within 30 days after completion of proceedings on the application. The decision shall include written findings and conclusions on such of the following as are relevant to the decision:

- (a) The applicant's status as a prevailing party;
- (b) The applicant's qualification as a party under 5 U.S.C. 504(b)(1)(B);
- (c) Whether the agency's position was substantially justified;
- (d) Whether special circumstances make an award unjust;
- (e) Whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and
- (f) The amounts, if any, awarded for fees and other expenses, with reasons for any difference between the amount requested and the amount awarded.

If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 14.335 Departmental review.

(a) Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Secretary (or his or her delegate, if any) may decide to review the decision

on his or her own initiative, in accordance with the Department's review or appeals procedures applicable to the underlying proceeding. If neither the applicant nor agency counsel seeks review and the Secretary (or his or her delegate, if any) does not take review on his or her own initiative, the initial decision on the application shall become a final decision of the Department in the same manner as a decision in the underlying proceeding becomes final. Whether to review a decision is a matter within the discretion of the Secretary (or his or her delegate, if any). If review is taken, the Department will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(b) Either party may seek reconsideration of the decision on the fee application in accordance with Rule 29, 24 CFR 20.10.

§ 14.340 Judicial review.

Judicial review of final departmental decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 14.345 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to: Director, Office of Finance and Accounting, Room 2202, Department of Housing and Urban Development, Washington, DC 20410, with a copy to: Associate General Counsel for Equal Opportunity and Administrative Law, Room 10244, Department of Housing and Urban Development, Washington, DC 20410. A statement that review of the underlying decision is not being sought in the United States courts, or that the process for seeking review of the award, if initiated, has been completed, must also be included. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.