

§ 21.10

Subpart B—Which Adversary Adjudications Are Covered?

§ 21.10 Adversary adjudications covered by the Act.

The Act covers adversary adjudications under section 554 of title 5 of the United States Code. These include the following:

- (a) Compliance proceedings under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).
- (b) Compliance and enforcement proceedings under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).
- (c) Compliance proceedings under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).
- (d) Compliance proceedings under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).
- (e) Withholding proceedings under section 1001 of Pub. L. 100-297 (Hawkins-Stafford) (20 U.S.C. 2833).
- (f) Proceedings under any of the following:
 - (1) Section 5(g) of Pub. L. 81-874 (Financial Assistance for Local Educational Agencies in Areas Affected by Federal Activity) (20 U.S.C. 240(g)).
 - (2) Sections 6(c) or 11(a) of Pub. L. 81-815 (an act relating to the construction of school facilities in areas affected by Federal activities and for other purposes) (20 U.S.C. 636(c) or 641(a)).
 - (3) Section 6 of Pub. L. 95-563 (Contract Disputes Act of 1978) (41 U.S.C. 605).
 - (4) Part E of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*).
- (g) Other adversary adjudications that fall within the coverage of the Act.

(Authority: 5 U.S.C. 504(c) and 554; 20 U.S.C. 1234(f)(2))

§ 21.11 Effect of judicial review of adversary adjudication.

If a court reviews the underlying decision of an adversary adjudication covered under this part, an award of fees and other expenses may be made only under 28 U.S.C. 2412 (awards in certain judicial proceedings).

(Authority: 5 U.S.C. 504(c)(1); 28 U.S.C. 2412(d)(3))

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Subpart C—How Is Eligibility Determined?

§ 21.20 Types of eligible applicants.

The following types of parties that prevail in adversary adjudications are eligible to apply under the Act for an award of fees and other expenses:

- (a) An individual who has a net worth of not more than \$2 million.
- (b) Any owner of an unincorporated business who has—
 - (1) A net worth of not more than \$7 million, including both personal and business interests; and
 - (2) Not more than 500 employees.
- (c) A charitable or other tax-exempt organization—
 - (1) As described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)); and
 - (2) Having not more than 500 employees.
- (d) A cooperative association—
 - (1) As defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141(a)); and
 - (2) Having not more than 500 employees.
- (e) Any other partnership, corporation, association, unit of local government, or organization that has—
 - (1) A net worth of not more than \$7 million; and
 - (2) Not more than 500 employees.

(Authority: 5 U.S.C. 504(b)(1)(B))

§ 21.21 Determination of net worth and number of employees.

- (a) The adjudicative officer shall determine an applicant's net worth and number of employees as of the date the adversary adjudication was initiated.
- (b) In determining eligibility, the adjudicative officer shall include the net worth and number of employees of the applicant and all of the affiliates of the applicant.
- (c) For the purposes of paragraph (b) of this section, the adjudicative officer shall consider the following as an affiliate:
 - (1) Any individual, corporation, or other entity that directly or indirectly owns or controls a majority of the voting shares or other interest of the applicant;

(2) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest; and

(3) Any entity with a financial relationship to the applicant that, in the determination of the adjudicative officer, constitutes an affiliation for the purposes of paragraph (b) of this section.

(d) In determining the number of employees of an applicant and its affiliates, the adjudicative officer shall count part-time employees on a proportional basis.

(Authority: 5 U.S.C. 504(c)(1))

§21.22 Applicants representing others.

If an applicant is a party in an adversary adjudication primarily on behalf of one or more persons or entities that are ineligible under this part, then the applicant is not eligible for an award.

(Authority: 5 U.S.C. 504 (b)(1)(B) and (c)(1))

Subpart D—How Does One Apply for an Award?

§21.30 Time for filing application.

(a) In order to be considered for an award under this part, an applicant may file its application when it prevails in an adversary adjudication—or in a significant and discrete substantive portion of an adversary adjudication—but no later than 30 days after the Department's final disposition of the adversary adjudication.

(b) In the case of a review or reconsideration of a decision in which an applicant has prevailed or believes it has prevailed, the adjudicative officer shall stay the proceedings on the application pending final disposition of the underlying issue.

(c) For purposes of this part, final disposition of the adversary adjudication means the latest of—

(1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer becomes administratively final;

(2) The date of an order disposing of any petitions for reconsideration of the final order in the adversary adjudication;

(3) If no petition for reconsideration is filed, the last date on which that type of petition could have been filed; or

(4) The date of a final order or any other final resolution of a proceeding—such as a settlement or voluntary dismissal—that is not subject to a petition for reconsideration.

(Authority: 5 U.S.C. 504 (a)(2) and (c)(1))

§21.31 Contents of application.

(a) In its application for an award of fees and other expenses, an applicant shall include the following:

(1) Information adequate to show that the applicant is a prevailing party in an adversary adjudication or in a significant and discrete substantive portion of an adversary adjudication.

(2) A statement that the adversary adjudication is covered by the Act according to §21.10.

(3) An allegation that the position of the Department was not substantially justified, including a description of the specific position.

(4) Unless the applicant is a qualified tax-exempt organization or a qualified agricultural cooperative association, information adequate to show that the applicant qualifies under the requirements of §§21.20 and 21.21 regarding net worth. The information, if applicable, shall include a detailed exhibit of the net worth of the applicant—and its affiliates as described in §21.21—as of the date the proceeding was initiated.

(5) (i) The total amount of fees and expenses sought in the award; and

(ii) An itemized statement of—

(A) Each expense; and

(B) Each fee, including the actual time expended for this fee and the rate at which the fee was computed.

(6) A written verification under oath or affirmation or under penalty of perjury from each attorney representing the applicant stating—

(i) The rate at which the fee submitted by the attorney was computed; and

(ii) The actual time expended for the fee.

(7) A written verification under oath, affirmation, or under penalty of perjury that the information contained in the application and any accompanying material is true and complete to the