

Federal Housing Enterprise Oversight

§ 1705.10

(3) The time actually spent in the representation of the eligible party;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(c) In determining the reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party, the adjudicative officer shall consider the prevailing rate for similar services in the community in which the services were performed.

(d) Fees and other expenses incurred before the date on which an adversary adjudication was initiated will be awarded only if the eligible party can demonstrate that they were reasonably incurred in preparation for the adversary adjudication.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1705.6 Rulemaking on maximum rate for fees.

If warranted by an increase in the cost of living or by special circumstances, OFHEO may adopt regulations providing for an award of attorney or agent fees at a rate higher than \$125 per hour in adversary adjudications covered by this part. Special circumstances include the limited availability of attorneys or agents who are qualified to handle certain types of adversary adjudications. OFHEO will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedures Act, 5 U.S.C. 553.

§ 1705.7 Awards against other agencies.

If another agency of the United States participates in an adversary adjudication before OFHEO and takes a position that was not substantially justified, the award or appropriate portion of the award to an eligible party that prevailed over that agency shall be made against that agency.

§§ 1705.8–1705.9 [Reserved]

Subpart B—Information Required from Applicants

§ 1705.10 Contents of the application for award.

(a) An application for award of fees and other expenses under either § 1705.4(a) and § 1705.4(b) shall:

(1) Identify the applicant and the adversary adjudication for which an award is sought;

(2) State the amount of fees and other expenses for which an award is sought;

(3) Provide the statements and documentation required by paragraph (b) or (c) of this section and § 1705.12 and any additional information required by the adjudicative officer; and

(4) Be signed by the applicant or an authorized officer or attorney of the applicant and contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(b) An application for award under § 1705.4(a) shall show that the demand of OFHEO was substantially in excess of, and was unreasonable when compared to, the decision in the underlying adversary adjudication under the facts and circumstances of the case. It shall also show that the applicant is a small entity as defined in 5 U.S.C. 601.

(c) An application for award under § 1705.4(b) shall:

(1) Show that the applicant has prevailed in a significant and discrete substantive portion of the underlying adversary adjudication and identify the position of OFHEO in the adversary adjudication that the applicant alleges was not substantially justified;

(2) State the number of employees of the applicant and describe briefly the type and purposes of its organization or business (if the applicant is not an individual);

(3) State that the net worth of the applicant does not exceed \$2 million, if the applicant is an individual; or for all other applicants, state that the net