

SUBCHAPTER A—OFHEO ORGANIZATION AND FUNCTIONS

PART 1700—ORGANIZATION AND FUNCTIONS

Sec.

1700.1 Office of Federal Housing Enterprise Oversight.

1700.2 Organization of the Office of Federal Housing Enterprise Oversight.

1700.3 Official logo and seal.

AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 4513, 4526.

SOURCE: 59 FR 62304, Dec. 5, 1994, unless otherwise noted.

§ 1700.1 Office of Federal Housing Enterprise Oversight.

(a) *Scope and authority.* The Office of Federal Housing Enterprise Oversight (referred to as OFHEO) is an independent office within the Department of Housing and Urban Development. OFHEO was created by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act), Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102-550, October 28, 1992; 106 Stat. 3943; 12 U.S.C. 4501, *et seq.*). OFHEO is responsible for the examination and financial regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). OFHEO is charged with ensuring that the Enterprises are adequately capitalized and operating in a safe and sound manner. OFHEO's costs and expenses are funded by annual assessments paid by the Enterprises. OFHEO is headed by a Director, who is appointed by the President and confirmed by the Senate for a five-year term.

(b) *Location.* OFHEO is located at 1700 G Street NW., 4th Floor, Washington, DC 20552. OFHEO's hours of business are 8:30 a.m.–5:00 p.m. (eastern standard time), Monday through Friday, excluding Federal holidays.

§ 1700.2 Organization of the Office of Federal Housing Enterprise Oversight.

(a) *Director.* The Director has exclusive authority under the Act with respect to the management of OFHEO, and is responsible for directing the de-

velopment, implementation, and review of all OFHEO programs and functions. The Director appoints such personnel as may be necessary to carry out the functions of OFHEO. The Director may delegate to OFHEO officers and employees any of the functions, powers, and duties of the Director, as the Director considers appropriate. The Director may establish and fix the responsibilities of the offices within OFHEO as the Director deems necessary for the efficient functioning of OFHEO.

(b) *Deputy Director.* The Deputy Director of OFHEO is appointed by the Director in accordance with the Act. In the event of the absence, sickness, death or resignation of the Director, the Deputy Director serves as acting Director until the Director's return or the confirmation of a successor. The Deputy Director performs such functions, powers and duties as the Director determines are necessary with respect to OFHEO's management and the development and implementation of OFHEO's programs and functions.

(c) *Executive Director and Chief of Staff.* The Executive Director and Chief of Staff of OFHEO heads the Office of Executive Director. The Executive Director and Chief of Staff reports to the Director and the Deputy Director. The Executive Director and Chief of Staff is the chief administrative officer of OFHEO, serves as a legal advisor on administrative matters, and coordinates communication and cooperation on administrative issues with the Office of General Counsel.

(d) *Offices and functions.* (1) Office of Executive Director. The Office of Executive Director consists of the Office of Budget and Financial Management, the Office of Human Resources Management, the Office of Technology and Information Management, and the Office of Strategic Planning and Management. The Office of Executive Director is responsible for OFHEO-wide management and oversight of all administrative matters.

(2) *Office of Examination.* The Office of Examination plans and conducts examinations of the Enterprises, as required by the Act, prepares and issues reports of examination summarizing the financial condition and management practices of each Enterprise, and seeks preventative and corrective actions as appropriate. The Office complements its on-site examination activities with off-site financial safety and soundness monitoring.

(3) *Office of Capital Supervision.* The Office of Capital Supervision ensures the comprehensive evaluation and classification of the capital adequacy of the Enterprises, the assessment of risks that impact capital and the development of tools to measure such risks. The Office ensures the integrity of capital classifications by effectively producing results under the minimum and risk based capital models and systems and by implementing appropriate enhancements to those measures. The Office assesses new GSE activities under the capital regime and addresses changes in accounting standards. The Office supports its responsibilities as well as other OFHEO offices through research on alternative models and measurements of risk and capital adequacy.

(4) *Office of General Counsel.* The Office of General Counsel advises the Director and OFHEO staff on all legal matters concerning the functions, activities, and operations of OFHEO and of the Enterprises under the Act. The Office is responsible for interpreting the Act and other applicable law, including financial institutions regulatory issues, securities and corporate law principles, and administrative and general legal matters. This Office also coordinates the preparation of legislation and agency regulations and works with other counsels in the government.

(5) *Office of External Relations.* The Office of External Relations is responsible for coordinating and communicating on behalf of OFHEO with the Congress, for monitoring relevant legislative developments, and for analyzing and assisting the Director in developing legislative proposals. The Office also is responsible for directing and coordinating communication with the news media and the public as well

as participating in planning programs for OFHEO.

(6) *Office of Policy Analysis and Research.* The Office of Policy Analysis and Research conducts policy analysis and research to assess the short- and long-term impact on the regulatory and supervisory functions of OFHEO of trends and developments in Enterprise activities, housing finance and financial regulation. The Office also prepares data series, reports and research papers; works with other OFHEO offices to develop policy options; and, makes recommendations to the Director on a broad range of policy issues.

(7) *Office of Compliance.* The Office of Compliance assists the Director in ensuring that the Enterprises operate in compliance with applicable laws, regulations and safety and soundness standards. The Office conducts special review and examinations on focused issues that may arise at the enterprises or that are of concern to OFHEO, often in coordination with other OFHEO offices, to assess compliance and obtain information. The Office also assists in providing information for enforcement actions and other activities as requested by the Director.

(8) *Office of Chief Accountant.* The Office of Chief Accountant advises the Director and OFHEO staff on all accounting matters related to the Enterprises. The Office develops policies regarding accounting and financial reporting and monitors accounting standards that affect the Enterprises, working with the Enterprises at a policy level on emerging issues. The Office supports and coordinates accounting resources within the agency to assure the best and most efficient use of those resources. The Office supports other offices in providing consistent accounting policy interpretation across OFHEO and works with external constituencies on accounting issues.

(e) *Additional information.* Current information on the organization of OFHEO may be obtained by mail from the Office of External Affairs, 1700 G Street NW, 4th Floor, Washington, DC 20552. Such information, as well as other OFHEO information, also may be obtained electronically by accessing

Federal Housing Enterprise Oversight, HUD

§ 1703.31

OFHEO's website located at *www.OFHEO.gov*.

[59 FR 62304, Dec. 5, 1994, as amended at 65 FR 39787, June 28, 2000; 69 FR 18809, Apr. 9, 2004; 70 FR 59629, Oct. 13, 2005]

§ 1700.3 Official logo and seal.

The section describes and displays the logo adopted by the Director as the official symbol representing the Office of Federal Housing Enterprise Oversight. It is displayed on correspondence, selected documents, and signage. The logo serves as the official seal to authenticate official documents of the Agency.

(a) *Description.* The logo is a disc consisting of two concentric circles enclosing the words "Office of Federal Housing Enterprise Oversight" and the inaugural year, 1993. In the center of the disc is a stylized image of a structure consisting of a solid two-tiered pedestal base topped by a solid triangular shape, which represents the roof of the structure. Placed between the base and the top are the letters "OFHEO." These letters spell out the acronym of the Office of Federal Housing Enterprise Oversight and act as a visual link between the top and bottom of the structure.

(b) *Display.* The Office of Federal Housing Enterprise Oversight's official logo and seal appears below:



[68 FR 32629, June 2, 2003]

PART 1703—RELEASE OF INFORMATION

Subparts A–D [Reserved]D [Reserved]

Subpart E—Testimony and Production of Documents in Legal Proceedings in Which OFHEO Is Not a Named Party

- 1703.31 General purposes.
- 1703.32 Definitions.
- 1703.33 General policy.
- 1703.34 Request for testimony or production of documents.
- 1703.35 Scope of permissible testimony.
- 1703.36 Manner in which testimony is given.
- 1703.37 Manner in which documents will be produced.
- 1703.38 Fees.
- 1703.39 Responses to demands served on employees.
- 1703.40 Responses to demands served on nonemployees.

Subpart F—Rules and Procedures for Service Upon OFHEO

- 1703.51 Service of process.

AUTHORITY: 5 U.S.C. 301, 552; 12 U.S.C. 4513, 4522, 4526, 4639; E.O. 12600, 3 CFR, 1987 Comp., p. 235.

SOURCE: 63 FR 71005, Dec. 23, 1998, unless otherwise noted. Redesignated at 65 FR 81327, Dec. 26, 2000.

Subparts A–D [Reserved]

Subpart E—Testimony and Production of Documents in Legal Proceedings in Which OFHEO Is Not a Named Party

§ 1703.31 General purposes.

The purposes of this subpart are to maintain the confidentiality of official documents and information of OFHEO, conserve the time of employees for their official duties, maintain the impartial position of OFHEO in litigation in which OFHEO is not a named party, and enable the Director to determine when to authorize testimony and to produce documents in legal proceedings in which OFHEO is not a named party. This subpart sets forth the procedures to be followed with respect to testimony concerning official matters and production of official documents of OFHEO in legal proceedings in which OFHEO is not a named party. This subpart in no way affects the

§ 1703.32

rights and procedures governing public access to official documents pursuant to the FOIA or the Privacy Act.

§ 1703.32 Definitions.

For the purpose of this subpart:

(a) *Court* means any entity conducting a legal proceeding.

(b) *Demand* means any order, subpoena, or other legal process for testimony or documents.

(c) *Legal proceeding* means any administrative, civil, or criminal proceeding, including a discovery proceeding therein, before a court of law, administrative board or commission, hearing officer, or other body in which OFHEO is not a named party or in which OFHEO has not instituted the administrative investigation or administrative hearing.

(d) *OFHEO Counsel* means the General Counsel or his or her designee, a Department of Justice attorney, or counsel authorized by OFHEO to act on behalf of OFHEO or an employee.

§ 1703.33 General policy.

It is the policy of OFHEO that in any legal proceeding in which OFHEO is not a named party, no employee shall, in response to a demand, produce any documents contained in the files of OFHEO, or disclose any information relating to, or based upon, documents contained in the files of OFHEO, or disclose or produce any documents acquired as part of the performance of that employee's official duties or because of that employee's official status. Under appropriate circumstances, the Director may grant exceptions in writing to this policy when the Director determines that the testimony of employees or disclosure of official documents would be in the best interest of OFHEO or in the public interest. Prior to any authorized testimony or release of official documents, the requesting party shall obtain a protective order from the court before which the action is pending to preserve the confidentiality of the testimony or documents subsequently produced. The protective order shall be in a form satisfactory to OFHEO.

12 CFR Ch. XVII (1-1-10 Edition)

§ 1703.34 Request for testimony or production of documents.

(a) No employee shall give testimony concerning official matters or produce any official documents in any legal proceeding to which OFHEO is not a named party without the prior written authorization of the Director.

(b) If testimony by an employee concerning official matters or the production of official documents is desired, the requesting party, or his or her attorney, shall submit a letter to the Director setting forth the title of the case, the forum, the requesting party's interest in the case, a summary of the issues in the litigation, the reasons for the request, and a showing that the desired testimony, documents, or information are not reasonably available from any other source. If an appearance or testimony is requested, the letter shall also set forth the intended use of the testimony, a general summary of the scope of the testimony requested, and a showing that no document could be provided and used in lieu of the testimony or other appearance requested.

(c) The General Counsel is authorized to consult with the requesting party or his or her attorney to refine and limit the request so that compliance is less burdensome, or obtain information necessary to make the determination described in §1703.33 of this subpart. Failure of the requesting party, or his or her attorney, to cooperate in good faith with the General Counsel to enable the Director to make an informed determination under this subpart may serve as the basis for a determination not to comply with the request.

[63 FR 71005, Dec. 23, 1998. Redesignated and amended at 65 FR 81327, Dec. 26, 2000]

§ 1703.35 Scope of permissible testimony.

(a) The scope of permissible testimony by an employee is limited to that set forth in the written authorization granted that employee by the Director.

(b) Employees are not authorized to give opinion testimony, except as authorized by the Director. OFHEO, as the regulatory agency charged with the responsibility of examining, supervising, and regulating the financial safety and soundness and capital adequacy of the Enterprises under the

Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501 *et seq.*, relies on the ability of its employees to gather full and complete information in order to carry out its statutory responsibilities. The use of employees to give opinion testimony would hamper OFHEO's ability to carry out its statutory responsibilities and would cause a serious administrative burden on OFHEO's staff.

§ 1703.36 Manner in which testimony is given.

(a) Authorized testimony of employees ordinarily will be made available only through depositions or written interrogatories.

(b) Where, in response to a request, the Director determines that circumstances warrant authorizing testimony by an employee, the requesting party shall cause a subpoena to be served on the employee in accordance with applicable Federal or State rules of procedure, with a copy of the subpoena sent by registered or certified mail to the General Counsel.

(c) Normally, authorized depositions will be taken at OFHEO's office, at a time arranged with the employee that is reasonably fixed to avoid substantial interference with the performance of the employee's duties.

(d) Upon completion of the deposition of an employee, a copy of the transcript of the testimony shall be furnished, at the expense of the party requesting the deposition, to the General Counsel for OFHEO's files.

§ 1703.37 Manner in which documents will be produced.

(a) An employee's authorization to produce official documents is limited to the authority granted that employee by the Director.

(b) Certified or authenticated copies of official OFHEO documents authorized by the Director to be released under this subpart will be provided upon request.

§ 1703.38 Fees.

Unless waived or reduced, the following fees shall be charged for documents produced by OFHEO in connection with requests subject to this subpart:

(a) *Searches for documents.* OFHEO will charge for the actual search time of the employee performing the work, billed in 15-minute segments, as described in § 1703.22(b)(1)(i).

(b) *Copying of documents.* The standard copying charge for documents in paper copy is \$.15 per page. When responsive information is provided in a format other than paper copy, such as in the form of computer tapes and disks, OFHEO will assess the direct costs of the tape, disk, or whatever medium is used to produce the information, as well as any related reproduction costs. Normally, only one copy will be provided. Additional copies will be provided only upon a showing of demonstrated need.

(c) *Certification or authentication of documents.* OFHEO will charge \$3.00 for each certification or authentication of documents.

(d) *Computer searches.* Services of personnel in the nature of a computer search shall be charged at rates prescribed in paragraph (a) of this section. A charge shall be made for the computer time involved, based upon the prevailing level of costs to OFHEO and upon the particular types of computer and associated equipment and the amount of time that such equipment is utilized. A charge shall also be made for any substantial amount of special supplies or documents used to contain, present, or make available the output of computers, based upon prevailing levels of costs to OFHEO and upon the type and amount of such supplies or documents that are used.

(e) *Other costs.* When other services and documents not specifically identified in this section are requested and provided, their actual cost to OFHEO shall be charged.

(f) *Payments of fees.* A bill will be forwarded to the requesting party upon completion of the production. Payment shall be made by check or money order payable to the Office of Federal Housing Enterprise Oversight.

[63 FR 71005, Dec. 23, 1998, as amended at 65 FR 55175, Sept. 13, 2000. Redesignated and amended at 65 FR 81327, Dec. 26, 2000]

§ 1703.39

§ 1703.39 Responses to demands served on employees.

(a) *Advice by employee served.* Any employee who is served with a demand in a legal proceeding requiring his or her personal attendance as a witness or requiring the production of documents or information in any proceeding, shall immediately notify the General Counsel of such service, of the testimony and documents described in the demand, and of all relevant facts which may be of assistance to the General Counsel in determining whether the individual in question should be authorized to testify or the documents requested should be made available.

(b) When authorization to testify or to produce documents has not been granted by the Director, OFHEO Counsel shall provide the party issuing the demand or the court with a copy of the regulations contained in this subpart and shall inform the party issuing the demand or the court that the employee upon whom the demand has been made is prohibited from testifying or producing documents without the prior approval of the Director.

(c) *Appearance by employee served.* Unless OFHEO has authorized disclosure of the information requested, any employee who has OFHEO information that may not be disclosed and who is required to respond to a subpoena or other legal process, shall attend at the time and place required and respectfully decline to disclose or to give any testimony with respect to the information, basing such refusal upon the provisions of this subpart. If the court nevertheless orders the disclosure of the information or the giving of testimony irrespective of instructions from the Director not to produce the documents or disclose the information sought, the employee upon whom the demand has been made shall continue to decline respectfully to disclose the information and shall report promptly the facts to OFHEO for such action as OFHEO may deem appropriate.

(d) A determination under this subpart to comply or not to comply with any demand shall not constitute an assertion or waiver of privilege, lack of relevance, technical deficiencies, or any other ground for noncompliance. OFHEO reserves the right to oppose

12 CFR Ch. XVII (1–1–10 Edition)

any demand on any legal ground independent of its determination under this subpart.

§ 1703.40 Responses to demands served on nonemployees.

(a) OFHEO reports of examinations, or any documents related thereto, are the property of OFHEO and are not to be disclosed to any person without the Director's prior written consent.

(b) If any person who has possession of an OFHEO report of examination, or any documents related thereto, is served with a demand in a legal proceeding directing that person to produce such OFHEO documents or to testify with respect thereto, such person shall immediately notify the General Counsel of such service, of the testimony and described documents in the demand, and of all relevant facts. Such person shall also object to the production of such documents or information contained therein on the basis that the documents are the property of OFHEO and cannot be released without OFHEO's consent and that their production must be sought from OFHEO following the procedures set forth in §1703.33, paragraphs (b) and (c) of §1703.34, and paragraph (b) of §1703.37 of this subpart.

[63 FR 71005, Dec. 23, 1998. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

Subpart F—Rules and Procedures for Service Upon OFHEO

§ 1703.51 Service of process.

(a) Except as otherwise provided by OFHEO regulations, the Federal Rules of Civil Procedure, or order of a court with jurisdiction over OFHEO, any legal process upon OFHEO, including a legal process served on OFHEO demanding access to its records under the FOIA, shall be duly issued and served upon the General Counsel and any OFHEO personnel named in the caption of the documents.

(b) Service of process upon the General Counsel may be effected by personally delivering a copy of the documents to the General Counsel or by sending a copy of the documents to the General Counsel by registered or certified mail,

Federal Housing Enterprise Oversight, HUD

§ 1704.1

postage prepaid, to the Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

PART 1704—DEBT COLLECTION

Subpart A—General

Sec.

- 1704.1 Authority and scope.
- 1704.2 Definitions.
- 1704.3 Collection of debts and referrals to the Department of the Treasury.
- 1704.4–1704.19 [Reserved]

Subpart B—Salary Offset

- 1704.20 Authority and scope.
- 1704.21 Notice requirements before salary offset where OFHEO is the creditor agency.
- 1704.22 Review of OFHEO records related to the debt.
- 1704.23 Opportunity for a hearing where OFHEO is the creditor agency.
- 1704.24 Certification where OFHEO is the creditor agency.
- 1704.25 Voluntary repayment agreements as alternative to salary offset where OFHEO is the creditor agency.
- 1704.26 Special review where OFHEO is creditor agency.
- 1704.27 Notice of salary offset where OFHEO is the paying agency.
- 1704.28 Procedures for salary offset where OFHEO is the paying agency.
- 1704.29 Coordinating salary offset with other agencies.
- 1704.30 Interest, penalties, and administrative costs.
- 1704.31 Refunds.
- 1704.32 Request from a creditor agency for the services of a hearing official.
- 1704.33 Non-waiver of rights by payment.
- 1704.34–1704.39 [Reserved]

Subpart C—Administrative Offset

- 1704.40 Authority and scope.
- 1704.41 Administrative offset prior to completion of procedures.
- 1704.42 Procedures.
- 1704.43 Interest.
- 1704.44 Refunds.
- 1704.45 Requests for administrative offset to other Federal agencies.
- 1704.46 Requests for administrative offset from other Federal agencies.
- 1704.47 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.
- 1704.48–1704.49 [Reserved]

Subpart D—Tax Refund Offset

- 1704.50 Authority and scope.

- 1704.51 Definitions.
- 1704.52 Procedures.

AUTHORITY: 5 U.S.C. 5514; 26 U.S.C. 6402(d); 31 U.S.C. 3701–3720A.

SOURCE: 64 FR 34969, June 30, 1999, unless otherwise noted. Redesignated at 65 FR 81328, Dec. 26, 2000.

Subpart A—General

§ 1704.1 Authority and scope.

(a) *Authority.* The Office of Federal Housing Enterprise Oversight (OFHEO) issues this part 1704 under the authority of 5 U.S.C. 5514 and 31 U.S.C. 3701–3720A, and in conformity with the FCCS at 4 CFR chapter II; the regulations on salary offset issued by the Office of Personnel Management at 5 CFR part 550, subpart K; and the regulations on tax refund offset issued by the Internal Revenue Service at 26 CFR 301.6402–6.

(b) *Scope.* (1) This part 1704 applies to debts that are owed to the Federal Government by Federal employees, other persons, organizations, or entities that are indebted to OFHEO, and by Federal employees of OFHEO who are indebted to other agencies, except for those debts listed in paragraph (b)(2) of this section.

(2) Subparts B and C of this part 1704 do not apply to:

(i) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States;

(ii) Any case to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies;

(iii) Any case where collection of a debt is explicitly provided for or provided by another statute, *e.g.* travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108, or, as provided for by title 11 of the United States Code, when the claims involve bankruptcy;

(iv) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, unless the Department of Justice authorizes OFHEO to handle the collection;

(v) Claims between agencies; or

§ 1704.2

(vi) A claim that has been outstanding for more than 10 years after the creditor agency's right to collect the debt first accrued, unless facts material to the Federal Government's right to collect were not known and could not reasonably have been known by the officials charged with the responsibility for discovery and collection of such debts.

(3) Nothing in this part 1704 precludes the compromise, suspension, or termination of collection actions, where appropriate under the FCCS, or the use of alternative dispute resolution methods if they are not inconsistent with applicable law and regulations.

(4) Nothing in this part 1704 precludes an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or from questioning the amount or validity of a debt, in the manner set forth in this part 1704.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1704.2 Definitions.

The following definitions apply to the terms used in this part 1704, unless the term is defined elsewhere in this part 1704.

(a) *Administrative offset* means an action, pursuant to 31 U.S.C. 3716, in which the Federal Government withholds funds payable to, or held by the Federal Government for a person, organization, or other entity in order to collect a debt from that person, organization, or other entity. Such funds include funds payable by the Federal Government on behalf of a State Government.

(b) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

(c) *Claim* or *debt* (used interchangeably in this part 1704) means any amount of funds or property that has been determined by an agency official to be due the Federal Government by a person, organization, or entity, except another agency. It also means any amount of money, funds, or property owed by a person to a State, the District of Columbia, American Samoa,

12 CFR Ch. XVII (1-1-10 Edition)

Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. A claim or debt includes:

(1) Funds owed on account of loans made, insured, or guaranteed by the Federal Government, including any deficiency or any difference between the price obtained by the Federal Government in the sale of a property and the amount owed to the Federal Government on a mortgage on the property;

(2) Expenditures of non-appropriated funds;

(3) Overpayments, including payments disallowed by audits performed by the Inspector General of the agency administering the program;

(4) Any amount the Federal Government is authorized by statute to collect for the benefit of any person;

(5) The unpaid share of any non-Federal partner in a program involving a Federal payment, and a matching or cost-sharing payment by the non-Federal partner;

(6) Any fines or penalties assessed by an agency; and

(7) Other amounts of money or property owed to the Federal Government.

(d) *Certification* means a written statement received by a paying agency from a creditor agency that request the paying agency to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

(e) *Compromise* means the settlement or forgiveness of a debt.

(f) *Creditor agency* means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt.

(g) *Debt*. See *Claim* or *debt* in paragraph (c) of this section.

(h) *Debt collection center* means the Department of the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(i) *Debtor* means the person, organization, or entity owing money to the Federal Government.

(j) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, or retainer pay (or in the case of an employee not entitled to basic pay, other authorized pay) remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that OFHEO must apply first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105 (b) through (f), as follows:

- (1) Federal employment taxes;
- (2) Amounts withheld for the United States Soldiers' and Airmen's Home;
- (3) Amounts deducted for Medicare;
- (4) Fines and forfeiture ordered by a court-martial or by a commanding officer;
- (5) Federal, State, or local income taxes to the extent authorized or required by law, but no greater than would be the case if the employee claimed all dependents to which her or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;
- (6) Health insurance premiums;
- (7) Normal retirement contributions, including employee contributions to the Thrift Savings Plan; and
- (8) Normal life insurance premiums, e.g., Serviceman's Group Life Insurance and "Basic Life" Federal Employee's Group Life Insurance premiums, not including amounts deducted for supplementary coverage.

(k) *Employee* means a current employee of OFHEO or other agency, including a current member of the Armed Forces or a Reserve of the Armed Forces of the United States.

(l) *FCCS* means the Federal Claims Collection Standards at 4 CFR chapter II.

(m) *Hearing official* means an individual who is responsible for conducting any hearing with respect to the existence or amount of a debt claimed and for rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of OFHEO

when OFHEO is the creditor agency but may be an administrative law judge.

(n) *Notice of Intent* means a written notice of a creditor agency to a debtor that states that the debtor owes a debt to the creditor agency and apprises the debtor of the applicable procedural rights.

(o) *Notice of salary offset* means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency that informs the employee that salary offset will begin at the next officially established pay interval.

(p) *Paying agency* means an agency of the Federal Government that employs the individual who owes a debt to an agency of the Federal Government.

(q) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(r) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to OFHEO or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1704.3 Collection of debts and referrals to the Department of the Treasury.

(a) *Collection activity*. The collection of debts directly and by offset shall be pursued in accordance with this part 1704. This part 1704 incorporates all applicable debt collection provisions of the FCCS and supplements the FCCS by the prescription of procedures necessary and appropriate for the operations of OFHEO.

(b) *Referral of delinquent debts*. (1) OFHEO shall transfer to the Secretary of the Department of the Treasury any past due, legally enforceable nontax debt that has been delinquent for a period of 180 days or more so that the Secretary may take appropriate action to collect the debt or terminate collection action in accordance with 31

U.S.C. 3716, 5 U.S.C. 5514, the FCCS, 5 CFR 550.1108, and 31 CFR part 285.

(2) OFHEO may transfer any past due, legally enforceable nontax debt that has been delinquent for less than a period of 180 days to a debt collection center for collection in accordance with 31 U.S.C. 3716, 5 U.S.C. 5514, 5 CFR 550.1108, 31 CFR part 285, and the FCCS.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§§ 1704.4–1704.19 [Reserved]

Subpart B—Salary Offset

§ 1704.20 Authority and scope.

(a) *Authority.* OFHEO may collect debts owed by employees to the Federal Government by means of salary offset under the authority of 5 U.S.C. 5514, 5 CFR part 550, subpart K, and this subpart B.

(b) *Scope.* (1) The procedures set forth in this subpart B apply to situations where OFHEO is attempting to collect a debt by salary offset that is owed to it by an individual employed by OFHEO or by another agency; or where OFHEO employs an individual who owes a debt to another agency.

(2) The procedures set forth in this subpart B do not apply to:

(i) Any routine intra-agency adjustment of pay that is attributable to clerical or administrative error or delay in processing pay documents that have occurred within the four pay periods preceding the adjustment, or any adjustment to collect a debt amounting to \$50 or less. However, at the time of any such adjustment, or as soon thereafter as possible, OFHEO or its designated payroll agent shall provide the employee with a written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(ii) Any negative adjustment to pay that arises from an employee's election of coverage or a change in coverage under a Federal benefits program that requires periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, at the time the such adjustment is made, OFHEO or its payroll agent shall provide in the employee's earnings statement a clear and

concise statement that informs the employee of the previous overpayment.

§ 1704.21 Notice requirements before salary offset where OFHEO is the creditor agency.

(a) *Notice of Intent.* Deductions from an employee's salary may not be made unless OFHEO provides the employee with a Notice of Intent a minimum of 30 calendar days before the salary offset is initiated.

(b) *Contents of Notice of Intent.* The Notice of Intent shall advise the employee of the following:

(1) OFHEO has reviewed the records relating to the claim and has determined that the employee owes the debt;

(2) OFHEO intends to collect the debt by deductions from the employee's current disposable pay account;

(3) The amount of the debt and the facts giving rise to the debt;

(4) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of disposable pay), and the intention to continue the deductions until the debt and all accumulated interest are paid in full or otherwise resolved;

(5) The name, address, and telephone number of the person to whom the employee may propose a written alternative schedule for voluntary repayment, in lieu of salary offset. The employee shall include a justification for the alternative schedule in his or her proposal. If the terms of the alternative schedule are agreed upon by the employee and OFHEO, the alternative written schedule shall be signed by both the employee and OFHEO;

(6) An explanation of OFHEO's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(7) The employee's right to inspect and copy all records of OFHEO pertaining to his or her debt that are not exempt from disclosure or to receive copies of such records if he or she is unable personally to inspect the records as the result of geographical or other constraints;

(8) The name, address, and telephone number of the OFHEO employee to whom requests for access to records relating to the debt must be sent;

(9) The employee's right to a hearing conducted by an impartial hearing official with respect to the existence and amount of the debt claimed or the repayment schedule *i.e.*, the percentage of disposable pay to be deducted each pay period, so long as a request is filed by the employee as prescribed in §1704.23; the name and address of the office to which the request for a hearing should be sent; and the name, address, and telephone number of a person whom the employee may contact concerning procedures for requesting a hearing;

(10) The filing of a request for a hearing on or before the 15th calendar day following receipt of the Notice of Intent will stay the commencement of collection proceedings and a final decision on whether a hearing will be held (if a hearing is requested) will be issued at the earliest practical date;

(11) OFHEO shall initiate certification procedures to implement a salary offset unless the employee files a request for a hearing on or before the 15th calendar day following receipt of the Notice of Intent;

(12) Any knowingly false or frivolous statement, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. chapter LXXV, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or under any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or under any other applicable statutory authority;

(13) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(14) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted from debts that are later waived or found not to be owed to the Federal

Government shall be promptly refunded to the employee; and

(15) Proceedings with respect to the debt are governed by 5 U.S.C. 5514.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1704.22 Review of OFHEO records related to the debt.

(a) *Request for review.* An employee who desires to inspect or copy OFHEO records related to a debt owed by the employee to OFHEO must send a letter to the individual designated in the Notice of Intent requesting access to the relevant records. The letter must be received in the office of that individual within 15 calendar days after the employee's receipt of the Notice of Intent.

(b) *Review location and time.* In response to a timely request submitted by the employee, the employee shall be notified of the location and time when the employee may inspect and copy records related to his or her debt that are not exempt from disclosure. If the employee is unable personally to inspect such records as the result of geographical or other constraints, OFHEO shall arrange to send copies of such records to the employee.

§ 1704.23 Opportunity for a hearing where OFHEO is the creditor agency.

(a) *Request for a hearing—(1) Time-period for submission.* An employee who requests a hearing on the existence or amount of the debt held by OFHEO or on the salary-offset schedule proposed by OFHEO, must send such request to OFHEO. The request for a hearing must be received by OFHEO on or before the 15th calendar day following receipt by the employee of the Notice of Intent.

(2) *Failure to submit timely.* If the employee files a request for a hearing after the expiration of the 15th calendar day, OFHEO may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

(3) *Contents of request.* The request for a hearing must be signed by the employee and must fully identify and explain with reasonable specificity all

§ 1704.23

the facts, evidence, and witnesses, if any, that the employee believes support his or her position. The employee must also specify whether he or she requests an oral hearing. If an oral hearing is requested, the employee should explain why a hearing by examination of the documents without an oral hearing would not resolve the matter.

(4) *Failure to request a hearing.* The failure of an employee to request a hearing will be considered an admission by the employee that the debt exists in the amount specified in the Notice of Intent that was provided to the employee under § 1704.21(b).

(b) *Obtaining the services of a hearing official*—(1) *Debtor is not OFHEO employee.* When the debtor is not an OFHEO employee and OFHEO cannot provide a prompt and appropriate hearing before an administrative law judge or other hearing official, OFHEO may request a hearing official from an agent of the paying agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the paying agency.

(2) *Debtor is OFHEO employee.* When the debtor is an OFHEO employee, OFHEO may contact any agent of another agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the agency, to request a hearing official.

(c) *Procedure*—(1) *Notice of hearing.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must occur no more than 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be conducted by an examination of documents, the employee shall be notified within 30 calendar days that he or she should submit evidence and arguments in writing to the hearing official.

(2) *Oral hearing.* (i) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by an examination of the documents alone, as for example, when an issue of credibility or veracity

12 CFR Ch. XVII (1–1–10 Edition)

is involved. The oral hearing need not be an adversarial adjudication and rules of evidence need not apply. Witnesses who testify in an oral hearing shall do so under oath or affirmation.

(ii) Oral hearings may take the form of, but are not limited to:

(A) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(B) Informal meetings in which the hearing examiner interviews the employee; or

(C) Formal written submissions followed by an opportunity for oral presentation.

(3) *Hearing by examination of documents.* If the hearing official determines that an oral hearing is not necessary, he or she shall make the determination based upon an examination of the documents.

(d) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(e) *Decision.* (1) The hearing official shall issue a written opinion stating his or her decision, based upon all evidence and information developed during the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the request was received by OFHEO, unless the hearing was delayed at the request of the employee, in which case the 60-day decision period shall be extended by the number of days by which the hearing was postponed.

(2) The decision of the hearing official shall be final and is considered to be an official certification regarding the existence and the amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. If the hearing official determines that a debt may not be collected by salary offset, but OFHEO finds that the debt is still valid, OFHEO may seek collection of the debt through other means in accordance with applicable law and regulations.

(f) *Content of decision.* The written decision shall include:

(1) A summary of the facts concerning the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(g) *Failure to appear.* If, in the absence of good cause shown, such as illness, the employee or the representative of OFHEO fails to appear, the hearing official shall proceed with the hearing as scheduled, and make his or her decision based upon the oral testimony presented and the documentation submitted by both parties. At the request of both parties, the hearing official may schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of the new hearing.

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§ 1704.24 Certification where OFHEO is the creditor agency.

(a) *Issuance.* OFHEO shall issue a certification in all cases where the hearing official determines that a debt exists or the employee admits the existence and amount of the debt, as for example, by failing to request a hearing.

(b) *Contents.* The certification must be in writing and state:

- (1) That the employee owes the debt;
- (2) The amount and basis of the debt;
- (3) The date of the Federal Government's right to collect the debt first accrued;
- (4) The date the employee was notified of the debt, the action(s) taken pursuant to OFHEO's regulations, and the dates such actions were taken;
- (5) If the collection is to be made by lump-sum payment, the amount and date such payment will be collected;
- (6) If the collection is to be made in installments, the amount or percentage of disposable pay to be collected in each installment and, if OFHEO wishes, the desired commencing date of the first installments, if a date other than the next officially established pay period; and
- (7) A statement that OFHEO's regulation on salary offset has been approved by the Office of Personnel Management pursuant to 5 CFR part 550, subpart K.

§ 1704.25 Voluntary repayment agreements as alternative to salary offset where OFHEO is the creditor agency.

(a) *Proposed repayment schedule.* In response to a Notice of Intent, an employee may propose to repay the debt voluntarily in lieu of salary offset by submitting a written proposed repayment schedule to OFHEO. Any proposal under this section must be received by OFHEO within 15 calendar days after receipt of the Notice of Intent.

(b) *Notification of decision.* In response to a timely proposal by the employee, OFHEO shall notify the employee whether the employee's proposed repayment schedule is acceptable. OFHEO has the discretion to accept, reject, or propose to the employee a modification of the proposed repayment schedule.

(1) If OFHEO decides that the proposed repayment schedule is unacceptable, the employee shall have 15 calendar days from the date he or she received notice of the decision in which to file a request for a hearing.

(2) If OFHEO decides that the proposed repayment schedule is acceptable or the employee agrees to a modification proposed by OFHEO, an agreement shall be put in writing and signed by both the employee and OFHEO.

§ 1704.26 Special review where OFHEO is the creditor agency.

(a) *Request for review.* (1) An employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by OFHEO of the amount of the salary offset or voluntary repayment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability.

(2) The request for special review must include an alternative proposed offset or payment schedule and a detailed statement, with supporting documents, that shows why the current salary offset or payments result in extreme financial hardship to the employee and his or her spouse and dependents. The detailed statement must indicate:

- (i) Income from all sources;
- (ii) Assets;

§ 1704.27

- (iii) Liabilities;
- (iv) Number of dependents;
- (v) Expenses for food, housing, clothing, and transportation;
- (vi) Medical expenses; and
- (vii) Exceptional expenses, if any.

(b) *Evaluation of request.* OFHEO shall evaluate the statement and supporting documents and determine whether the original offset or repayment schedule imposes extreme financial hardship on the employee. OFHEO shall notify the employee in writing within 30 calendar days of such determination, including, if appropriate, a revised offset or payment schedule. If the special review results in a revised offset or repayment schedule, OFHEO shall provide a new certification to the paying agency.

§ 1704.27 Notice of salary offset where OFHEO is the paying agency.

(a) *Notice.* Upon issuance of a proper certification by OFHEO (for debts owed to OFHEO) or upon receipt of a proper certification from another creditor agency, OFHEO shall send the employee a written notice of salary offset.

(b) *Content of notice.* Such written notice of salary offset shall advise the employee of the:

- (1) Certification that has been issued by OFHEO or received from another creditor agency;
- (2) Amount of the debt and of the deductions to be made; and
- (3) Date and pay period when the salary offset will begin.

(c) If OFHEO is not the creditor agency, OFHEO shall provide a copy of the notice of salary offset to the creditor agency and advise the creditor agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 1704.28 Procedures for salary offset where OFHEO is the paying agency.

(a) *Generally.* OFHEO shall coordinate salary deductions under this section and shall determine the amount of an employee's disposable pay and the amount of the salary offset subject to the requirements in this section. Deductions shall begin the pay period following the issuance of the certification by OFHEO or the receipt by OFHEO of the certification from another agency, or as soon thereafter as possible.

12 CFR Ch. XVII (1–1–10 Edition)

(b) *Types of collection*—(1) *Lump-sum payment.* If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay, such debt ordinarily will be collected in one lump-sum payment.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any pay period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount. The installment payment should normally be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than \$50 should be accepted only in the most unusual circumstances.

(3) *Lump-sum deductions from final check.* In order to liquidate a debt, a lump-sum deduction exceeding 15 percent of disposable pay may be made pursuant to 31 U.S.C. 3716 from any final salary payment due a former employee, whether the former employee was separated voluntarily or involuntarily.

(4) *Lump-sum deductions from other sources.* Whenever an employee subject to salary offset is separated from OFHEO, and the balance of the debt cannot be liquidated by offset of the final salary check, OFHEO may offset any later payments of any kind to the former employee to collect the balance of the debt pursuant to 31 U.S.C. 3716.

(c) *Multiple debts.* (1) Where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, OFHEO may, at his or her discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(2) In the event that a debt owed OFHEO is certified while an employee is subject to salary offset to repay another agency, OFHEO may, at its discretion, determine whether the debt to OFHEO should be repaid before the debt to the other agency is repaid, repaid simultaneously with the other

Federal Housing Enterprise Oversight, HUD

§ 1704.31

debt, or repaid after the debt to the other agency.

(3) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section, as provided in 5 U.S.C. 5514(d).

§ 1704.29 Coordinating salary offset with other agencies.

(a) *Responsibility of OFHEO as the creditor agency.* (1) OFHEO shall be responsible for:

(i) Arranging for a hearing upon proper request by a Federal employee;

(ii) Preparing the Notice of Intent consistent with the requirements of § 1704.21;

(iii) Obtaining hearing officials from other agencies pursuant to § 1704.23(b); and

(iv) Ensuring that each certification of debt is sent to a paying agency pursuant to § 1704.24(b).

(2) Upon completion of the procedures set forth in §§ 1704.24–1704.26, OFHEO shall submit to the employee's paying agency, if applicable, a certified debt claim and an installment agreement or other instruction on the payment schedule.

(i) If the employee is in the process of separating from the Federal Government, OFHEO shall submit its debt claim to the employee's paying agency for collection by lump-sum deduction from the employee's final check. The paying agency shall certify the total amount of its collection and furnish a copy of the certification to OFHEO and to the employee.

(ii) If the employee is already separated and all payments due from his or her former paying agency have been paid, OFHEO may, unless otherwise prohibited, request that money due and payable to the employee from the Federal Government be administratively offset to collect the debt.

(iii) When an employee transfers to another paying agency, OFHEO shall not repeat the procedures described in §§ 1704.24–1704.26. Upon receiving notice of the employee's transfer, OFHEO shall review the debt to ensure that collection is resumed by the new paying agency.

(b) *Responsibility of OFHEO as the paying agency*—(1) *Complete claim.* When OFHEO receives a certified claim from

a creditor agency, the employee shall be given written notice of the certification, the date salary offset will begin, and the amount of the periodic deductions. Deductions shall be scheduled to begin at the next officially established pay interval or as otherwise provided for in the certification.

(2) *Incomplete claim.* When OFHEO receives an incomplete certification of debt from a creditor agency, OFHEO shall return the claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed, and that a properly certified claim must be received before OFHEO will take action to collect the debt from the employee's current pay account.

(3) *Review.* OFHEO is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another agency.* If, after the creditor agency has submitted the debt claim to OFHEO, the employee transfers to another agency before the debt is collected in full, OFHEO must certify the total amount collected on the debt. One copy of the certification shall be furnished to the employee and one copy shall be sent to the creditor agency along with notice of the employee's transfer. If OFHEO is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the requirements set forth herein and in 5 CFR part 550, subpart k, have been met.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1704.30 Interest, penalties, and administrative costs.

Where OFHEO is the creditor agency, OFHEO shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and the FCCS.

§ 1704.31 Refunds.

(a) Where OFHEO is the creditor agency, OFHEO shall promptly refund

§ 1704.32

any amount deducted under the authority of 5 U.S.C. 5514 when:

(1) OFHEO receives notice that the debt has been compromised or otherwise found not to be owing to the Federal Government; or

(2) An administrative or judicial order directs OFHEO to make a refund.

(b) Unless required by law or contract, refunds under this section shall not bear interest.

§ 1704.32 Request from a creditor agency for the services of a hearing official.

(a) OFHEO may provide qualified personnel to serve as hearing officials upon request of a creditor agency when—

(1) The debtor is employed by OFHEO and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement; or

(2) The debtor is employed by the creditor agency and that agency cannot arrange for a hearing official.

(b) Services provided by OFHEO to creditor agencies under this section shall be provided on a fully reimbursable basis pursuant to 31 U.S.C. 1535.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1704.33 Non-waiver of rights by payments.

A debtor's payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this subpart B shall not be construed as a waiver of any rights that the debtor may have under any statute, regulation, or contract, except as otherwise provided by law or contract.

§§ 1704.34–1704.39 [Reserved]

Subpart C—Administrative Offset

§ 1704.40 Authority and scope.

OFHEO may collect a debt owed to the Federal Government from a person, organization, or other entity by administrative offset, pursuant to 31 U.S.C. 3716, where:

(a) The debt is certain in amount;

(b) Administrative offset is feasible, desirable, and not otherwise prohibited;

12 CFR Ch. XVII (1–1–10 Edition)

(c) The applicable statute of limitations has not expired; and

(d) Administrative offset is in the best interest of the Federal Government.

§ 1704.41 Administrative offset prior to completion of procedures.

Prior to the completion of the procedures described in §1704.42, OFHEO may effect administrative offset if failure to offset would substantially prejudice its ability to collect the debt, and if the time before the payment is to be made does not reasonably permit completion of the procedures described in §1704.42. Such prior administrative offset shall be followed promptly by the completion of the procedures described in §1704.42.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1704.42 Procedures.

Unless the procedures described in §1704.41 are used, prior to collecting any debt by administrative offset or referring such claim to another agency for collection through administrative offset, OFHEO shall provide the debtor with the following:

(a) Written notification of the nature and amount of the debt, the intention of OFHEO to collect the debt through administrative offset, and a statement of the rights of the debtor under this section;

(b) An opportunity to inspect and copy the records of OFHEO related to the debt that are not exempt from disclosure;

(c) An opportunity for review within OFHEO of the determination of indebtedness. Any request for review by the debtor shall be in writing and shall be submitted to OFHEO within 30 calendar days of the date of the notice of the offset. OFHEO may waive the time limits for requesting review for good cause shown by the debtor. OFHEO shall provide the debtor with a reasonable opportunity for an oral hearing when:

(1) An applicable statute authorizes or requires OFHEO to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

Federal Housing Enterprise Oversight, HUD

§ 1704.47

(2) The debtor requests reconsideration of the debt and OFHEO determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, as for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this subpart C is not required to be a formal evidentiary hearing, although OFHEO shall document all significant matters discussed at the hearing. In those cases where an oral hearing is not required by this subpart C, OFHEO shall make its determination on the request for waiver or reconsideration based upon a review of the written record; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the claim at the discretion of OFHEO.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1704.43 Interest.

OFHEO shall assess interest, penalties, and administrative costs on debts owed to the Federal Government, in accordance with 31 U.S.C. 3717 and the FCCS. OFHEO may also assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 and the FCCS to the extent authorized under the common law or other applicable statutory authority.

§ 1704.44 Refunds.

OFHEO shall refund promptly those amounts recovered by administrative offset but later found not to be owed to the Federal Government.

§ 1704.45 Requests for administrative offset to other Federal agencies.

(a) OFHEO may request that a debt owed to OFHEO be collected by administrative offset against funds due and payable to a debtor by another agency.

(b) In requesting administrative offset, OFHEO, as creditor, shall certify in writing to the agency holding funds of the debtor:

- (1) That the debtor owes the debt;
- (2) The amount and basis of the debt; and
- (3) That OFHEO has complied with the requirements of its own administrative offset regulations and the appli-

cable provisions of the FCCS with respect to providing the debtor with due process.

§ 1704.46 Requests for administrative offset from other Federal agencies.

(a) Any agency may request that funds due and payable to a debtor by OFHEO be administratively offset in order to collect a debt owed to such agency by the debtor.

(b) OFHEO shall initiate the requested administrative offset only upon:

(1) Receipt of written certification from the creditor agency that:

(i) The debtor owes the debt, including the amount and basis of the debt;

(ii) The agency has prescribed regulations for the exercise of administrative offset; and

(iii) The agency has complied with its own administrative offset regulations and with the applicable provisions of the FCCS, including providing any required hearing or review.

(2) A determination by OFHEO that collection by administrative offset against funds payable by OFHEO would be in the best interest of the Federal Government as determined by the facts and circumstances of the particular case and that such administrative offset would not otherwise be contrary to law.

§ 1704.47 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) *Request for administrative offset.* Unless otherwise prohibited by law, OFHEO may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund (Fund) be offset administratively in reasonable amounts in order to collect in one full payment or in a minimal number of payments debt owed to OFHEO by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of the Office of Personnel Management.

(b) *Contents of certification.* When making a request for administrative

offset under paragraph (a) of this section, OFHEO shall include a written certification that:

(1) The debtor owes OFHEO a debt, including the amount of the debt;

(2) OFHEO has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) OFHEO has complied with the requirements of the FCCS, including any required hearing or review.

(c) If OFHEO decides to request administrative offset under paragraph (a) of this section, it shall make the request as soon as practicable after completion of the applicable procedures. This will satisfy any requirement that administrative offset be initiated prior to the expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least one year has elapsed since the administrative offset request was originally made, the debtor shall be permitted to offer a satisfactory repayment plan in lieu of administrative offset if he or she establishes that changed financial circumstances would render the administrative offset unjust.

(d) If OFHEO collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, OFHEO shall act promptly to modify or terminate its request for administrative offset under paragraph (a) of this section.

§§ 1704.48–1704.49 [Reserved]

Subpart D—Tax Refund Offset

§ 1704.50 Authority and scope.

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury to offset a delinquent debt owed the Federal Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due.

§ 1704.51 Definitions.

(a)(1) *Debt* means money owed by an individual, organization, or entity from sources which include loans insured or guaranteed by the Federal Government and all other amounts due the Federal

Government from fees, leases, services, overpayments, civil and criminal penalties, damages, interest, fines, administrative costs, and all other similar sources.

(2) A debt becomes eligible for tax refund offset procedures if:

(i) It cannot currently be collected pursuant to the salary offset procedures of 5 U.S.C. 5514(a)(1);

(ii) The debt is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or it cannot be collected currently by administrative offset under 31 U.S.C. 3716(a); and

(iii) The requirements of this section are otherwise satisfied.

(3) All judgment debts are past due for purposes of this subpart D. Judgment debts remain past due until paid in full.

(b) *Dispute* means a written statement supported by documentation or other evidence that all or part of an alleged debt is not past due or legally enforceable, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or in the case of a debt reduced to judgment, that the judgement has been satisfied or stayed.

(c) *Notice* means the information sent to the debtor pursuant to §1704.53. The date of the notice is that date shown on the notice letter as its date of issuance.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1704.52 Procedures.

(a) *Referral to the Department of the Treasury.* (1) OFHEO may refer any past due, legally enforceable nonjudgment debt of an individual, organization, or entity to the Department of the Treasury for tax refund offset if OFHEO's or the referring agency's rights of action accrued more than three months but less than 10 years before the offset is made.

(2) Debts reduced to judgment may be referred at any time.

(3) Debts in amounts lower than \$25 are not subject to referral.

(4) In the event that more than one debt is owed, the tax refund offset procedures shall be applied in the order in which the debts became past due.

(5) OFHEO shall notify the Department of the Treasury of any change in the amount due promptly after receipt of payment or notice of other reductions.

(b) *Notice.* OFHEO shall provide the debtor with written notice of its intent to offset before initiating the offset. Notice shall be mailed to the debtor at the current address of the debtor, as determined from information obtained from the Internal Revenue Service pursuant to 26 U.S.C. 6103(m)(2), (4), (5) or maintained by OFHEO. The notice sent to the debtor shall state the amount of the debt and inform the debtor that:

(1) The debt is past due;

(2) OFHEO intends to refer the debt to the Department of the Treasury for offset from tax refunds that may be due to the taxpayer;

(3) OFHEO intends to provide information concerning the delinquent debt exceeding \$100 to a consumer reporting bureau unless such debt has already been disclosed; and

(4) Before the debt is reported to a consumer reporting agency, if applicable, and referred to the Department of the Treasury for offset from tax refunds, the debtor has 65 calendar days from the date of notice to request a review under paragraph (d).

(c) *Report to consumer reporting agency.* If the debtor neither pays the amount due nor presents evidence that the amount is not past due or is satisfied or stayed, OFHEO will report the debt to a consumer reporting agency at the end of the notice period, if applicable, and refer the debt to the Department of the Treasury for offset from the taxpayer's Federal tax refund. OFHEO shall certify to the Department of the Treasury that reasonable efforts have been made by OFHEO to obtain payment of such debt.

(d) *Request for review.* A debtor may request a review by OFHEO if he or she believes that all or part of the debt is not past due or is not legally enforceable, or in the case of a judgment debt, that the debt has been stayed or the amount satisfied, as follows:

(1) The debtor must send a written request for review to OFHEO at the address provided in the notice.

(2) The request must state the amount disputed and reasons why the

debtor believes that the debt is not past due, is not legally enforceable, has been satisfied, or if a judgment debt, has been satisfied or stayed.

(3) The request must include any documents that the debtor wishes to be considered or state that additional information will be submitted within the time permitted.

(4) If the debtor wishes to inspect records establishing the nature and amount of the debt, the debtor must make a written request to OFHEO for an opportunity for such an inspection. The office holding the relevant records not exempt from disclosure shall make them available for inspection during normal business hours within one week from the date of receipt of the request.

(5) The request for review and any additional information submitted pursuant to the request must be received by OFHEO at the address stated in the notice within 65 calendar days of the date of issuance of the notice.

(6) In reaching its decision, OFHEO shall review the dispute and shall consider its records and any documentation and arguments submitted by the debtor. OFHEO shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(7) If the evidence presented by the debtor is considered by a non-OFHEO agent or other entities or persons acting on behalf of OFHEO, the debtor shall be accorded at least 30 calendar days from the date the agent or other entity or person determines that all or part of the debt is past due and legally enforceable to request review by OFHEO of any unresolved dispute.

(8) Any debt that previously has been reviewed pursuant to this section or any other section of this part, or that has been reduced to a judgment, may not be disputed except on the grounds of payments made or events occurring subsequent to the previous review or judgment.

**PART 1705—IMPLEMENTATION OF
THE EQUAL ACCESS TO JUSTICE
ACT**

Subpart A—General Provisions

- Sec.
1705.1 Purpose and scope.
1705.2 Definitions.
1705.3 Eligible parties.
1705.4 Standards for awards.
1705.5 Allowable fees and expenses.
1705.6 Rulemaking on maximum rate for fees.
1705.7 Awards against other agencies.
1705.8–1705.9 [Reserved]

**Subpart B—Information Required from
Applicants**

- 1705.10 Contents of the application for award.
1705.11 Request for confidentiality of net worth exhibit.
1705.12 Documentation of fees and expenses.
1705.13–1705.19 [Reserved]

**Subpart C—Procedures for Filing and
Consideration of the Application for Award**

- 1705.20 Filing and service of the application for award and related papers.
1705.21 Answer to the application for award.
1705.22 Reply to the answer.
1705.23 Comments by other parties.
1705.24 Settlement.
1705.25 Further proceedings on the application for award.
1705.26 Decision of the adjudicative officer.
1705.27 Review by OFHEO.
1705.28 Judicial review.
1705.29 Payment of award.

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

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Subpart A—General Provisions

§ 1705.1 Purpose and scope.

(a) This part implements the Equal Access to Justice Act, 5 U.S.C. 504, by establishing procedures for the filing and consideration of applications for award of fees and other expenses to eligible individuals and entities who are parties to adversary adjudications before OFHEO.

(b) This part applies to the award of fees and other expenses in connection with adversary adjudications before OFHEO. However, if a court reviews the underlying decision of the adver-

sary adjudication, an award for fees and other expenses may be made only pursuant to 28 U.S.C. 2412(d)(3).

§ 1705.2 Definitions.

(a) *Adjudicative officer* means the official who presided at the underlying adversary adjudication, without regard to whether the official is designated as a hearing examiner, administrative law judge, administrative judge, or otherwise.

(b) *Adversary adjudication* means an administrative proceeding conducted by OFHEO under 5 U.S.C. 554 in which the position of OFHEO or any other agency of the United States is represented by counsel or otherwise, including but not limited to an adjudication conducted under 12 CFR part 1780. Any issue as to whether an administrative proceeding is an adversary adjudication for purposes of this part will be an issue for resolution in the proceeding on the application for award.

(c) *Affiliate* means an individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the party, or any corporation or other entity of which the party directly or indirectly owns or controls a majority of the voting shares or other interest, unless the adjudicative officer determines that it would be unjust and contrary to the purpose of the Equal Access to Justice Act in light of the actual relationship between the affiliated entities to consider them to be affiliates for purposes of this part.

(d) *Agency counsel* means the attorney or attorneys designated by the General Counsel of OFHEO to represent OFHEO in an adversary adjudication covered by this part.

(e) *Demand of OFHEO* means the express demand of OFHEO that led to the adversary adjudication, but does not include a recitation by OFHEO of the maximum statutory penalty when accompanied by an express demand for a lesser amount.

(f) *Fees and other expenses* include reasonable attorney or agent fees, the reasonable expenses of expert witnesses, and the reasonable cost of any study, analysis, engineering report, test, or project that is found by the agency to

be necessary for the preparation of the eligible party's case.

(g) *Final disposition* means the date on which a decision or order disposing of the merits of the adversary adjudication or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

(h) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(i) *Party* means an individual, partnership, corporation, association, or public or private organization that is named or admitted as a party, that is admitted as a party for limited purposes, or that is properly seeking and entitled as of right to be admitted as a party in an adversary adjudication.

(j) *Position of OFHEO* means the position taken by OFHEO in the adversary adjudication, including the action or failure to act by OFHEO upon which the adversary adjudication was based.

§ 1705.3 Eligible parties.

(a) To be eligible for an award of fees and other expenses under § 1705.4(a), a party must be a small entity as defined in 5 U.S.C. 601.

(b)(1) To be eligible for an award of fees and other expenses for prevailing parties under § 1705.5(b), a party must be one of the following:

(i) An individual who has a net worth of not more than \$2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interest, and not more than 500 employees; however, a party who owns an unincorporated business will be considered to be an "individual" rather than the "sole owner of an unincorporated business" if the issues on which the party prevails are related primarily to personal interests rather than to business interests.

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), with not more than 500 employees;

(iv) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a), with not more than 500 employees; or

(v) Any other partnership, corporation, association, unit of local government, or organization that has a net worth of not more than \$7 million and not more than 500 employees.

(2) For purposes of eligibility under paragraph (b) of this section:

(i) The employees of a party include all persons who regularly perform services for remuneration for the party, under the party's direction and control. Part-time employees shall be included on a proportional basis.

(ii) The net worth and number of employees of the party and its affiliates shall be aggregated to determine eligibility.

(iii) The net worth and number of employees of a party shall be determined as of the date the underlying adversary adjudication was initiated.

(c) A party that participates in an adversary adjudication primarily on behalf of one or more entities that would be ineligible for an award is not itself eligible for an award.

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

§ 1705.4 Standards for awards.

(a) An eligible party that files an application for award of fees and other expenses in accordance with this part shall receive an award of fees and other expenses related to defending against a demand of OFHEO if the demand was in excess of the decision in the underlying adversary adjudication and was unreasonable when compared with the decision under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or unless special circumstances make an award unjust. The burden of proof that the demand of OFHEO was substantially in excess of the decision and is unreasonable when compared with the decision is on the eligible party.

(b) An eligible party that submits an application for award in accordance with this part shall receive an award of fees and other expenses incurred in connection with an adversary adjudication in which it prevailed or in a significant and discrete substantive portion of the adversary adjudication in which it prevailed, unless the position

§ 1705.5

of OFHEO in the adversary adjudication was substantially justified or special circumstances make an award unjust. OFHEO has the burden of proof to show that its position was substantially justified and may do so by showing that its position was reasonable in law and in fact.

§ 1705.5 Allowable fees and expenses.

(a) Awards of fees and other expenses shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the party. However, except as provided in § 1705.6, an award for the fee of an attorney or agent may not exceed \$125 per hour and an award to compensate an expert witness may not exceed the highest rate at which OFHEO pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or expert witness as a separate item if he or she ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services; or, if the attorney, agent, or expert witness is an employee of the eligible party, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(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

12 CFR Ch. XVII (1–1–10 Edition)

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 worth of the applicant and its affiliates, if any, does not exceed \$7 million; and

(4) Include one of the following:

(i) A detailed exhibit showing the net worth (net worth exhibit) of the applicant and its affiliates, if any, when the underlying adversary adjudication was initiated. The net worth exhibit may be in any form convenient to the applicant as long as the net worth exhibit provides full disclosure of the assets and liabilities of the applicant and its affiliates, if any, and is sufficient to determine whether the applicant qualifies as an eligible party;

(ii) A copy of a ruling by the Internal Revenue Service that shows that the applicant qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3); or in the case of a tax-exempt organiza-

tion not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the belief that the applicant qualifies under such section; or

(iii) A statement that the applicant is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a).

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

§ 1705.11 Request for confidentiality of net worth exhibit.

(a) The net worth exhibit described in § 1705.10(c)(4)(i) shall be included in the public record of the proceeding for the award of fees and other expenses, except if confidential treatment is requested and granted as provided in paragraph (b) of this section.

(b)(1) The applicant may request confidential treatment of the information in the net worth exhibit by filing a motion directly with the adjudicative officer in a sealed envelope labeled "Confidential Financial Information." If the adjudicative officer finds that the information should be withheld from public disclosure, any request to inspect or copy the information by another party or the public shall be resolved in accordance with the Freedom of Information Act, 5 U.S.C. 552b, and the Releasing Information regulation at 12 CFR part 1710.

(2) The motion shall:

(i) Include a copy of the portion of the net worth exhibit sought to be withheld;

(ii) Describe the information sought to be withheld; and

(iii) Explain why the information is exempt from disclosure under the Freedom of Information Act and why public disclosure of the information would adversely affect the applicant and is not in the public's interest.

(iv) Be served on agency counsel but need not be served on any other party to the proceeding.

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

§ 1705.12 Documentation of fees and expenses.

(a) The application for award shall be accompanied by full and itemized documentation of the fees and other expenses for which an award is sought. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other documentation for any fees or expenses claimed.

(b) A separate itemized statement shall be submitted for each entity or individual whose services are covered by the application. Each itemized statement shall include:

(1) The hours spent by each entity or individual;

(2) A description of the specific services performed and the rates at which each fee has been computed; and

(3) Any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity.

§§ 1705.13–1705.19 [Reserved]

Subpart C—Procedures for Filing and Consideration of the Application for Award

§ 1705.20 Filing and service of the application for award and related papers.

(a) An application for an award of fees and other expenses must be filed no later than 30 days after the final disposition of the underlying adversary adjudication.

(b) An application for award and other papers related to the proceedings on the application for award shall be filed and served on all parties in the same manner as papers are filed and served in the underlying adversary adjudication, except as otherwise provided in this part.

(c) The computation of time for filing and service of the application of award and other papers shall be computed in the same manner as in the underlying adversary adjudication.

§ 1705.21 Answer to the application for award.

(a) Agency counsel shall file an answer within 30 days after service of an application for award of fees and other

expenses except as provided in paragraphs (b) and (c) of this section. In the answer, agency counsel shall explain any objections to the award requested and identify the facts relied upon to support the objections. If any of the alleged facts are not already in the record of the underlying adversary adjudication, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1705.25.

(b) If agency counsel and the applicant believe that the issues in the application for award 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. Upon request by agency counsel and the applicant, the adjudicative officer may grant for good cause further time extensions.

(c) Agency counsel may request that the adjudicative officer extend the time period for filing an answer. If agency counsel does not answer or otherwise does not contest or settle the application for award within the 30-day period or the extended time period, the adjudicative officer may make an award of fees and other expenses upon a satisfactory showing of entitlement by the applicant.

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

§ 1705.22 Reply to the answer.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the underlying adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1705.25.

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

§ 1705.23 Comments by other parties.

Any party to the underlying adversary adjudication other than the applicant and agency counsel may file comments on an application for award within 30 calendar days after it is

served, or on an answer within 15 calendar 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.

§ 1705.24 Settlement.

The applicant and agency counsel may agree on a proposed settlement of an award before the final decision on the application for award is made, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If the eligible party and agency counsel agree on a proposed settlement of an award before an application for award has been filed, the application shall be filed with the proposed settlement.

§ 1705.25 Further proceedings on the application for award.

(a) On request of either the applicant or agency counsel, on the adjudicative officer's own initiative, or as requested by the Director of OFHEO under §1705.27, 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 evidential hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application for award and shall be conducted as promptly as possible. The issue as to whether the position of OFHEO in the underlying adversary adjudication was substantially justified shall be determined on the basis of the whole administrative record that was made in the underlying adversary adjudication.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought on the disputed issues and shall explain why the addi-

tional proceedings are necessary to resolve the issues.

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

§ 1705.26 Decision of the adjudicative officer.

(a) The adjudicative officer shall make the initial decision on the basis of the written record, except if further proceedings are ordered under §1705.25.

(b) The adjudicative officer shall issue a written initial decision on the application for award within 30 days after completion of proceedings on the application. The initial decision shall become the final decision of OFHEO after 30 days from the day it was issued, unless review is ordered under §1705.27.

(c) In all initial decisions, the adjudicative officer shall include findings and conclusions with respect to the applicant's eligibility and an explanation of the reasons for any difference between the amount requested by the applicant and the amount awarded. If the applicant has sought an award against more than one agency, the adjudicative officer shall also include findings and conclusions with respect to the allocation of payment of any award made.

(d) In initial decisions on applications filed pursuant to §1705.4(a), the adjudicative officer shall include findings and conclusions as to whether OFHEO made a demand that was substantially in excess of the decision in the underlying adversary adjudication and that was unreasonable when compared with that decision; and, if at issue, whether the applicant has committed a willful violation of the law or otherwise acted in bad faith, or whether special circumstances would make the award unjust.

(e) In decisions on applications filed pursuant to §1705.4(b), the adjudicative officer shall include written findings and conclusions as to whether the applicant is a prevailing party and whether the position of OFHEO was substantially justified; and, if at issue, whether the applicant unduly protracted or delayed the underlying adversary adjudication or whether special circumstance make the award unjust.

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

§ 1705.27

12 CFR Ch. XVII (1–1–10 Edition)

§ 1705.27 Review by OFHEO.

Within 30 days after the adjudicative officer issues an initial decision under § 1705.26, either the applicant or agency counsel may request the Director of OFHEO to review the initial decision of the adjudicative officer. The Director of OFHEO or his or her designee may also decide, on his or her own initiative, to review the initial decision. Whether to review a decision is at the discretion of the Director of OFHEO or his or her designee. If review is ordered, the Director of OFHEO or his or her designee shall issue a final decision on the application for award or remand the application for award to the adjudicative officer for further proceedings under § 1705.25.

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

§ 1705.28 Judicial review.

Any party, other than the United States, that is dissatisfied with the

final decision on an application for award of fees and expenses under this part may seek judicial review as provided in 5 U.S.C. 504(c)(2).

§ 1705.29 Payment of award.

To receive payment of an award of fees and other expenses granted under this part, the applicant shall submit a copy of the final decision that grants the award and a certification that the applicant will not seek review of the decision in the United States courts to the Director, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Washington, DC 20552. OFHEO shall pay the amount awarded to the applicant within 60 days of receipt of the submission of the copy of the final decision and the certification, unless judicial review of the award has been sought by any party to the proceedings.

SUBCHAPTER B [RESERVED]