

§ 15.111

responsibilities which the FOIA provides that HUD alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. HUD will ensure that, when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the National Technical Information Service, HUD will inform requesters of the steps necessary to obtain records from those sources. Information provided routinely in the normal course of business will be provided at no charge.

[66 FR 6968, Jan. 22, 2001, as amended at 72 FR 12541, Mar. 15, 2007]

§ 15.111 How do I appeal a denial of my request for records or a fee determination?

(a) *To what address do I submit my appeals?* You must submit your appeal, in writing, to the address specified in HUD's notice responding to your FOIA request (see § 15.106(a)(2)(iv)). If you send your appeal to the wrong HUD office, that office will forward it to the correct office. That office will also notify you that it has so forwarded your appeal and advise you that, for processing purposes, the time of receipt will be when the appropriate office receives your appeal.

(b) *How much time do I have to submit an appeal?* Your written appeal must be postmarked within 30 calendar days of the date of the HUD determination from which you are appealing. If your appeal is transmitted by other than the United States Postal Service (i.e., facsimile, messenger or delivery service) it must be received in the appropriate office by close of business on the 30th calendar day after the date of the HUD determination.

(c) *What information must I provide if I am appealing a denial of request for information?* If you are appealing a denial of your request for information, the appeal must contain the following information:

- (1) A copy of your original request;
- (2) A copy of the written denial of your request; and
- (3) Your statement of the facts and legal arguments supporting disclosure.

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(d) *What information must I provide if I am appealing a fee determination?* If you are appealing a fee determination, including a denial of your request for HUD to waive the fee, the appeal must contain the following information:

- (1) The address of the office which made the fee determination from which you are appealing;
- (2) The fee that office charged;
- (3) The fee, if any, you believe should have been charged;
- (4) The reasons you believe that your fee should be lower than the fee which the Agency charged or should have been waived; and
- (5) A copy of the initial fee determination and copies of any correspondence concerning the fee.

(e) *What information must I provide if I am appealing a denial of expedited processing?* If you are appealing a denial of your request for expedited processing, your appeal must contain the following information:

- (1) A copy of your original request;
- (2) A copy of the written denial of your request; and
- (3) Your statement of the facts and legal arguments supporting expedited processing.

§ 15.112 How will HUD respond to my appeal?

(a) *How much time does HUD have to decide my appeal?* HUD will decide your appeal of a denial of expedited processing within 10 working days after its receipt. For any other type of appeal, HUD will decide your appeal within 20 working days after its receipt. HUD may have an additional 10 working days if unusual circumstances require.

(b) *What action will HUD take if it grants my appeal?*—(1) *Appeal of a denial of request for information.* If you are appealing a decision to deny your request for records, HUD will either:

- (i) Give you the records you requested or advise you that the records will be provided by the originating office;
- (ii) Give you some of the records you requested while declining to give you other records you requested, tell you why HUD has concluded that the documents were exempt from disclosure under FOIA, and tell you how to obtain judicial review of HUD's decision; or

(iii) Decline to give you the records you requested, tell you why HUD has concluded that the records were exempt from disclosure under FOIA, and tell you how to obtain judicial review of HUD's decision.

(2) *Appeal of a fee determination.* If you are appealing a fee determination, HUD will either:

(i) Waive the fee or charge the fee that you have requested;

(ii) Modify the original fee charged, and explain why it has determined that the modified fee is appropriate; or

(iii) Advise you that the original fee charged was appropriate, and explain why it has determined that the fee is appropriate.

(3) *Appeal of a denial of expedited processing.* If you are appealing a denial of your request for expedited processing, HUD will either:

(i) Agree to expedited processing of your request; or

(ii) Advise you that the decision to deny expedited processing has been affirmed, and tell you how to obtain judicial review of HUD's decision.

Subpart C—Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings Among Private Litigants

SOURCE: 72 FR 8582, Feb. 26, 2007, unless otherwise noted.

§ 15.201 Purpose and scope.

(a) This subpart contains the regulations of the Department concerning the procedures to be followed and standards to be applied when demand is issued in a legal proceeding among private litigants for the production or disclosure of any material, whether provided through production of material or provision of testimony.

(b) This subpart does not apply to demands, which are covered by part 2004 of this title, for production of material in the files of the Office of Inspector General or provision of testimony by employees within the Office of Inspector General.

(c) This subpart also provides guidance to persons engaged in private litigation, to which the United States is

not a party, on the procedures to be followed when making a demand for documents or testimony on the Department of Housing and Urban Development. This subpart does not, and may not be relied upon to, create any affirmative right or benefit, substantive or procedural, enforceable against HUD.

[72 FR 8582, Feb. 26, 2007, as amended at 73 FR 72205, Nov. 26, 2008]

§ 15.202 Production of material or provision of testimony prohibited unless approved.

Neither the Department nor any employee of the Department shall comply with any demand for production of material or provision of testimony in a legal proceeding among private litigants, unless the prior approval of the Authorized Approving Official has been obtained in accordance with this subpart. This rule does not apply to any legal proceeding in which an employee may be called to participate, either through the production of documents or the provision of testimony, not on official time, as to facts or opinions that are in no way related to material described in § 15.201.

[73 FR 72205, Nov. 26, 2008]

§ 15.203 Making a demand for production of material or provision of testimony.

(a) Any demand made to the Department or an employee of the Department to produce any material or provide any testimony in a legal proceeding among private litigants must:

(1) Be submitted in writing to the Department or employee of the Department, with a copy to the Appropriate Associate General Counsel or Appropriate Regional Counsel, no later than 30 days before the date the material or testimony is required;

(2) State, with particularity, the material or testimony sought;

(3) If testimony is requested, state:
(i) The intended use of the testimony, and

(ii) Whether expert or opinion testimony will be sought from the employee;