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(iv) Not collect, maintain, use or disseminate information concerning an individual's religious or political beliefs or activities or membership in associations or organizations, unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(v) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier;

(vi) Assure that no records maintained in a CFPB system of records are disseminated without the permission of the individual about whom the record pertains, except when authorized by 5 U.S.C. 552a(b);

(vii) Maintain and process information concerning individuals with care in order to ensure that no inadvertent disclosure of the information is made either within or without the CFPB;

(viii) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to 5 U.S.C. 552a(b)(2), make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes; and

(ix) Assure that an accounting is kept in the prescribed form, of all dissemination of personal information outside the CFPB, whether made orally or in writing, unless disclosed under 5 U.S.C. 552 or subpart B of this part.

(3) The head of each office of the CFPB shall, at least annually, review the record systems subject to their supervision to ensure compliance with the provisions of the Privacy Act of 1974 and the regulations in this subpart.

§ 1070.62 Preservation of records.

The CFPB will preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of or destroyed while they are the subject

of a pending request, appeal, proceeding, or lawsuit.

§ 1070.63 Use and collection of Social Security numbers.

The CFPB will ensure that employees authorized to collect information are aware:

(a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their Social Security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) That individuals requested to provide their Social Security numbers must be informed of:

(1) Whether providing Social Security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of Social Security numbers; and

(3) The uses that will be made of the numbers.

PART 1071—RULE IMPLEMENTING EQUAL ACCESS TO JUSTICE ACT

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Subpart A—General

§ 1071.100 Purpose.

(a) *In general.* The Equal Access to Justice Act (the Act), 5 U.S.C. 504, provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (adversary adjudications) before the Bureau of Consumer Financial Protection (the Bureau). An eligible party may receive an award when it prevails over the Bureau, unless the Bureau's position in the proceeding was substantially justified or special circumstances make an award unjust. This part describes the parties eligible for awards and the proceedings that are covered. This part also explains how to apply for awards, and the procedures and standards that the Bureau will use in ruling on those applications.

(b) *When an eligible party will receive an award.* An eligible party will receive an award when:

(1) It prevails in the adversary adjudication, unless the Bureau's position in the proceeding was substantially justified or special circumstances make an award unjust. Whether or not the position of the Bureau was substantially justified will be determined on the basis of the administrative record as a whole that is made in the adversary proceeding for which fees and other expenses are sought; or

(2) The Bureau's demand is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with that decision, under all the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. "Demand" means the express final written demand made by the Bureau prior to initiation of the adversary adjudication, but does not include a recitation by the Bureau of the statutory penalty in the notice of charges or elsewhere when accompanied by an express demand for a lesser amount. The relief requested in the Bureau's notice of

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charges issued pursuant to 12 CFR 1081.200(b)(3) may constitute the Bureau's demand only where the notice of charges was not preceded by an express final written demand.

§ 1071.101 When the Act applies.

The Act applies to any adversary adjudication pending before the Bureau at any time after July 21, 2011.

§ 1071.102 Proceedings covered.

The Act applies to all adjudicative proceedings under part 1081 as defined in § 1081.103.

§ 1071.103 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than \$2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests, and not more than 500 employees;

(3) 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;

(4) 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

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than \$7 million and not more than 500 employees.

(6) For purposes of receiving an award for fees and expenses for defending against an excessive Bureau demand, any small entity, as that term is defined under 5 U.S.C. 601(6).

(c) For purposes of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered

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an “individual” rather than a “sole owner of an unincorporated business” if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

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

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual or group of individuals, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate of that business for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 1071.104 Standards for awards.

(a) For a prevailing party:

(1) An eligible prevailing applicant may receive an award for fees and expenses incurred after initiation of the adversary adjudication in connection with the entire adversary adjudication, or on a substantive portion of the adversary adjudication that is sufficiently significant and discrete to merit treatment as a separate unit, unless the position of the Bureau was substantially justified. The burden of proof that an award should not be made to an eligible prevailing appli-

cant because the Bureau’s position was substantially justified is on counsel for the Bureau. However, no presumption arises that the Bureau’s position was not substantially justified simply because the Bureau did not prevail.

(2) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(b) For a party defending against an excessive demand:

(1) An eligible applicant will receive an award for fees and expenses incurred after initiation of the adversary adjudication related to defending against the portion of a Bureau demand that is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with that decision under all the facts and circumstances of the case.

(2) An award will be denied if the applicant has committed a willful violation of law or otherwise acted in bad faith or if special circumstances make an award unjust.

§ 1071.105 Allowable fees and other expenses.

(a) Subject to the limitations in paragraph (b) of this section, awards will be based on rates customarily charged, in the locale of the hearing, 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 applicant.

(b) No award for the fee of any attorney or agent under this rule may exceed the hourly rate specified in 5 U.S.C. 504(b)(1)(A). No award to compensate an expert witness may exceed the reasonable rate at which the Bureau pays witnesses with similar expertise. However an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

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

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(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

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

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

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

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

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

(e) An award of fees or expenses under the Act is limited to fees and expenses incurred after initiation of the adversary adjudication and, with respect to excessive demands, the fees and expenses incurred in defending against the excessive portion of the demand.

§ 1071.106 Delegations of authority.

The Director may delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases.

Subpart B—Information Required from Applicants

§ 1071.200 Contents of application.

An application for an award of fees and expenses under the Act shall contain the following:

(a) Identity of the applicant and the proceeding for which the award is sought;

(b) A showing that the applicant has prevailed; or, if the applicant has not prevailed, a showing that the Bureau's demand was substantially in excess of the decision of the adjudicative officer and was unreasonable when compared with that decision, under the facts and circumstances of that case;

(c) Identification of the Bureau position(s) in the proceeding that the applicant alleges was (were) not substantially justified; or, identification of the Bureau's demand that is alleged to be excessive and unreasonable and an explanation as to why the demand was excessive and unreasonable;

(d) A brief description of the type and purpose of the organization or business (unless the applicant is an individual).

(e) A statement of how the applicant meets the eligibility criteria of § 1071.103;

(f) The amount of fees and expenses incurred after the initiation of the adversary adjudication, or in the case of a claim for defending against an allegedly excessive demand, the amount of fees and expenses incurred after the initiation of the adjudicative proceeding attributable to the allegedly excessive portion of the demand;

(g) Any other matter the applicant wishes the Bureau to consider in determining whether and in what amount an award should be made; and

(h) A written verification under oath or under penalty of perjury that the information provided is true and correct, accompanied by the signature of the applicant or an authorized officer or attorney.

§ 1071.201 Net worth exhibit.

(a) The application shall also include a detailed exhibit showing that the applicant's net worth did not exceed \$2 million (if an individual) or \$7 million (for all other applicants, including their affiliates) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) However, an applicant may omit this exhibit if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it 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 organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section;

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a));

(3) In the case of an application for an award related to an allegedly excessive demand by the Bureau, it demonstrates that it is a small entity as that term is defined by 5 U.S.C. 601(6).

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 522(b)(1) through (9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on Bureau counsel but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be handled in accordance with the Bureau's established procedures under the Freedom of Information Act, 12 CFR subpart B.

§ 1071.202 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses incurred after initiation of the adversary adjudication, including the cost of any study, engineering report, test, or project for which an

award is sought. With respect to a claim for fees and expenses involving an excessive demand by the Bureau, the application shall be accompanied by full documentation of the fees and expenses incurred after initiation of the adversary adjudication, including the cost of any study, engineering report, test, or project for which an award is sought attributable to the portion of the demand alleged to be excessive and unreasonable. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, 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 for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 1071.203 When an application may be filed.

(a) An application may be filed not later than 30 days after the final disposition of the proceeding to which the application relates.

(b) If review or reconsideration is sought or taken of a decision, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this subpart, *final disposition* means the later of—

(1) The date that the Director's final order issued pursuant to §1081.405 is final and unappealable, both within the agency and to the courts; or

(2) The date that the Bureau issues any other final resolution of a proceeding, such as a consent agreement, settlement or voluntary dismissal, that is not subject to a petition for reconsideration.

Subpart C—Procedures for Considering Applications

§ 1071.300 Filing and service of documents.

(a) Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in proceedings under part 1081.

(b) In addition, a copy of each application for fees and expenses shall be served on the General Counsel of the Bureau.

§ 1071.301 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Bureau may file an answer to the application. Unless Bureau counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as consent to the award requested.

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

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of Bureau counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, Bureau counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1071.305 of this part.

§ 1071.302 Reply.

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 proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1071.305 of this part.

§ 1071.303 Comments by other parties.

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

§ 1071.304 Settlement.

The applicant and Bureau counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with the Bureau's standard settlement procedures. If a prevailing party and Bureau counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If a proposed settlement of an underlying proceeding provides that each side shall bear its own expenses and the settlement is accepted, no application may be filed.

§ 1071.305 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Bureau counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

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

§ 1071.306 Recommended decision.

The adjudicative officer shall issue a recommended decision on the application within 60 days after the time for filing a reply, or where further proceedings are held, within 60 days after completion of such proceedings.

(a) For a decision involving a prevailing party: The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

(b) For a decision involving an allegedly excessive Bureau demand: The decision on the application shall include written findings and conclusions on the applicant's eligibility and an explanation of the reasons why the Bureau's demand was or was not determined to be substantially in excess of the underlying decision of the adjudicative officer and was or was not unreasonable when compared with that decision. That determination shall be based upon all the facts and circumstances of the case. The decision on the application shall also include, if at issue, findings on whether the applicant has committed a willful violation of law or otherwise acted in bad faith, or whether special circumstances make an award unjust.

§ 1071.307 Bureau review.

Either the applicant or Bureau counsel may seek review of the recommended decision on the fee application by filing a notice of appeal under § 1081.402(a), or the Director may decide to review the decision on his or her own initiative, in accordance with § 1081.402(b). If neither the applicant nor Bureau counsel seeks review and the Director does not take review on his or her own initiative, the Director will adopt the recommended decision on the application as the final decision of the Bureau within 30 days of the issuance of the recommended decision. Whether to review a decision is a mat-

ter within the discretion of the Director. If review is taken, the Director will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 1071.308 Judicial review.

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

§ 1071.309 Payment of award.

An applicant seeking payment of an award shall submit to the Bureau a copy of the Bureau's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. An applicant shall be paid the amount awarded within 60 days of entry of the final decision unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

PART 1072—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS AND ACTIVITIES CONDUCTED BY THE BUREAU OF CONSUMER FINANCIAL PROTECTION

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