

§ 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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AUTHORITY: 29 U.S.C. 794; 29 U.S.C. 794d.

SOURCE: 77 FR 46609, August 6, 2012, unless otherwise noted.

§ 1072.101

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§ 1072.101 Purpose.

(a) This part implements section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Sec. 119 (Pub. L. 95–602, 92 Stat. 2982), the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), the Workforce Investment Act of 1998 (Pub. L. 105–220, 112 Stat. 936), and the Americans with Disabilities Act Amendments of 2008 (Pub. L. 110–325, 122 Stat. 3553), to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

(b) This part is also intended to implement section 508 of the Rehabilitation Act of 1973 as amended to ensure that employees and members of the public with disabilities have access to, and are able to use, electronic and information technology (EIT) to the same extent as individuals without disabilities, unless an undue burden would be imposed on the department or the Bureau. Specifically, this part clarifies that individuals with disabilities may utilize the complaint procedures established in section 504 to enforce rights guaranteed under section 508.

§ 1072.102 Application.

This part applies to all programs, activities, and electronic and information technology developed, procured, maintained, used, or conducted by the Bureau.

§ 1072.103 Definitions.

For purposes of this part *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Bureau. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TDD's), interpreters, Computer-

aided real-time transcription (CART), captioning, note takers, written materials, and other similar services and devices.

Bureau means the Bureau of Consumer Financial Protection.

Complete complaint means a written statement or a complaint in audio, Braille, electronic, and/or video format, that contains the complainant's name and address, and describes the Bureau's alleged discriminatory action in sufficient detail to inform the Bureau of the nature and date of the alleged violation of section 504 or section 508. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints in audio, Braille, electronic, and/or video formats shall contain an affirmative identity statement of the individual, which for this purpose shall be considered to be functionally equivalent to a complaint's signature. Complaints filed on behalf of classes of individuals with disabilities shall also identify (where possible) the alleged victims of discrimination.

Electronic and information technology means information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, world-wide web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation are not electronic and information technology.

Facility means all or any portion of a building, structure, equipment, road, walk, parking lot, rolling stock or

other conveyance, or other real or personal property.

Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more of the individual's major life activities.

Is regarded as having an impairment means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Bureau as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Bureau as having such an impairment.

Individual with a disability means any person who has a physical or mental impairment that substantially limits one or more of the individual's major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

Major life activities includes without limitation—

(1) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

(2) The operation of major bodily functions of the immune system, special sense organs and skin, normal cell growth, and digestive genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

(3) In determining other examples of major life activities, the Bureau will follow the guidance provided by EEOC in its 2011 regulations interpreting the Americans with Disabilities Act Amendments Act of 2008.

Physical or mental impairment includes without limitation:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine.

(2) Any mental or psychological disorder such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(3) Diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, drug addiction and alcoholism.

Program or Activity means any activity of the Bureau permitted or required by its enabling statutes, including but not limited to any proceeding, investigation, hearing, or meeting.

Qualified individual with a disability means:

(1) In reference to individuals other than employees of the Bureau—

(i) With respect to any Bureau program or activity under which an individual is required to perform services or to achieve a level of accomplishment, an individual with a disability who, with or without reasonable accommodations, meets the essential eligibility requirements for participation in the program or activity, and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration in its nature; or

(ii) With respect to any other program or activity, an individual with a disability who, with or without reasonable modification to rules, policies, or practices that do not change the fundamental nature of the activity, or the provision of auxiliary aids, meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; or

(2) In reference to individuals employed by the Bureau, the definition of that term for purposes of employment

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contained in 29 CFR 1630.2(m), which is made applicable to this part by § 1072.101.

Section 504 means section 504 of the Rehabilitation Act of 1973 as amended. As used in this part, § 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Section 508 means section 508 of the Rehabilitation Act of 1973 as amended.

§ 1072.104 Review of compliance.

(a) The Bureau shall, within two years of the promulgation of this regulation, review its current policies and practices in view of advances in relevant technology and achievability. Based on this review, the Bureau shall modify its practices and procedures to ensure that the Bureau's programs and activities are fully accessible.

(b) The Bureau shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the review process.

(c) The Bureau shall maintain on file and make available for public inspection until three years following the completion of the compliance review—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1072.105 Notice.

The Bureau shall make available to all Bureau employees, applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the programs or activities conducted by the Bureau in a manner that apprises them of the protections against discrimination provided by § 504 and this regulation.

§ 1072.106 General prohibitions against discrimination.

(a) No qualified individual with a disability in the United States, shall, on the basis of disability, be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Bureau.

(b) *Discriminatory actions prohibited.*

(1) The Bureau, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not substantially equivalent to that afforded others;

(iii) Provide different or separate aid, benefits or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits or services that are as effective as those provided to others;

(iv) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with disabilities and for persons who are not so identified, but must afford individuals with disabilities a reasonable opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs.

(3) Even if the Bureau is permitted, under paragraph (b)(1)(iv) of this section, to operate a separate or different program for individuals with disabilities or for any class of individuals with disabilities, to the extent reasonably feasible, the Bureau must permit any qualified individual with a disability who wishes to participate in the program that is not separate or different to do so.

(4) The Bureau may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

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(i) Subject qualified individuals with disabilities to unlawful discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The Bureau may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to unlawful discrimination under any program or activity conducted by the Bureau; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(6) The Bureau, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to unlawful discrimination on the basis of disability.

(7) The Bureau may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to unlawful discrimination on the basis of disability, nor may the Bureau establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to unlawful discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the Bureau are not, themselves, covered by this part.

(8) The Bureau shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Bureau can demonstrate that making the modifications would fundamentally alter the nature of the program, service, or activity.

(c) The exclusion of persons who have not self-identified as having disabilities from the benefits of a program limited by federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this part.

(d) The Bureau shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§ 1072.107 Employment.

No qualified individual with disability shall, on the basis of disability, be subjected to unlawful discrimination in employment under any program or activity conducted by the Bureau. The definitions, requirements and procedures of §501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, as established by the Equal Employment Opportunity Commission in 29 CFR parts 1614 and 1630, shall apply to employment in federally conducted programs or activities.

§ 1072.108 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §1072.109 no qualified individual with a disability shall, because the Bureau's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Bureau.

§ 1072.109 Program accessibility: Existing facilities.

(a) *General.* The Bureau shall operate each program or activity so that the program or activity, when viewed in its entirety, is accessible to and usable by individuals with disabilities. This paragraph does not require the Bureau

(1) To make structural alterations in each of its existing facilities in order to make them accessible to and usable by individuals with disabilities where other methods are effective in achieving compliance with this section; or

(2) To take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the Bureau shall take any other action

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that would not result in such an alteration or such burdens but would nevertheless to the extent reasonably feasible ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods.* The Bureau may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The Bureau, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Bureau shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(c) *Time period for compliance.* The Bureau shall comply with the obligations established under this section within ninety (90) days of the effective date of this part except that where structural changes in facilities are undertaken, such changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

§ 1072.110 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Bureau shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as implemented in 41 CFR 101-19.600 through 101-19.607, apply to buildings covered by this section.

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§ 1072.111 Communications.

(a) The Bureau shall take appropriate steps to effectively communicate with applicants, participants, personnel of other federal entities, and members of the public.

(1) The Bureau shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Bureau.

(i) In determining what type of auxiliary aid is necessary, the Bureau shall give consideration to any reasonable request of the individual with a disability.

(ii) The Bureau need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature to applicants or participants in programs.

(2) Where the Bureau communicates with applicants and beneficiaries by

telephone, the Bureau shall use a telecommunication device for deaf persons (TDD's) or equally effective telecommunication systems to communicate with persons with impaired hearing.

(b) The Bureau shall make available to interested persons, including persons with impaired vision or hearing, information as to the existence and location of accessible services, activities, and facilities.

(c) The Bureau shall post notices at a primary entrance to each of its inaccessible facilities, directing users to an accessible facility, or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Bureau to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

§ 1072.112 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the Bureau and

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denial of access to electronic and information technology.

(b) The Bureau shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) All other complaints alleging violations of section 504 or section 508 may be sent to Labor and Employee Relations, Office of the Chief Human Capital Officer Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20052. The Office of the Chief Human Capital Officer shall be responsible for coordinating implementation of this section.

(d) *Complaint-filing procedures.* (1) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by himself or herself or by his or her authorized representative file a complaint. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a class complaint.

(2) The Bureau shall accept and investigate each timely filed, complete complaint over which it has jurisdiction.

(3) A complete complaint must be filed within 180 days of the alleged act of discrimination. A complaint submitted to the Bureau via first-class mail will be deemed to have been filed when postmarked. A complaint submitted to the Bureau via any other means of delivery will be deemed to have been filed when received by the Bureau. The Bureau may extend this time period for good cause.

(e) If the Bureau receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Bureau shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural

Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with disabilities.

(g)(1) Within 180 days of the receipt of a timely filed, complete complaint over which it has jurisdiction, the Bureau shall notify the complainant of the results of the investigation in a letter containing:

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found; and

(iii) A notice of the right to appeal.

(2) Bureau employees are required to cooperate in the investigation and attempted resolution of complaints. Employees who are required to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement shall describe the subject matter of the complaint and any corrective action to which the parties have agreed.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 30 days of receipt from the Bureau of the letter required by §1072.112(g). The Bureau may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Chief Human Capital Officer, who will issue the final agency decision which may include appropriate corrective action to be taken by the Bureau.

(j) The Bureau shall notify the complainant of the results of the appeal within 60 days of the receipt of the timely appeal. If the Bureau determines that it needs additional information from the complainant, it shall have 60 days from the date it received the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended for an individual case when the Chief Human Capital Officer determines there is good cause, based on the

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particular circumstances of that case, for the extension.

(1) The Bureau may delegate its authority for conducting complaint investigations to other federal agencies or may contract with a nongovernment investigator to perform the investigation, but the authority for making the final determination may not be delegated to another entity.

PART 1073—PROCEDURES FOR BUREAU DEBT COLLECTION

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Subpart D—Administrative Wage Garnishment

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Subpart E—Tax Refund Offset

- 1073.501 Tax refund offset.

AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 5514; 31 U.S.C. 3711, *et seq.*

SOURCE: 78 FR 41678, July 11, 2013, unless otherwise noted.

Subpart A—Scope, Purpose, and Definitions

§ 1073.101 Scope.

This part establishes Bureau procedures for the collection of certain debts owed to the United States.

(a) This part applies to collections by the Bureau from:

(1) Federal employees who are indebted to the Bureau;

(2) Employees of the Bureau who are indebted to other agencies; and

(3) Other persons, organizations, or entities that are indebted to the United States, except those excluded in paragraph (b) of this section.

(b) This part does not apply:

(1) To debts or claims arising under the Internal Revenue Code (Title 26, U.S. Code), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States;

(2) To a situation to which the Contract Disputes Act (41 U.S.C. 7101 *et seq.*) applies; or

(3) To debts arising out of acquisition contracts subject to the Federal Acquisition Regulation. These debts shall be determined, collected, compromised, terminated, or settled in accordance with that regulation (see 48 CFR part 32).

(4) In any other case where collection of a debt is exclusively provided for or prohibited by another statute or applicable regulation.

(c) In addition to the procedures set forth in this part, the Bureau shall also follow the procedures set forth in 5 CFR part 550, subpart K, for the collection by offset from indebted government employees, and in 31 CFR part 285 and the Federal Claims Collection Standards (FCCS) (31 CFR chapter IX