

**CONSUMER FINANCIAL PROTECTION BUREAU
INFORMATION COLLECTION REQUEST – SUPPORTING STATEMENT
EQUAL ACCESS TO JUSTICE ACT
(OMB CONTROL NUMBER: 3170-XXXX)**

TERMS OF CLEARANCE: Not applicable. This is a new information collection request.

ABSTRACT: The Equal Access to Justice Act (EAJA or the Act) provides for payment of fees and expenses to eligible parties who have prevailed against the Consumer Financial Protection Bureau (Bureau) in certain administrative proceedings. In order to obtain an award, the statute and associated regulations (12 CFR Part 1071) require the filing of an application that shows that the party is a prevailing party and is eligible to receive an award under the Act. The Bureau regulations implementing the Act require the collection of information related to the application for an award in 12 CFR Part 1071, Subparts B, C.

On June 29, 2012, the Bureau published in the Federal Register an interim final rule implementing the Act. 77 FR 39117. At that time, the Bureau adopted the position that the rule did not contain any information collection requirements that required the approval of OMB under the Paperwork Reduction Act (the “PRA”), 44 U.S.C. 3501 et seq. The Bureau has since changed its interpretation and now adopts the position that the rule does contain information collection requirements that require the approval of OMB under the PRA and invites the general public and other Federal agencies to comment on the proposed information collections.

A. JUSTIFICATION

1. Circumstances Necessitating the Data Collection

The Act provides for payment of fees and expenses to eligible parties who have prevailed against the Bureau in certain administrative proceedings. In order to obtain an award, the statute and associated regulations (12 CFR Part 1071) require the filing of an application that shows that the party is a prevailing party and is eligible to receive an award under the Act. The Bureau regulations implementing the Equal Access to Justice Act require information related to the application for an award in 12 CFR Part 1071, Subparts B, C.

Specifically, subparts B and C require the following information from applicants:

- (a) Identity of the applicant and the proceeding for which the award is sought [§ 1071.200(a)];
- (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 [§ 1071.200(b)];
- (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 [§ 1071.200(c)];

(d) A brief description of the type and purpose of the organization or business (unless the applicant is an individual) [§ 1071.200(d)];

(e) A statement of how the applicant meets the eligibility criteria of § 1071.103 [§ 1071.200(e)];

(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 [§ 1071.200(f)];

(g) Any other matter the applicant wishes the Bureau to consider in determining whether and in what amount an award should be made [§ 1071.200(g)];

(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 [§ 1071.200(h)];

(i) 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 [§ 1071.302];

(j) 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) [§ 1071.307]; and

(k) 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 [§ 1071.309].

2. Use of the Information

The information is used by agency adjudicative officers and the Director to determine whether an applicant is eligible for an award of fees and expenses under the Act, and whether the applicant is entitled to the amount claimed in the application. Since this is a "benefit" program, elimination of the information collection would much more directly harm the individual and small business applicants, rather than any government programs. Applicants would have to find some means of demonstrating eligibility. The consequence to the government is that, absent this information, the adjudicative officer would be unable to determine whether an applicant for an award against the government is eligible for such an award in accordance with the standards set forth in the statute.

3. Use of Information Technology

The use of improved information technology would not serve to reduce the burden since: (1) the number of applicants are relatively few; (2) the information provided by applicants is generally provided on a one-time basis; (3) not all applicants provide the same information; (4) signatures of the applicant and signature of an attorney are required; and (5) the burden on applicants is minimized by allowing them to provide the information in a format convenient to them.

4. Efforts to Identify Duplication

The information is provided by applicants on a one-time basis in a specific proceeding and is made only to the agency from which fees and expenses are sought. Hence, the information requested of applicants does not duplicate any existing information collection.

5. Efforts to Minimize Burdens on Small Entities

The Bureau has minimized burden in two ways: (1) it has allowed applicants to provide information in a format convenient to them rather than prescribing a format that might request information not absolutely needed of all applicants; and (2) it has limited the information requested to that required by the statute. This information collection does not pose a significant impact on small entities.

6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction

If the Bureau did not collect this information, it would not be in compliance with the Act. Further, this is not a recurring collection of information – respondents usually only provide the information one time.

7. Circumstances Requiring Special Information Collection

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.8(d)(2).

8. Consultation Outside the Agency

In accordance with 5 CFR §§ 1320.11(a) and 1320.8(d)(1), the Bureau has published a notice in the Federal Register allowing the public 60 days to comment on this proposed new collection of information. Comments received in response to this notice and the Bureau's response to such comments will be summarized in the Notice of Final Rulemaking.

9. Payments or Gifts to Respondents

No payments or gifts are provided to respondents.

10. Assurances of Confidentiality

No assurance of confidentiality is provided to respondents.

11. Justification for Sensitive Questions

The Equal Access to Justice Act requires that an applicant's total net worth fall below a certain threshold to be eligible for an award (See 5 U.S.C. § 504(b)). This is the only question of a sensitive nature contained in this information collection and it is required by statute.

12. Estimated Burden of Information Collection

Summary of Burden:

| | <i>Number of respondents</i> | <i>Estimated annual frequency</i> | <i>Average time per response</i> | <i>Estimated annual burden hours</i> |
|-------------------------------|----------------------------------|---|--------------------------------------|--|
| Application for reimbursement | 3 | 1 | 5 hours | 15 |

We expect as many as 3 applications will be filed annually with the Bureau. As described in the response to Item 4, these applications are filed on a one-time basis. We expect that the average completion time for an application will be five hours. Accordingly, we estimate the annual burden as follows:

$$3 \text{ respondents} \times 1 \text{ response} \times 5 \text{ hours} = 15 \text{ total burden hours.}$$

We estimate that each application will require 3 hours of work by a paralegal or legal assistant and 2 hours of work by an attorney. According to BLS's National Occupational Employment and Wage Estimates, the national mean hourly wage for a paralegal or legal assistant is \$24.15 and the national mean hourly wage for an attorney is \$62.93. The burden hour cost to each respondent is \$72.45 for three hours of paralegal or legal assistant work and \$125.86 for two hours of attorney work for a total cost of \$198.31 per respondent. For three respondents, the total burden hour cost is \$594.93.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

For the purposes of this information collection request, it is assumed that each eligible party would expend \$2.00 on postage and associated mailing material. The cost to the 3 respondents is estimated to be \$6.00.

14. Estimated Cost to the Federal Government

Estimating the costs to the government is a speculative venture for two reasons:

- (a) The amount of time necessary to respond to and defend the application varies greatly, depending upon the number and difficulty of the issues involved; and
- (b) The amount and level of resources depend on the factors described above. Certain cases can be disposed of by two hours work from a mid-level attorney; other cases may require ten or more

hours by a staff attorney, two from supervisory-level attorney, and one hour of secretarial help.

However, the Bureau does not plan to hire any additional attorneys as a result of this collection of information, therefore, the Bureau does not anticipate any costs associated with this collection of information that it would not have otherwise incurred without it.

15. Program Changes or Adjustments

This is a new collection of information.

16. Plans for Tabulation, Statistical Analysis, and Publication

This is not a collection of information for statistical use.

17. Display of Expiration Date

The Bureau is not seeking such approval. There are no forms associated with this information collection on which to display an expiration date.

18. Exceptions to the Certification Requirement

The Bureau is not seeking exceptions to the certification statement.