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(3) Remand a request to FHFA or FHFA-OIG, as appropriate, for re-processing, stating the time limits for responding to the remanded request.

(e) *Notice of delayed determinations on appeal.* If FHFA or FHFA-OIG cannot send a determination on your appeal within the 20-day time limit, the designated Appeals Officer will continue to process the appeal and upon expiration of the time limit, will inform you of the reason(s) for the delay and the date on which a determination may be expected. In this notice of delay, the FHFA or FHFA-OIG FOIA Appeals Officer may request that you forebear seeking judicial review until a final determination is made.

(f) *Judicial review.* If the denial of your request for records is upheld in whole or in part, or if a determination on your appeal has not been sent at the end of the 20-day period in paragraph (d) of this section, or the last extension thereof, you may seek judicial review under 5 U.S.C. 552(a)(4).

(g) *Additional Resource.* The National Archives and Records Administration (NARA), Office of Government Information Services (OGIS) offers non-compulsory, non-binding mediation services to resolve FOIA disputes. If you seek information regarding the OGIS and/or the services it offers, please contact the OGIS directly at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001, Email: ogis@nara.gov, Phone: (301) 837-1996, Fax: (301) 837-0348, Toll-free: 1-(877) 684-6448. This information is provided as a public service only. By providing this information, FHFA and FHFA-OIG do not commit to refer disputes to OGIS, or to defer to OGIS' mediation decisions in particular cases.

[76 FR 29634, May 23, 2011, as amended at 77 FR 4645, Jan. 31, 2012]

§ 1202.10 Will FHFA or FHFA-OIG expedite my request or appeal?

(a) *Request for expedited processing.* You may request, in writing, expedited processing of an initial request or of an appeal. FHFA or FHFA-OIG may grant expedited processing, and give your request or appeal priority if your request for expedited processing demonstrates

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a compelling need by establishing one or more of the following—

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity if you are a person primarily engaged in disseminating information;

(3) The loss of substantial due process or rights;

(4) A matter of widespread and exceptional media interest in which there exists possible questions about the Federal Government's integrity, affecting public confidence; or

(5) Humanitarian need.

(b) *Certification of compelling need.* Your request for expedited processing must include a statement certifying that the reason(s) you present demonstrate a compelling need are true and correct to the best of your knowledge.

(c) *Determination on request.* FHFA or FHFA-OIG will notify you within 10 days of receipt of your request whether expedited processing has been granted. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal under § 1202.9 of that decision will be acted on expeditiously.

§ 1202.11 What will it cost to get the records I requested?

(a) *Assessment of fees, generally.* FHFA or FHFA-OIG will assess you for fees covering the direct costs of responding to your request and costs for duplicating records, except as otherwise provided in a statute with respect to the determination of fees that may be assessed for disclosure, search time, or review of particular records.

(b) *Assessment of fees, categories of requesters.* The fees that FHFA or FHFA-OIG may assess vary depending on the type of request or the type of requester you are—

(1) *Commercial use.* If you request records for a commercial use, the fees that FHFA or FHFA-OIG may assess are limited to FHFA's or FHFA-OIG's

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operating costs incurred for document search, review, and duplication.

(2) *Educational institution, noncommercial scientific institution, or representative of the news media.* If you are not requesting records for commercial use and you are an educational institution or a noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the fees that may be assessed are limited to standard reasonable charges for duplication in excess of 100 pages or an electronic equivalent of 100 pages.

(3) *Other.* If neither paragraph (b)(1) nor paragraph (b)(2) of this section applies, the fees assessed are limited to the costs for document searching in excess of two hours and duplication in excess of 100 pages, or an electronic equivalent of 100 pages.

(c) *Fee schedule.* The current schedule of fees is maintained on FHFA's Web site at: <http://www.fhfa.gov>.

(d) *Notice of anticipated fees in excess of \$100.00.* When FHFA or FHFA-OIG determines or estimates that the fees chargeable to you will exceed \$100.00, you will be notified of the actual or estimated amount of fees you will incur, unless you earlier indicated your willingness to pay fees as high as those anticipated. When you are notified that the actual or estimated fees exceed \$100.00, your FOIA request will not be considered received by FHFA or FHFA-OIG until you agree to pay the anticipated total fee.

(e) *Advance payment of fees.* FHFA or FHFA-OIG may request that you pay estimated fees or a deposit in advance of responding to your request. If FHFA or FHFA-OIG requests advance payment or a deposit, your request will not be considered received by FHFA or FHFA-OIG until the advance payment or deposit is received. FHFA or FHFA-OIG will request advance payment or a deposit if—

(1) The fees are likely to exceed \$500.00. FHFA or FHFA-OIG will notify you of the likely cost and obtain from you satisfactory assurance of full payment if you have a history of prompt payment of FOIA fees to FHFA or FHFA-OIG;

(2) You do not have a history of payment, or if the estimate of fees exceeds

\$1,000.00, FHFA or FHFA-OIG may require an advance payment of fees in an amount up to the full estimated charge that will be incurred;

(3) You previously failed to pay a fee to FHFA or FHFA-OIG in a timely fashion, *i.e.*, within 30 calendar days of the date of a billing, FHFA or FHFA-OIG may require you to make advance payment of the full amount of the fees anticipated before processing a new request or finishing processing of a pending request; or

(4) You have an outstanding balance due from a prior request. FHFA or FHFA-OIG may require you to pay the full amount owed plus any applicable interest, as provided in paragraph (f) of this section, or demonstrate that the fee owed has been paid, as well as payment of the full amount of anticipated fees before processing your request.

(f) *Interest.* FHFA or FHFA-OIG may charge you interest on an unpaid bill starting on the 31st calendar day following the day on which the bill was sent. Once a fee payment has been received by FHFA or FHFA-OIG, even if not processed, FHFA or FHFA-OIG will stay the accrual of interest. Interest charges will be assessed at the rate prescribed by 31 U.S.C. 3717 and will accrue from the date of the billing.

(g) *FHFA or FHFA-OIG assistance to reduce costs.* If FHFA or FHFA-OIG notifies you of estimated fees exceeding \$100.00 or requests advance payment or a deposit, you will have an opportunity to consult with FHFA or FHFA-OIG FOIA staff to modify or reformulate your request to meet your needs at a lower cost.

(h) *Fee waiver requests.* You may request a fee waiver in accordance with FOIA and this regulation. FHFA or FHFA-OIG may grant your fee waiver request if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester. In submitting a fee waiver request, you must address the following six factors—

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(1) Whether the subject of the requested records concerns the operations or activities of the Federal Government;

(2) Whether the disclosure is likely to contribute to an understanding of Federal Government operations or activities;

(3) Whether disclosure of the requested information will contribute to public understanding;

(4) Whether the disclosure is likely to contribute significantly to public understanding of Federal Government operations or activities;

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(1) *Determination on request.* FHFA or FHFA-OIG will notify you within 20 days of receipt of your request whether the fee waiver has been granted. A request for fee waiver that is denied may only be appealed when a final decision has been made on the initial FOIA request.

§ 1202.12 Is there anything else I need to know about FOIA procedures?

This FOIA regulation does not and shall not be construed to create any right or to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under FOIA. This regulation only provides procedures for requesting records under FOIA.

PART 1203—EQUAL ACCESS TO JUSTICE ACT

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Subpart B—Information Required From Applicants

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- 1203.20 Filing and service of the application for award and related papers.
- 1203.21 Response to the application for award.
- 1203.22 Reply to the response.
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- 1203.24 Settlement.
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AUTHORITY: 12 U.S.C. 4526, 5 U.S.C. 504.

SOURCE: 75 FR 65219, Oct. 22, 2010, unless otherwise noted..

Subpart A—General Provisions

§ 1203.1 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 awards of fees and other expenses to eligible individuals and entities who are parties to adversary adjudications before FHFA.

(b) This part applies to the award of fees and other expenses in connection with adversary adjudications before FHFA. However, if a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to 28 U.S.C. 2412(d)(3).

§ 1203.2 Definitions.

As used in this part:

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.