

§ 2610.201

5 CFR Ch. XVI (1–1–05 Edition)

agency of the United States that participates in a proceeding before the Office of Government Ethics and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Subpart B—Information Required From Applicants

§ 2610.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall further state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of the Office in the proceeding that the applicant alleges was not substantially justified; or

(2) Show that the demand by the Office in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application shall also include, for purposes of § 2610.106 (a) or (b), a statement that the applicant's net worth does not exceed \$2,000,000 (for individuals) or \$7,000,000 (for all other applicants, including their affiliates) or alternatively, for purposes of § 2610.106(b) only, a declaration that the applicant is a small entity as defined in 5 U.S.C. 601. However, an applicant may omit the statement concerning its net worth 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; or

(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)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Office to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification made by the applicant or authorized officer or attorney of the applicant under oath or under penalty of perjury that the information provided in the application is true and correct.

(f) These collections of information are not subject to Office of Management and Budget review under the Paperwork Reduction Act (44 U.S.C. chapter 35) because they are expected to involve nine or fewer persons each year.

[57 FR 33268, July 28, 1992, as amended at 59 FR 34755, July 7, 1994; 63 FR 13116, Mar. 18, 1998]

§ 2610.202 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 2610.105(f)) when the underlying adversary adjudication 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 part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) 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 portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied