

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 309

RIN 3064-AA06

#### Disclosure of Information

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC or Corporation) is proposing to revise its rule which sets forth the procedures to be used by members of the public in requesting records maintained by the FDIC, the amount of fees charged by the Corporation for responding to requests, the procedures to be used when appealing a decision to deny access to records or for a waiver of fees, circumstances and procedures under which exempt records might be disclosed, and the method by which a party can serve legal process on the Corporation in order to obtain information. The revisions in the proposed rule are designed to accommodate changes in the organizational structure of the Corporation, provide clearer guidance to requesters on how to obtain records under the Freedom of Information Act (FOIA) as amended by the Freedom of Information Reform Act (FOIRA), and allow the Corporation to charge appropriate fees as required under the FOIRA and the guidelines established by the United States Office of Management and Budget.

**DATES:** Comments must be received on before September 5, 1995.

**ADDRESSES:** Send comments to Jerry L. Langley, Executive Secretary, FDIC, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to room 400, 1776 F Street, NW, Washington, DC 20429 on business days between 8:30 a.m. and 5 p.m. [FAX number: (202) 898-3604; Internet: comments@FDIC.gov]. Comments will be available for inspection and

photocopying at the FDIC's Reading Room, room 7118, 550 17th Street, NW, Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** Paul A. Jeddeloh, Senior Program Attorney, Office of the Executive Secretary, telephone (202) 898-7161; Z. Scott Birdwell, Senior Attorney, Corporate and Special Litigation Section, Legal Division, telephone (202) 736-0536; or Dirck A. Hargraves, Attorney, Regulation and Legislation Section, Legal Division, telephone (202) 898-7049, FDIC, 550 17th Street, NW, Washington, DC 20429.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This proposed rule is intended to revise the Corporation's rule governing the release of records maintained by the Corporation and sets forth the procedures to be used by members of the public when requesting such records from the FDIC, the method used by the Corporation in determining the amount of fees to be charged to various categories of requesters, the procedures to be used when appealing a decision to deny access to records or for a waiver of fees, circumstances and procedures under which exempt records might be disclosed, and the method by which a party can serve legal process on the Corporation in order to obtain information.

##### II. Amendments to Part 309

1. *Purpose and Scope.* No changes have been proposed in § 309.1.

2. *Definitions.* Section 309.2 provides definitions that are used throughout part 309. Proposed § 309.2(f) recognizes that the FDIC conducts joint examinations with other federal financial institutions regulators and clarifies that compliance examination reports are included within the definition of "report of examination". A new § 309.2(i) has been proposed in order to define the term "Director of Division having primary authority" as including the heads of FDIC offices which create, maintain custody, or otherwise have primary responsibility for the handling of FDIC records or information.

3. *Federal Register publication.* No changes have been proposed in § 309.3.

4. *Publicly available records.* Proposed § 309.4 sets forth the procedure to be followed by requesters

who seek publicly available FDIC records. The FDIC has established a worldwide server on the Internet whereby users may access information. The address is set forth in the regulation. Paragraphs (a)(3) through (a)(6) of § 309.4 have been added to advise requesters that the public portion of Community Reinvestment Act (CRA) Evaluations, records regarding final compliance and enforcement actions, Summaries of Deposit Reports, and Annual Reports of Trust Assets can be obtained from the FDIC's Office of Corporate Communications.

Proposed § 309.4(b) has been amended by adding the term "administrative" to the term "cases" in order to clarify the type of final opinions and orders available through the FDIC's Office of the Executive Secretary.

Paragraphs (c)(3), (c)(4), and (c)(5) of § 309.4 have been added to advise requesters that they may obtain from the FDIC's Division of Supervision the Manual of Trust Examination Policies, the Federal Financial Institutions Examination Council Information Systems Handbook and, in the FDIC's discretion, the Consolidated Reports of Income and Consolidated Reports of Condition.

No changes have been proposed for § 309.4(d).

In proposed § 309.4(e), an updated listing of the manuals available from the Division of Depositor and Asset Services has been provided.

Proposed § 309.4(f) has been added to accommodate the creation of the FDIC's Division of Compliance and Consumer Affairs and its role as the contact for the Compliance Examination Manual.

Paragraph § 309.4(g) of the current rule has been deleted in the proposed rule since the information has been consolidated in § 309.4(e) of the proposed rule.

5. *Procedures for requesting records.* Proposed § 309.5 implements the procedural provisions of the FOIA, as amended by the FOIRA, and sets forth the procedures to be followed by members of the public when requesting records maintained by the Corporation, the method by which the Corporation would determine and charge fees for responding to such requests, a delineation of the various categories of requesters for the purpose of determining the application of fees, and

the procedures to be followed by requesters when appealing a determination by the Corporation not to grant a waiver of fees or release of records.

The FOIA established the statutory framework under which federal agencies were required to provide nonexempt records to members of the public upon request and were permitted to recover costs incurred in responding to such requests. The FOIRA significantly amended the fee provisions of the FOIA by establishing classes of FOIA requesters and providing the framework under which fees could be charged to the individual categories of requesters. The FOIRA also charged the United States Office of Management and Budget (OMB) with responsibility for issuing guidelines to be followed by federal agencies in determining the fees to be charged to requesters. OMB published its guidelines on March 27, 1987 at 52 FR 10012 and in those guidelines elaborated on the categories of requesters and stated that the fees to be charged for processing requests under FOIA should recoup the full allowable direct costs incurred in the search, review, and duplication of documents. The proposed changes to § 309.5 are intended to clarify the provisions relating to the method by which the Corporation charges fees for responding to requests under the FOIA and how requesters can obtain a list of such fees, to permit appeals of denials of waiver requests, conform the provisions of the section to the OMB guidelines, and delete an obsolete provision.

Section 309.5 has been reorganized and renumbered. The definitions applicable to § 309.5 were moved to § 309.5(a) in the proposed rule and were expanded to more fully utilize the definitions established by the OMB guidelines. For example, the last sentence in the definition of "commercial use request" was added to clarify the method by which the Corporation would determine whether a request falls under such category and to match the definition of "commercial use request" as set forth in the OMB guidelines. Likewise, the definition of "direct costs" was taken from the OMB guidelines and added to the proposed rule since the proposed fee provision found at § 309.5(c) utilizes such term in arriving at the fees to be charged. The remaining definitions were also expanded in conformity with the OMB guidelines.

Proposed § 309.5(b)(1) was modified, consistent with the OMB guidelines, to provide that the Corporation would not require the payment of fees by a

requester when the cost of responding to a request is less than the Corporation's cost of processing the requester's remittance.

The provisions of § 309.5(b)(2) and § 309.5(b)(3) were not changed except for renumbering within the provisions.

Proposed § 309.5(c)(1) was modified to clarify that fees would not be assessed under circumstances where the total costs involved with responding to a request for records amount to less than the Corporation's cost of processing the requester's remittance; that requests made to the Corporation are for "records" maintained by the Corporation; that an aggregation of requests will be made for purposes of determining fees when the same "group of requesters" submits multiple requests for similar or related records; that a requester must agree in writing to pay costs prior to the initiation of a search; that advance payment might be required when a requester has previously failed to pay fees assessed within 30 days following mailing of the invoice; that a requester who has an outstanding fee balance may be required to pay all amounts outstanding prior to the initiation of any additional records search; that the time in which the Corporation must respond to a request for records would be extended until the written agreement, advance payment, or outstanding charge issues are resolved; that the Corporation may assess interest on outstanding bills beginning on the 31st day after mailing of the invoice and which interest assessment would relate back to the date of the invoice; and appeals of determinations not to grant a waiver or reduction of fees under § 309.5(c)(1)(ix) may be appealed to the FDIC's General Counsel.

Proposed § 309.5(c)(2)(iii) was revised to limit the charging of fees to "the full reasonable direct cost of search and duplication" as consistent with the OMB guidelines.

At 12 CFR 309.5(c)(3), the FDIC distinguishes among the various categories of requesters consistent with the requirements of the FOIRA and the OMB guidelines. However, the FDIC's fee schedule, as set forth at § 309.5(b)(4) of the current rule, no longer complies with the guidelines since it does not provide for the recovery by the Corporation of its direct costs associated with searches for records as required. Proposed 309.5(c)(3) would replace the fee schedule set forth in the current rule and would establish the method by which the Corporation would determine the fees to be charged requesters for search, review, and duplication of records. As provided in the proposed rule, a list of fees would be generated

annually by the Corporation's Division of Finance and would be made available to all requesters at no charge through the Office of the Executive Secretary. The proposed changes to the rule would also establish the method by which the Corporation would charge the various categories of requesters for services to be provided thereby providing for continuing conformity with the FOIRA and the OMB guidelines.

In proposed § 309.5(d), a technical correction was made by the elimination of the parenthetical expression contained in § 309.5(d)(3).

Paragraph 309.5(h) of the current rule contains obsolete procedures and information and was deleted from the proposed rule.

6. *Disclosure of exempt records (§ 309.6)*. In order to clarify the exempt record disclosure provisions and eliminate a redundancy, paragraph 309.6(a) as set forth in the current rule was deleted in the proposed rule and the paragraphs renumbered accordingly.

In proposed § 309.6(a), the second sentence was added to clarify that FDIC exempt records remain the property of the FDIC regardless of custody and that disclosure would be prohibited without the written permission of the Director of the FDIC's Division which holds primary authority over such records. A similar provision appears at § 309.6(b) of the current rule.

In proposed § 309.6(b), a revision was made to the current § 309.6(c) to reflect changes in the FDIC's organizational structure and the person to whom authority to disclose or authorize disclosure of exempt records would be delegated. Additionally, much of current § 309.6(c) has been removed in the proposed rule, because the provision unnecessarily repeats provisions set forth in other sections of the rule.

Proposed § 309.6(b)(1) has been modified to provide that exempt records pertaining to a depository institution may be disclosed to that depository institution by the FDIC Division Director having primary authority over those records. Similarly, proposed § 309.6(b)(2) has been modified to provide that exempt records pertaining to a state-chartered depository institution may be disclosed to the state banking authority that supervises that institution by the FDIC Division Director having primary authority over that record. Other exempt records may also be disclosed if requested in writing for a legitimate supervisory or regulatory purpose.

Under the current rule, § 309.6(c)(3) permits certain FDIC officials to disclose exempt records to other supervisory agencies. Proposed § 309.6(b)(3)

provides that the FDIC Division Director having primary authority over exempt records may disclose those records to other federal supervisory agencies and certain non-supervisory federal agencies for any legitimate purpose. The proposed rule refers the reader to the Right to Financial Privacy Act of 1978 (RFPA) for a complete list of supervisory agencies and the RFPA further provides that no notice of the disclosure of exempt records would be required to be given to customers as a condition of such disclosure. The proposed rule was also amended to provide for the disclosure of information obtained in the course of the FDIC's exercising supervisory or examination authority to any foreign bank regulatory or supervisory authority per the conditions and limitations contained in § 206 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

The current rule set forth at § 309.6(c)(4) has been substantially rewritten for clarity. The listing of the contents of criminal referrals has been deleted due to the standardization of referral forms. In § 309.6(b)(4) of the proposed rule, criminal referrals may be made to either state or federal authorities without the provision of notice to customers, as provided in the RFPA. Additionally, exempt records may be disclosed to appropriate state or federal authorities by the Director of the Corporation's Division having primary authority over those records when there is a belief that there are federal or state civil or criminal law violations. The listing of exceptions for when notice of a disclosure of records must be provided to the customer have been deleted and a reference to applicable provisions of the RFPA has been provided.

In proposed § 309.6(b)(5), modifications were made to provide that exempt records pertaining to a depository institution may be disclosed to the servicers of such institution by the FDIC Division Director having primary authority over those records.

Proposed § 309.6(b)(6) sets forth the conditions under which exempt records may be disclosed to third parties and was modified to provide that exempt records may be disclosed to third parties by the FDIC Division Director with primary authority over such records for good cause, but only pursuant to a written request, and only after requiring such conditions as are necessary to protect the confidentiality of the records. Extraneous language was also deleted from the provision.

Proposed § 309.6(b)(7) sets forth the conditions under which depository institutions or other third parties in

possession of FDIC exempt records may be authorized to disclose the records. This paragraph has been modified to provide that third parties may be authorized by the FDIC Division Director with primary authority over those records to disclose any exempt records, but only pursuant to a written request, and only after requiring such conditions as are necessary to protect the confidentiality of the records.

Proposed § 309.6(b)(8) permits the General Counsel (or designee) to disclose or authorize disclosure of exempt records or information (including testimony) in litigation in response to a subpoena or otherwise for good cause and in the interests of justice. The amendments would also clarify the FDIC's current position that the General Counsel's authority extends to records or information held by former FDIC employees or officials when the records were obtained in course of the former employee's employment with the FDIC. Significantly, the amendments are intended to clarify that, in situations where the FDIC has not been made a party to litigation, prior to serving a subpoena or other legal process on the FDIC, a requester must first exhaust their administrative procedures by seeking disclosure of FDIC records pursuant to the procedures set forth § 309.5. Such requirement provides the FDIC with the opportunity to exercise its discretion regarding whether an exempt record should be disclosed. The lengthy list of the exceptions for when notice to the customer must be provided has been deleted and replaced by a simple citation to the exceptions provided by the RFPA.

Paragraph § 309.6(c)(9) of the current rule was deleted from the proposed rule since other amendments to the rule clarified the authority of Division Directors involving records over which they have primary authority.

Under proposed § 309.6(b)(9), the Chairman would be able to authorize the disclosure or withholding of exempt records or information whenever the public interest is served by such action. The provision extends the Chairman's authority to former employees or officials and governs testimony as well as records.

Proposed § 309.6(b)(10) clarifies that any disclosure of exempt records by the FDIC would be discretionary, that FDIC officials have authority to condition disclosure, that all steps must be taken to protect the confidentiality of exempt information, and that should exempt records be disclosed, such disclosure should be pursuant to appropriate protective orders or confidentiality

agreements and with appropriate redaction.

7. *Service of process.* Section 309.7 in the proposed rule provides notice of the appropriate means of serving process on the FDIC, that persons in possession of FDIC exempt records who receive a subpoena must notify the FDIC, and that persons in possession of FDIC exempt records must appear as required and refuse to produce such records or testify thereon in the absence of authorization from the FDIC. If the FDIC is named as a party, service of process must conform to Federal Rules of Civil Procedure. The amendments clarify that former FDIC employees or officials in possession of FDIC records must notify the FDIC of any subpoena or legal process served on them which relates to exempt records or information, and must not disclose such records or information without the General Counsel's authorization.

8. *Generally.* The term "records" has replaced the terms "information" and "documents" in appropriate places throughout the regulation in order to clarify that, in most instances, requests made under the rule would involve requests for disclosure of records maintained by the Corporation. The term "information" was retained in various places in the rule in recognition of the limited circumstances where more than records might be sought.

Certain references to "Reports of Examination" have been deleted to make clear that the regulation governs all exempt records.

Certain references to "Division of Supervision" have been deleted and/or replaced with other office designations to make clear that other Divisions may have primary authority over an exempt record.

References to "or anyone he designates in writing" has been replaced by "or designee" to provide simplicity and a gender neutral term.

### III. Matters of Regulatory Procedure

#### *Administrative Procedure Act*

This proposed rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 60-day comment period.

#### *Authority*

These amendments are promulgated under the FDIC's general authority to prescribe, through its Board of Directors, such rules and regulations as it may deem necessary to carry out the provisions of the Federal Deposit Insurance Act or any other law which the FDIC has the responsibility of administering or enforcing (except to the extent that authority to issue such

rules and regulations has been expressly and exclusively granted to any other regulatory agency). 12 U.S.C. 1819 "Seventh" and "Tenth"; 5 U.S.C. 552.

#### Regulatory Flexibility Act

The Board of Directors has concluded that the proposed rule will not impose a significant economic hardship on small institutions. Therefore, the Board of Directors hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposed rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### Paperwork Reduction Act

The Board of Directors has determined that this proposed regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 12 CFR Part 309

Banks, banking, Credit, Freedom of information, Privacy.

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation is proposing to revise Part 309 of Chapter III of title 12, of the Code of Federal Regulations to read as follows:

### PART 309—DISCLOSURE OF INFORMATION

Sec.

- 309.1 Purpose and scope.
- 309.2 Definitions.
- 309.3 Federal Register publication.
- 309.4 Publicly available records.
- 309.5 Procedures for requesting records.
- 309.6 Disclosure of exempt records.
- 309.7 Service of process.

**Authority:** 5 U.S.C. 552; 12 U.S.C. 1819 "Seventh" and "Tenth".

#### § 309.1 Purpose and scope.

This part sets forth the basic policies of the Federal Deposit Insurance Corporation regarding information it maintains and the procedures for obtaining access to such information.

#### § 309.2 Definitions.

For purposes of this part:

(a) The term *depository institution*, as used in § 309.6, includes depository institutions that have applied to the Corporation for federal deposit insurance, closed depository institutions, presently operating federally insured depository institutions, foreign banks, branches of

foreign banks, and all affiliates of any of the foregoing.

(b) The terms *Corporation* or *FDIC* mean the Federal Deposit Insurance Corporation.

(c) The words *disclose* or *disclosure*, as used in § 309.6, mean to give access to a record, whether by producing the written record or by oral discussion of its contents. Where the Corporation employee authorized to release Corporation documents makes a determination that furnishing copies of the documents is necessary, the words *disclose* or *disclosure* include the furnishing of copies of documents or records. In addition, *disclose* or *disclosure* as used in § 309.6 is synonymous with the term *transfer* as used in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*).

(d) The term *examination* includes, but is not limited to, formal and informal investigations of irregularities involving suspected violations of federal or state civil or criminal laws, or unsafe and unsound practices as well as such other investigations as may be conducted pursuant to law.

(e) The term *record* includes records, files, documents, reports, correspondence, books, and accounts, or any portion thereof.

(f) The term *report of examination* includes, but is not limited to, examination reports resulting from examinations of depository institutions conducted jointly by Corporation examiners and state banking authority examiners or other federal financial institution examiners, as well as reports resulting from examinations conducted solely by Corporation examiners. The term also includes compliance examination reports.

(g) The term *customer financial records*, as used in § 309.6, means an original of, a copy of, or information known to have been derived from, any record held by a depository institution pertaining to a customer's relationship with the depository institution but does not include any record that contains information not identified with or identifiable as being derived from the financial records of a particular customer. The term *customer* as used in § 309.6 refers to individuals or partnerships of five or fewer persons.

(h) The term *Director of the Division having primary authority* includes Deputies to the Chairman and directors of FDIC Divisions and Offices that create, maintain custody, or otherwise have primary responsibility for the handling of FDIC records or information.

#### § 309.3 Federal Register publication.

The FDIC publishes the following information in the **Federal Register** for the guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the FDIC;

(e) Every amendment, revision or repeal of the foregoing; and

(f) General notices of proposed rule-making.

#### § 309.4 Publicly available records.

The following records are available upon request or, as noted, available for public inspection during normal business hours, at the listed offices. Certain records are also available on the Internet at the following address: <http://www.fdic.gov>. To the extent permitted by law, the FDIC may delete identifying details when it makes available or publishes a final opinion, final order, statement of policy, interpretation or staff manual or instruction. Fees for furnishing records under this section are as set forth in § 309.5(c).

(a) At the Office of Corporate Communications, Federal Deposit Insurance Corporation, 550-17th Street, N.W., Washington, D.C. 20429, (202) 898-6996:

(1) Documents, including press releases, financial institution letters and proposed and adopted regulations, published by the FDIC and pertaining to its operations and those of insured depository institutions that it supervises.

(2) Reports on the competitive factors involved in merger transactions and the bases for approval of merger transactions as required by sections 18(c)(4) and 18(c)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(4) and (9)).

(3) Community Reinvestment Act (CRA) Public Evaluations.

(4) Final decisions and orders concerning compliance, enforcement, and other related administrative actions.

(5) At the FDIC's discretion, Summary of Deposits filed by insured depository institutions, except that information on the size and number of accounts filed before June, 1982 is not available.<sup>1</sup>

(6) Annual Report of Trust Assets for commercial banks and state savings banks.<sup>2</sup>

(b) At the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550-17th Street, N.W., Washington, D.C. 20429, which information is available for public inspection:

(1) All final opinions (including concurring and dissenting opinions) and all final orders made in the adjudication of administrative cases.

(2) Statements of policy and interpretations which have been adopted by the FDIC but have not been published in the **Federal Register**.

(3) A current index of matters covered by paragraphs (b)(1) and (b)(2) of this section that were issued, adopted or promulgated after July 4, 1967. Copies of the index will be provided at the direct cost of duplication as set forth in § 309.5(b).

(c) At the Division of Supervision, Federal Deposit Insurance Corporation, 550-17th Street, N.W., Washington, D.C. 20429:

(1) Filings and reports required under the provisions of 12 CFR Part 335 and the Securities and Exchange Act of 1934, as amended (15 U.S.C. 78a), by insured nonmember banks the securities of which are registered with the FDIC pursuant to section 12 of that Act (15 U.S.C. 78l). These filings and reports are available for public inspection as detailed in 12 CFR 335.702.

(2) Manual of Examination Policies.

(3) Manual of Trust Examination Policies.

(4) Federal Financial Institutions Examination Council (FFIEC) Information Systems Examination Handbook.

(5) In the FDIC's discretion, the Consolidated Reports of Condition and Income filed by insured nonmember banks (and certain nonfederally insured depository institutions in the case of reports of condition), except that select sensitive financial information may be withheld.<sup>3</sup>

(d) At the regional office of the FDIC for the region in which the applicant or

subject depository institution is located (A list of FDIC's regional offices is available from the Office of Corporate Communications, Federal Deposit Insurance Corporation, 550-17th Street, N.W., Washington, DC 20429, (202) 898-6996):

(1) In the FDIC's discretion, non-confidential portions of application files as provided in 12 CFR 303.6(g), including applications for deposit insurance, to establish branches, to relocate offices and to merge.

(2)(i) After acceptance by the FDIC of a notice filed pursuant to the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) (other than a notice filed in contemplation of a public tender offer subject to the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78n) and the FDIC's tender offer regulations (12 CFR 335.501-335.530), the appropriate FDIC regional office will make available, on request, the following information: The name of the depository institution whose stock is to be acquired; the date the notice was accepted; the identity of the acquiring person(s); the number of shares to be acquired; and the number of outstanding shares of stock in the depository institution. (The mere filing of a notice does not automatically constitute "acceptance" by the FDIC; a notice is "accepted" when the regional office determines that the notice contains all the information required by 12 U.S.C. 1817(j)(6)).

(ii) In the case of a notice filed in contemplation of a public tender offer that is subject to the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78n) and the FDIC's tender offer regulations (12 CFR 335.501-335.530), when public disclosure is determined under § 303.4(b)(4) of the FDIC's regulations (12 CFR 303.4(b)(4)) to be appropriate, the appropriate FDIC regional office will make available, on request, the information described in paragraph (d)(2)(i) of this section.

(iii) After a transaction subject to the Change in Bank Control Act of 1978 has been consummated, the appropriate FDIC regional office will make available, on request, the following information, in addition to the information described in paragraph (d)(2)(i) of this section: The date the shares were acquired; the names of the sellers (or transferors); and the total number of shares owned by the purchasers (or acquirors).

(e) At the Division of Depositor and Asset Services, Federal Deposit Insurance Corporation, 550-17th Street, N.W., Washington, D.C., 20429:

(1) Credit Manual;

(2) Agriculture Manual;

(3) Claims Manual;

(4) Operations Manual;

(5) Closing Manual;

(6) Environmental Guidelines Manual;

(7) Deposit Insurance Manual;

(8) Settlement Manual.

(f) At the Division of Compliance and Consumer Affairs, Federal Deposit Insurance Corporation, 550-17th Street, N.W., Washington, D.C. 20429: Compliance Examination Manual.

#### § 309.5 Procedures for requesting records.

(a) Definitions. For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a requester who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request falls within this category, the FDIC will determine the use to which a requester will put the records requested and seek additional information as it deems necessary.

(2) *Direct costs* means those expenditures the FDIC actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing records in response to a request for records.

(3) *Duplication* means the process of making a copy of a record necessary to respond to a request for records or for inspection of original records that contain exempt material or that cannot otherwise be directly inspected. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (e.g., magnetic tape or computer disk).

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(5) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis as that term is defined in paragraph (a)(1) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) *Representative of the news media* means any person actively gathering news for, or a free-lance journalist who reasonably expects to have his or her work product published or broadcast by, an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events

<sup>1</sup> Summary of Deposits reports are described at 12 CFR 304.5.

<sup>2</sup> Annual Report of Trust Assets, FFIEC Form 001.

<sup>3</sup> Reports of income and of condition are described at 12 CFR 304.4.

or that would be of current interest to the general public.

(7) *Review* means the process of examining records located in response to a request for records to determine whether any portion of any record is permitted to be withheld as exempt information. It includes processing any record for disclosure, e.g., doing all that is necessary to excise them or otherwise prepare them for release.

(8) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually and/or by computer using existing programming.

(b) *Initial request.* (1) Except as provided in paragraphs (d) and (h) of this section, the FDIC, upon request for any record in its possession, will make the record available to any person who agrees to pay the costs of searching, review and duplication as set forth in paragraph (c) of this section. The request must be in writing, provide information reasonably sufficient to enable the FDIC to identify the requested records and specify a dollar limit which the requester is willing to pay for the costs of searching, review and duplication, unless the costs are believed to be less than the FDIC's cost of processing the requester's remittance, which cost will be set forth in the "Notice of Federal Deposit Insurance Corporation Records Fees" as described in paragraph (c)(3) of this section. Requests under this paragraph (b) should be addressed to the Office of the Executive Secretary, FDIC, 550-17th Street, N.W., Washington, DC 20429.

(2) The FDIC will transmit notice to the requester within 10 business days after receipt of the initial request whether it is granted or denied. Denials of requests will be based on the exemptions provided for in paragraph (d) of this section.

(3) Notification of a denial of an initial request will be in writing and will state:

- (i) If the denial is in part or in whole;
- (ii) The name and title of each person responsible for the denial (when other than the person signing the notification);
- (iii) The exemptions relied on for the denial; and
- (iv) The right of the requester to appeal the denial to the FDIC's General Counsel within 30 business days following receipt of the notification.

(c) *Fees*—(1) *General rules.* (i) Persons requesting records of the FDIC shall be charged for the direct costs of search, duplication and review as set forth in paragraphs (c)(2) and (c)(3) of this

section, unless such costs are less than the FDIC's cost of processing the requester's remittance.

(ii) Multiple requests will be charged for search and review costs even if responsive records are not located and, if located, are determined to be exempt from disclosure.

(iii) Multiple requests seeking similar or related records from the same requester or group of requesters will be aggregated for the purposes of this section.

(iv) If the FDIC determines that the estimated costs of search, duplication or review of requested records will exceed the dollar amount specified in the request or if no dollar amount is specified, the FDIC will advise the requester of the estimated costs (if greater than the FDIC's cost of processing the requester's remittance). The requester must agree in writing to pay the costs of search, duplication and review prior to the FDIC initiating any records search.

(v) If the FDIC estimates that its search, duplication and review costs will exceed \$250.00, the requester must pay an amount equal to 20 percent of the estimated costs prior to the FDIC initiating any records search.

(vi) The FDIC may require any requester who has previously failed to pay the charges under this section within 30 days of mailing of the invoice to pay in advance the total estimated costs of search, duplication and review. The FDIC may also require a requester who has any charges outstanding in excess of 30 days following mailing of the invoice to pay the full amount due, or demonstrate that the fee has been paid in full, prior to the FDIC initiating any additional records search.

(vii) The FDIC may begin assessing interest charges on unpaid bills on the 31st day following the day on which the notice was sent. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date of the invoice.

(viii) The time limit for FDIC to respond to a request will not begin to run until the FDIC has received the requester's written agreement under paragraph (c)(1)(iv) of this section, and advance payment under paragraph (c)(1)(v) or (vi) of this section, or outstanding charge under paragraph (c)(1)(vi) of this section.

(ix) As part of the initial request, a requester may ask that the FDIC waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest

of the requester. Determinations as to a waiver or reduction of fees will be made by the Executive Secretary (or designee) and the requester will be notified in writing of his/her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the FDIC's General Counsel (or designee) pursuant to the procedure set forth in paragraph (e) of this section.

(2) *Chargeable fees by category of requester.* (i) Commercial use requesters shall be charged search, duplication and review costs.

(ii) Educational institutions, non-commercial scientific institutions and news media representatives shall be charged duplication costs, except for the first 100 pages.

(iii) Requesters not within the scope of paragraph (c)(2)(i) or (ii) of this section shall be charged the full reasonable direct cost of search and duplication, except for the first two hours of search time and first 100 pages of duplication.

(3) *Fee schedule.* The dollar amount of fees which the FDIC may charge to records requesters will be established by the Chief Financial Officer of the FDIC (or designee), and will be set forth in the "Notice of Federal Deposit Insurance Corporation Records Fees" issued in December of each year or in such "Interim Notice of Federal Deposit Insurance Corporation Records Fees" as may be issued. Copies of such notices may be obtained at no charge from the FDIC's Office of the Executive Secretary, FOIA Unit, 550 17th Street, N.W., Washington, D.C. 20429. The fees implemented in the December or Interim Notice will be effective 30 days after issuance. The FDIC may charge fees that recoup the full allowable direct costs it incurs. The FDIC may contract with independent contractors to locate, reproduce, and/or disseminate records; provided however, that the FDIC has determined that the ultimate cost to the requester will be no greater than it would be if the FDIC performed these tasks itself. In no case will the FDIC contract out responsibilities which the Freedom of Information Act (FOIA) (5 U.S.C. 552) provides that the FDIC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees. Fees are subject to change as costs change.

(i) *Manual searches for records.* The FDIC will charge for manual searches for records at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. Where a single class of personnel (e.g., all clerical, all professional, or all executive) is used exclusively, the FDIC,

at its discretion, may establish and charge an average rate for the range of grades typically involved.

(ii) *Computer searches for records.* The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs, and the operator's time apportionable to the search. The fee for a computer printout is the actual cost. The fees for computer supplies are the actual costs. The FDIC may, at its discretion, establish and charge a fee for computer searches based upon a reasonable FDIC-wide average rate for central processing unit operating costs and the operator's basic rate of pay plus 16 percent to cover employee benefit costs.

(iii) *Duplication of records.* (A) The per-page fee for paper copy reproduction of documents is the average FDIC-wide cost based upon the reasonable direct costs of making such copies.

(B) For other methods of reproduction or duplication, the FDIC will charge the actual direct costs of reproducing or duplicating the documents.

(iv) *Review of records.* The FDIC will charge commercial use requesters for the review of records at the time of processing the initial request to determine whether they are exempt from mandatory disclosure at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. Where a single class of personnel (e.g., all clerical, all professional, or all executive) is used exclusively, the FDIC, at its discretion, may establish and charge an average rate for the range of grades typically involved. The FDIC will not charge at the administrative appeal level for review of an exemption already applied. When records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, the FDIC may charge for a subsequent review to determine the applicability of other exemptions not previously considered.

(v) *Other services.* Complying with requests for special services is at the FDIC's discretion. The FDIC may recover the full costs of providing such services to the extent it elects to provide them.

(d) *Exempt information.* A request for records may be denied if the requested record contains information which falls into one or more of the following categories.<sup>4</sup> If the requested record

contains both exempt and nonexempt information, the nonexempt portions which may reasonably be segregated from the exempt portions will be released to the requester:

(1) Records which are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Records related solely to the internal personnel rules and practices of the FDIC;

(3) Records specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the FDIC;

(6) Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished records on a confidential basis;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC or any agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(e) *Appeals.* (1) A person whose initial request for records under paragraph (a) of this section, or whose request for a waiver of fees under paragraph (c)(1)(ix) of this section, has been denied, either in part or in whole, has the right to appeal the denial to FDIC's General Counsel (or designee) within 30 business days after receipt of notification of the denial. Appeals of denials of initial requests or for a waiver of fees must be in writing and include any additional information relevant to consideration of the appeal. Appeals should be addressed to the Office of the Executive Secretary, FDIC, 550-17th Street, N.W., Washington, DC 20429.

(2) The FDIC will notify the appellant within 20 business days after receipt of the appeal whether it is granted or denied. Denials of appeals on initial requests for records will be based on the exemptions provided for in paragraph (c) of this section.

(3) Notifications of a denial of an appeal will be in writing and will state:

(i) Whether the denial is in part or in whole;

(ii) The name and title of each person responsible for the denial (if other than the person signing the notification);

(iii) The exemptions relied upon for the denial in the case of initial requests for records; and

(iv) The right to judicial review of the denial under the FOIA.

(f) *Extension of time.* (1) Under unusual circumstances the FDIC may require additional time, up to a maximum of 10 business days, to determine whether to grant or deny an initial request or to respond to an appeal of an initial denial. These circumstances would arise in cases where:

(i) The records are in facilities, such as field offices or storage centers, that are not part of the FDIC's Washington office;

(ii) The records requested are voluminous and are not in close proximity to one another; or

(iii) There is a need to consult with another agency or among two or more components of the FDIC having a substantial interest in the determination.

<sup>4</sup> Classification of a record as exempt from disclosure under the provisions of § 309.5(d) shall not be construed as authority to withhold the record if it is otherwise subject to disclosure under the

Privacy Act of 1974 (5 U.S.C. 552a) or other federal statute, any applicable regulation of FDIC or any other federal agency having jurisdiction thereof, or any directive or order of any court of competent jurisdiction.



(2) The FDIC will promptly give written notification to the person making the request of the estimated date it will make its determination and the reasons why additional time is required.

(g) *FDIC procedures.* (1) Initial requests for records will be forwarded by the Executive Secretary to the head of the FDIC division or office which has primary authority over such records. Where it is determined that the requested records may be released, the appropriate division or office head will grant access to the records. A request for records may be denied only by the Executive Secretary (or designee), except that a request for records not responded to within 10 business days following its receipt by the Office of Executive Secretary—by notice to the requester either granting the request, denying the request, or extending the time for making a determination on the request—shall, if the requester chooses to treat such delay in response as a denial, be deemed to have been denied.

(2) Appeals from a denial of an initial request will be forwarded by the Executive Secretary to the General Counsel (or designee) for a determination whether the appeal will be granted or denied. The General Counsel (or designee) may on his or her own motion refer an appeal to the Board of Directors for a determination or the Board of Directors may in its discretion consider such an appeal.

(h) *Records of another agency.* If a requested record is the property of another federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the FDIC will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

### § 309.6 Disclosure of exempt records.

(a) *Disclosure prohibited.* Except as provided in paragraph (b) of this section or by 12 CFR part 310<sup>5</sup>, no person shall disclose or permit the disclosure of any exempt records, or information contained therein, to any persons other than those officers, directors, employees, or agents of the Corporation who have a need for such records in the performance of their official duties. In any instance in which any person has possession, custody or control of FDIC

exempt records or information contained therein, all copies of such records shall remain the property of the Corporation and under no circumstances shall any person, entity or agency disclose or make public in any manner the exempt records or information without written authorization from the Director of the Corporation's Division having primary authority over the records or information as provided in this section.

(b) *Disclosure authorized.* Exempt records or information of the Corporation may be disclosed only in accordance with the conditions and requirements set forth in this paragraph (b). Requests for discretionary disclosure of exempt records or information pursuant to this paragraph (b) may be submitted directly to the Division having primary authority over the exempt records or information or to the Office of Executive Secretary for forwarding to the appropriate Division having primary authority over the records sought. Such administrative request must clearly state that it seeks discretionary disclosure of exempt records, clearly identify the records sought, provide sufficient information for the Corporation to evaluate whether there is good cause for disclosure, and meet all other conditions set forth in paragraphs (b)(1) through (10) of this section. Information regarding the appropriate FDIC Division having primary authority over a particular record or records may be obtained from the Office of Executive Secretary. Authority to disclose or authorize disclosure of exempt records of the Corporation is delegated as follows:

(1) *Disclosure to depository institutions.* The Director of the Corporation's Division having primary authority over the exempt records, or designee, may disclose to any director or authorized officer, employee or agent of any depository institution, information contained in, or copies of, exempt records pertaining to that depository institution.

(2) *Disclosure to state banking agencies.* The Director of the Corporation's Division having primary authority over the exempt records, or designee, may in his or her discretion and for good cause, disclose to any authorized officer or employee of any state banking or securities department or agency, copies of any exempt records to the extent the records pertain to a state-chartered depository institution supervised by the agency or authority, or where the exempt records are requested in writing for a legitimate depository institution supervisory or regulatory purpose.

(3) *Disclosure to federal financial institutions supervisory agencies and certain other agencies.* The Director of the Corporation's Division having primary authority over the exempt records, or designee, may in his or her discretion and for good cause, disclose to any authorized officer or employee of any federal financial institution supervisory agency including the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Securities and Exchange Commission, the National Credit Union Administration, or any other agency included in section 1101(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et. seq.*) (RFPFA), any exempt records for a legitimate depository institution supervisory or regulatory purpose. The Director, or designee, may in his or her discretion and for good cause, disclose exempt records, including customer financial records, to certain other federal agencies as referenced in section 1113 of the RFPFA for the purposes and to the extent permitted therein, or to any foreign bank regulatory or supervisory authority as provided, and to the extent permitted, by section 206 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(4) *Disclosure to prosecuting or investigatory agencies or authorities.* (i) Reports of Apparent Crime pertaining to suspected violations of law, which may contain customer financial records, may be disclosed to federal or state prosecuting or investigatory authorities without giving notice to the customer, as permitted in the relevant exceptions of the RFPFA.

(ii) The Director of the Corporation's Division having primary authority over the exempt records, or designee, may disclose to the proper federal or state prosecuting or investigatory authorities, or to any authorized officer or employee of such authority, copies of exempt records pertaining to irregularities discovered in depository institutions which are believed to constitute violations of any federal or state civil or criminal law, or unsafe or unsound banking practices, provided that customer financial records may be disclosed without giving notice to the customer, only as permitted by the relevant exceptions of the RFPFA. Unless such disclosure is initiated by the FDIC, customer financial records shall be disclosed only in response to a written request which:

(A) Is signed by an authorized official of the agency making the request;

(B) Identifies the record or records to which access is requested; and

<sup>5</sup>The procedures for disclosing records under the Privacy Act are separately set forth in 12 CFR part 310.



(C) Gives the reasons for the request.

(iii) When notice to the customer is required to be given under the RFPA, the Director of the Corporation's Division having primary authority over the exempt records, or designee, may disclose customer financial records to any federal or state prosecuting or investigatory agency or authority, provided, that:

(A) The General Counsel, or designee, has determined that disclosure is authorized or required by law; or

(B) Disclosure is pursuant to a written request that indicates the information is relevant to a legitimate law enforcement inquiry within the jurisdiction of the requesting agency and:

(1) The Director of the Corporation's Division having primary authority over the exempt records, or designee, certifies pursuant to section 1112(a) <sup>6</sup> of the RFPA that the records are believed relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency; and

(2) A copy of such certification and the notice required by section 1112(b) <sup>7</sup> of the RFPA is sent within fourteen days of the disclosure to the customer whose records are disclosed.<sup>8</sup>

(5) *Disclosure to servicers and serviced institutions.* The Director of the Corporation's Division having primary authority over the exempt records, or designee, may disclose copies of any exempt record related to a bank data center, a depository institution service corporation or any other data center that provides data processing or related services to an insured institution (hereinafter referred to as "data center") to:

(i) The examined data center;

(ii) Any insured institution that receives data processing or related services from the examined data center;

(iii) Any state agency or authority which exercises general supervision over an institution serviced by the examined data center; and

(iv) Any federal financial institution supervisory agency which exercises general supervision over an institution serviced by the examined data center. The federal supervisory agency may disclose any such examination report received from the Corporation to an insured institution over which it exercises general supervision and which is serviced by the examined data center.

(6) *Disclosure to third parties.* (i) Except as otherwise provided in paragraphs (c) (1) through (5) of this section, the Director of the Corporation's Division having primary authority over the exempt records, or designee, may in his or her discretion and for good cause, disclose copies of any exempt records to any third party where requested to do so in writing. Any such written request shall:

(A) Specify, with reasonable particularity, the record or records to which access is requested; and

(B) Give the reasons for the request.

(ii) Either prior to or at the time of any disclosure, the Director or designee shall require such terms and conditions as he deems necessary to protect the confidential nature of the record, the financial integrity of any depository institution to which the record relates, and the legitimate privacy interests of any individual named in such records.

(7) *Authorization for disclosure by depository institutions or other third parties.* (i) The Director of the Corporation's Division having primary authority over the exempt records, or designee, may, in his or her discretion and for good cause, authorize any director, officer, employee, or agent of a depository institution to disclose copies of any exempt record in his custody to anyone who is not a director, officer or employee of the depository institution. Such authorization must be in response to a written request from the party seeking the record or from management of the depository institution to which the report or record pertains. Any such request shall specify, with reasonable particularity, the record sought, the party's interest therein, and the party's relationship to the depository institution to which the record relates.

(ii) The Director of the Corporation's Division having primary authority over the exempt records, or designee, may, in his or her discretion and for good cause, authorize any third party, including a federal or state agency, that has received

a copy of a Corporation exempt record, to disclose such exempt record to another party or agency. Such authorization must be in response to a written request from the party that has custody of the copy of the exempt record. Any such request shall specify the record sought to be disclosed and the reasons why disclosure is necessary.

(iii) Any subsidiary depository institution of a bank holding company or a savings and loan holding company may reproduce and furnish a copy of any report of examination of the subsidiary depository institution to the parent holding company without prior approval of the Director of the Division having primary authority over the exempt records and any depository institution may reproduce and furnish a copy of any report of examination of the disclosing depository institution to a majority shareholder if the following conditions are met:

(A) The parent holding company or shareholder owns in excess of 50% of the voting stock of the depository institution or subsidiary depository institution;

(B) The board of directors of the depository institution or subsidiary depository institution at least annually by resolution authorizes the reproduction and furnishing of reports of examination (the resolution shall specifically name the shareholder or parent holding company, state the address to which the reports are to be sent, and indicate that all reports furnished pursuant to the resolution remain the property of the Federal Deposit Insurance Corporation and are not to be disclosed or made public in any manner without the prior written approval of the Director of the Corporation's Division having primary authority over the exempt records as provided in paragraph (b) of this section);

(C) A copy of the resolution authorizing disclosure of the reports is sent to the shareholder or parent holding company; and

(D) The minutes of the board of directors of the depository institution or subsidiary depository institution for the meeting immediately following disclosure of a report state:

(1) That disclosure was made;

(2) The date of the report which was disclosed;

(3) To whom the report was sent; and

(4) The date the report was disclosed.

(iv) With respect to any disclosure that is authorized under paragraph (b)(7) of this section, the Director of the Corporation's Division having primary authority over the exempt records, or designee, shall only permit disclosure of

<sup>6</sup>The form of certification generally is as follows. Additional information may be added:

Pursuant to section 1112(a) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412), I, \_\_\_\_\_ [name and appropriate title] hereby certify that the financial records described below were transferred to (agency or department) in the belief that they were relevant to a legitimate law enforcement inquiry, within the jurisdiction of the receiving agency.

<sup>7</sup>The form of notice generally is as follows.

Additional information may be added:

Dear Mr./Mrs. \_\_\_\_\_:

Copies of, or information contained in, your financial records lawfully in the possession of the Federal Deposit Insurance Corporation have been furnished to (agency or department) pursuant to the Right to Financial Privacy Act of 1978 for the following purpose: \_\_\_\_\_. If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Right to Financial Privacy Act of 1978 or the Privacy Act of 1974.

<sup>8</sup>Whenever the Corporation is subject to a court-ordered delay of the customer notice, the notice shall be sent immediately upon the expiration of the court-ordered delay.

records upon determining that good cause exists. If the exempt record contains information derived from depository institution customer financial records, disclosure is to be authorized only upon the condition that the requesting party and the party releasing the records comply with any applicable provision of the RFPA. Before authorizing the disclosure, the Director (or designee) may require that both the party having custody of a copy of a Corporation exempt record and the party seeking access to the record agree to such limitations as the Director (or designee) deems necessary to protect the confidential nature of the record, the financial integrity of any depository institution to which the record relates and the legitimate privacy interests of any persons named in such record.

(8) *Disclosure by General Counsel.* (i) The Corporation's General Counsel, or designee, may disclose or authorize the disclosure of any exempt record in response to a valid judicial subpoena, court order, or other legal process, and authorize any current or former officer, director, employee, agent of the Corporation, or third party, to appear and testify regarding an exempt record or any information obtained in the performance of such person's official duties, at any administrative or judicial hearing or proceeding where such person has been served with a valid subpoena, court order, or other legal process requiring him or her to testify. The General Counsel shall consider the relevancy of such exempt records or testimony to the litigation, and the interests of justice, in determining whether to disclose such records or testimony. Third parties seeking disclosure of exempt records or testimony in litigation to which the FDIC is not a party shall submit a request for discretionary disclosure directly to the General Counsel.<sup>9</sup> Such request shall specify the information sought with reasonable particularity and shall be accompanied by a statement with supporting documentation showing in detail the relevance of such exempt information to the litigation, justifying good cause for disclosure, and a commitment to be bound by a protective order. Failure to exhaust such administrative request prior to service of a subpoena, court order or other legal process may, in the General Counsel's

discretion, serve as a basis for objection to such subpoena, court order or legal process. Customer financial records may not be disclosed to any federal agency that is not a federal financial supervisory agency pursuant to this paragraph unless notice to the customer and certification as required by the RFPA have been given except where disclosure is subject to the relevant exceptions set forth in the RFPA.

(ii) The General Counsel, or designee, may in his or her discretion and for good cause, disclose or authorize disclosure of any exempt record or testimony by a current or former officer, director, employee, agent of the Corporation, or third party, sought in connection with any civil or criminal hearing, proceeding or investigation without the service of a judicial subpoena, or other legal process requiring such disclosure or testimony, if he or she determines that the records or testimony are relevant to the hearing, proceeding or investigation and that disclosure is in the best interests of justice. Customer financial records shall not be disclosed to any federal agency pursuant to this paragraph that is not a federal financial supervisory agency, unless the records are sought under the Federal Rules of Civil Procedure (28 U.S.C. appendix) or the Federal Rules of Criminal Procedure (18 U.S.C. appendix) or comparable rules of other courts and in connection with litigation to which the receiving federal agency, employee, officer, director, or agent, and the customer are parties, or disclosure is otherwise subject to the relevant exceptions in the RFPA. Where the General Counsel or designee authorizes a current or former officer, director, employee or agent of the Corporation to testify or disclose exempt records pursuant to this paragraph (b)(8), he or she may, in his or her discretion, limit the authorization to so much of the record or testimony as is relevant to the issues at such hearing, proceeding or investigation, and he or she shall give authorization only upon fulfillment of such conditions as he or she deems necessary and practicable to protect the confidential nature of such records or testimony.

(9) *Authorization for disclosure by the Chairman of the Corporation's Board of Directors.* Except where expressly prohibited by law, the Chairman of the Corporation's Board of Directors may in his or her discretion, authorize the disclosure of any Corporation records. Except where disclosure is required by law, the Chairman may direct any current or former officer, director, employee or agent of the Corporation to refuse to disclose any record or to give

testimony if the Chairman determines, in his or her discretion, that refusal to permit such disclosure is in the public interest.

(10) *Limitations on disclosure.* All steps practicable shall be taken to protect the confidentiality of exempt records and information. Any disclosure permitted by paragraph (b) of this section is discretionary and nothing in paragraph (b) of this section shall be construed as requiring the disclosure of information. Further, nothing in paragraph (b) of this section shall be construed as restricting, in any manner, the authority of the Board of Directors, the Chairman of the Board of Directors, the Director of the Corporation's Division having primary authority over the exempt records, the Corporation's General Counsel, or their designees, or any other Corporation Division or Office head, in their discretion and in light of the facts and circumstances attendant in any given case, to require conditions upon and to limit the form, manner, and extent of any disclosure permitted by this section. Wherever practicable, disclosure of exempt records shall be made pursuant to a protective order and redacted to exclude all irrelevant or non-responsive exempt information.

#### § 309.7 Service of process.

(a) *Service.* Any subpoena or other legal process to obtain information maintained by the FDIC shall be duly issued by a court having jurisdiction over the FDIC, and served upon either the Executive Secretary (or designee), FDIC, 550 17th Street, NW., Washington, DC 20429, or the Regional Director or Regional Manager of the FDIC region where the legal action from which the subpoena or process was issued is pending. A list of the FDIC's regional offices is available from the Office of Corporate Communications, FDIC, 550 17th Street, NW., Washington, DC 20429 (telephone 202-898-6996). Where the FDIC is named as a party, service of process shall be made pursuant to the Federal Rules of Civil Procedure, and upon the Executive Secretary (or designee), FDIC, 550 17th Street NW., Washington, DC 20429, or upon the agent designated to receive service of process in the state, territory, or jurisdiction in which any insured depository institution is located. Identification of the designated agent in the state, territory, or jurisdiction may be obtained from the Office of the Executive Secretary or from the Office of the General Counsel, FDIC, 550 17th Street NW., Washington, DC 20429. The Executive Secretary (or designee), Regional Director or designated agent shall immediately forward any

<sup>9</sup>This administrative requirement does not apply to subpoenas, court orders or other legal process issued for records of depository institutions held by the FDIC as Receiver or Conservator. Subpoenas, court orders or other legal process issued for such records will be processed in accordance with State and Federal law, regulations, rules and privileges applicable to FDIC as Receiver or Conservator.

subpoena, court order or legal process to the General Counsel.

(b) *Notification by person served.* If any current or former officer, director, employee or agent of the Corporation, or any other person who has custody of exempt records belonging to the FDIC, is served with a subpoena, court order, or other process requiring that person's attendance as a witness concerning any matter related to official duties, or the production of any exempt record of the Corporation, such person shall promptly advise the Office of the Corporation's General Counsel of such service, of the testimony and records described in the subpoena, and of all relevant facts which may be of assistance to the General Counsel in determining whether the individual in question should be authorized to testify or the records should be produced. Such person should also inform the court or tribunal which issued the process and the attorney for the party upon whose application the process was issued, if known, of the substance of this section.

(c) *Appearance by person served.* Absent the written authorization of the Corporation's General Counsel, or designee, to disclose the requested information, any current or former officer, director, employee, or agent of the Corporation, and any other person having custody of exempt records of the Corporation, who is required to respond to a subpoena, court order, or other legal process, shall attend at the time and place therein specified and respectfully decline to produce any such record or give any testimony with respect thereto, basing such refusal on this section.

By Order of the Board of Directors.

Dated at Washington, DC this 27th day of June, 1995.

Federal Deposit Insurance Corporation.

**Jerry L. Langley,**

*Executive Secretary.*

[FR Doc. 95-16329 Filed 7-5-95; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### 14 CFR Part 234

[Docket 50053]

RIN 2137-AC67

#### Airline Service Quality Performance Reports

**AGENCY:** Department of Transportation.

**ACTION:** Extension of comment period.

**SUMMARY:** This notice announces that the Bureau of Transportation Statistics is extending from July 5 to August 5,

1995, the deadline for submitting comments to the notice of proposed rulemaking concerning reporting by air carriers concerning their on-time performance.

**DATES:** Comments are now due August 5, 1995.

**ADDRESSES:** Comments should be submitted in duplicate to the Docket Clerk, Docket 50053, room PL 401, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Bernard Stankus, Office of Airline Information, K-25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4387.

**SUPPLEMENTARY INFORMATION:** On June 5, 1995 (60 FR 29514), the Office of Airline Statistics, Research and Special Programs Administration of DOT (now the Office of Airline Information, Bureau of Transportation Statistics; see 60 FR 30195, June 8, 1995) published a notice of proposed rulemaking (NPRM) to amend the on-time flight performance reporting requirements. The central issue was whether air carriers should exclude mechanical delays from their on-time performance report. The public was given 30 days to respond to the NPRM.

On June 28, 1995, the Department received three different requests for extension of the comment period. In a letter to Secretary Peña, Senator Mark O. Hatfield asked that the comment period be extended 60 days. He noted that when DOT proposed changes to the on-time report process in the past, the docket was open for substantially longer periods of time. He further stated that the current proposal merits the same type of thoughtful and thorough review by all interested parties.

In a second letter to Secretary Peña, the National Consumers League asked that the comment period be extended for 60 days. It stated that it only recently became aware of the proposed change to exclude mechanical delays and cancellations from the carrier on-time performance ratings. Because on-time performance is now the number one concern of business travelers, the National Consumers League believes the public should be given more time to respond to the rulemaking.

American Airlines, Delta Air Lines, United Airlines and USAir filed a joint submission asking the Department to extend the comment period to September 5, 1995. The joint carriers stated that they need additional time to prepare comments that fully take into account the history of this issue, as well

as the merits of the Department's proposal. In addition, they note that we are now entering the peak vacation period and that critical personnel have not been available during the full period between issuance of the NPRM and the current comment closing date.

Two answers were filed opposing the extension. Southwest Airlines stated that the joint carriers failed to provide a credible basis for an extension and criticized the last minute nature of the filing. It stated that the "peak vacation period" argument is both unconvincing and irrelevant, and that the carriers are seeking a lengthy extension in order to delay a ruling. They concluded by stating that all parties deserve certainty on this issue instead of an unending period of further debate and skirmishing.

Northwest Airlines strongly opposed the request for extension. It stated that the Department has before it a pressing safety issue that requires immediate action, and that neither procrastination nor vacation schedules should stand in the way of the Department's resolution of this issue.

We are granting a one-month extension. This action serves to facilitate the submission of informed comments, while not unduly delaying the proceeding. DOT believes this action will not prejudice the position of any party.

Issued in Washington on June 30, 1995.

**Timothy E. Carmody,**

*Acting Director, Office of Airline Information, Bureau of Transportation Statistics.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 944

#### Utah Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Utah's proposed rules pertain to normal husbandry practices and Utah's "Vegetation Information Guidelines."