

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

**Circular No. 79-132
August 8, 1979**

PROPOSED REGULATION S

**Reimbursement Procedures for Financial Institutions Providing
Customer Records to the Federal Government**

**TO ALL BANKS, OTHER CREDITORS,
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:**

The Board of Governors has proposed a new regulation to set reimbursement rates for costs incurred by financial institutions in assembling and providing customer financial records to an authority of the federal government. The Board was directed by the Right to Financial Privacy Act of 1978 (Title XI of Public Law 95-630) to provide by regulation the rates and conditions for such reimbursement. Under the proposed Regulation S, search costs would be reimbursed at \$5.00 an hour or fraction thereof, reproduction costs would be set at \$.10 per page, and reimbursement for transportation costs would be limited to actual costs.

Comments on the new regulation should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and should refer to Docket No. R-0243. Comments must be received by September 10, 1979.

Printed on the following pages is a copy of the Board's press release which describes proposed Regulation S. Enclosed is the text of the Board's proposed rule as it was submitted for publication in the *Federal Register*.

Any questions concerning the proposal should be directed to the Consumer Affairs Section of our Bank Supervision and Regulations Department, Ext. 6171.

Sincerely yours,

Robert H. Boykin

First Vice President

Enclosure

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-492-4403 (intrastate) and 1-800-527-4970 (interstate). For calls placed locally, please use 651 plus the extension referred to above.



FEDERAL RESERVE

press release

For immediate release

August 3, 1979

The Federal Reserve Board today announced proposed rules under the new Financial Privacy Right Act for reimbursing financial institutions that provide reports on their customers' financial records requested or required by the Federal government.

The Board asked for comment by September 10, 1979.

The Act^{1/} places restrictions on Federal government access to the financial records of individuals maintained by financial institutions, by requiring that, with certain exceptions, Federal authorities seeking such information must follow prescribed procedures.

The Act also authorizes, with certain exceptions, reimbursement to financial institutions for the reasonably necessary costs of such reports. It directs the Federal Reserve Board to establish, by regulation, the rules for reimbursement.

The Board proposed:

- Financial institutions would be entitled to payment for reasonably necessary costs directly incurred in assembling or providing required, requested or authorized financial records. (The Federal financial supervisory agencies are exempt from the Act's restrictions in the exercise of their supervisory, regulatory or monetary functions.)
- Only a financial institution would be entitled to reimbursement.
- The rate of reimbursement for search costs would be \$5 an hour or fraction of an hour and would be limited to the personnel time spent locating, retrieving and reproducing documents or information required or requested by the Federal government.

^{1/} Title XI of the Financial Institutions Regulatory and Interest Rate Control Act of 1978.

--Reimbursement for reproduction costs would be 10 cents per page.

--Reimbursement for transportation costs would be limited to actual costs.

The Board particularly invited comment on how reimbursement should be set and how it could be varied over time.

The draft regulation provides 11 types of exemptions from cost reimbursement. These are set forth in the attached copy of the draft regulation.

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TITLE 12--BANKS AND BANKING

CHAPTER 11--FEDERAL RESERVE SYSTEM

SUBCHAPTER A--BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[12 C.F.R. Part 219]

[DOCKET NO. R-0243]

NOTICE OF PROPOSED RULEMAKING

REGULATION S

REIMBURSEMENT TO FINANCIAL INSTITUTIONS FOR
ASSEMBLING OR PROVIDING FINANCIAL RECORDS

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System proposes to issue a new regulation required by section 1115 of the Right to Financial Privacy Act (12 U.S.C. § 3415) to provide rates and conditions for reimbursement of reasonably necessary costs, directly incurred by financial institutions in assembling or providing customer financial records to a Federal Government authority.

The Right to Financial Privacy Act of 1978 (Title XI of Public Law 95-630) provides a limited protection against Federal Government access to individuals' financial records maintained by financial institutions by requiring that, with certain exceptions, Federal authorities seeking disclosure of these records must follow procedures prescribed by the Act.

For the first time, the Act and this proposed regulation require reimbursement on a broad scale to financial institutions for the cost of assembling or providing this financial information.

DATE: Comments must be received by September 10, 1979.

ADDRESS: Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should include the Docket Number R-0243. Such material will be made available for inspection and copying upon request except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR § 261.6(a)).

FOR FURTHER INFORMATION, CONTACT: MaryEllen A. Brown, Senior Counsel, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3608).

SUPPLEMENTARY INFORMATION: The Right to Financial Privacy Act of 1978 (the "Act") restricts Federal Government access to individual customers' financial records maintained by financial institutions. Access to or disclosure of these financial records must be pursuant to one of the procedures authorized by the Act: (1) valid written customer authorization; (2) administrative summons or subpoena; (3) valid search warrant; (4) judicial subpoena; and (5) formal written request. The Act also restricts transfer of financial information thus obtained from one Federal agency to another.

Except in the case of a search warrant or court-ordered delay, the bank customer is also given notice of his or her rights to challenge the Federal Government's access and advice about how to effectuate these challenge rights.

A financial institution is prohibited from releasing a customer's financial records until the Federal agency seeking the records certifies in writing to the financial institution that it has fully complied with the Act.

Various exceptions to the Act's requirements are provided, including one that exempts the Board and other Federal financial supervisory agencies from these restrictions in the exercise of their supervisory, regulatory, or monetary functions.

Civil penalties, injunctive relief, and employee disciplinary proceedings are authorized as remedies for violations of the Act.

The Act also authorizes, with certain exceptions, reimbursement to financial institutions for reasonably necessary costs directly incurred in assembling or providing required, requested, or authorized financial records.

Pursuant to this proposed regulation, financial institutions would be entitled to payment for reasonably necessary costs directly incurred to search for, reproduce, or transport financial records sought by a Federal authority.

Payment would be made only at the rates and under the conditions set forth in the proposed regulation. Only a financial institution would be entitled to reimbursement.

The rate of reimbursement for search costs would be \$5 per hour or fraction of an hour and would be limited to the total amount of personnel time spent in locating, retrieving and reproducing documents or information required or requested by the Government authority.

Specific salaries of personnel would not be included in search costs. In addition, search costs would not include salaries, fees, or similar costs for analysis of material or for managerial or legal advice, expertise, research, or time spent for any of these activities. Reimbursement for reproduction costs would be at the rate of 10 cents per page. Reimbursement for transportation costs would be limited to actual costs, as specified.

Financial institutions should keep an accurate record of personnel search time, computer costs, number of reproductions made, and transportation costs, by each request, and should include on the itemized bill or invoice the name of the customer to whom it relates. After a financial institution receives a Certificate of Compliance with the Act from the Government authority seeking access to financial records, the financial institution may submit an itemized bill or invoice to that Federal authority. If the financial institution does not receive a Certificate of Compliance because the Federal agency has withdrawn its request for disclosure or a customer has revoked his or her authorization, or because a customer has successfully challenged disclosure to the Federal agency, the financial institution may submit an itemized bill or invoice for assembling financial records up to the time that the Federal agency notifies it that its request is withdrawn or defeated.

The proposed regulation does not address the issue of internal procedures for Federal agencies because this issue is expected to be resolved by agencies' internal audit procedures.

The statute provides eleven types of exceptions from cost reimbursement which are incorporated into this draft regulation. Reimbursement for financial records sought pursuant to any of these exceptions is, accordingly, also excepted from this regulation.

This draft regulation is issued pursuant to 5 U.S.C. § 553, 12 CFR § 262.2 and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures (44 Fed. Reg. 3957). Since the regulation will reduce cost burdens to financial institutions by reimbursing them for searching for and reproducing customers' financial records as required or requested by the Federal Government or as authorized by the customer, and in view of the fact that a final regulation must be adopted by October 1, 1979, expedited rulemaking procedures were followed in issuing this draft regulation, in accordance with the Board's Policy Statement. The Right to Financial Privacy Act requires the Board to establish, by regulation, the rates and conditions of cost reimbursement; thus, nonregulatory alternatives were not considered during planning of these regulations.

Comments are invited particularly about how the reimbursement should be set and how it could be permitted to vary over time. Comments are also invited about any other provision of the draft regulation. All comments and information on this proposal should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received by September 10, 1979. All material submitted should include the Docket Number R-0243.

Under the authority of section 1115 of the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3415, the Board proposes to amend Title 12 of the Code of Federal Regulations by adding a new Part 219 (to be known as Regulation S) to read as follows:

REGULATION S

PART 219--REIMBURSEMENT TO FINANCIAL INSTITUTIONS FOR ASSEMBLING OR PROVIDING FINANCIAL RECORDS

Sec.

- 219.1 Authority, Purpose and Scope
- 219.2 Definitions
- 219.3 Cost Reimbursement
- 219.4 Exceptions
- 219.5 Conditions for Payment
- 219.6 Payment Procedures

§ 219.1 AUTHORITY, PURPOSE AND SCOPE

This Part is issued by the Board of Governors of the Federal Reserve System under section 1115 of the Right to Financial Privacy Act of 1978 (the "Act") (12 U.S.C. § 3415). It establishes the rates and conditions for reimbursement of reasonably necessary costs directly incurred by financial institutions in assembling or providing customer financial records to a Government authority.

§219.2 DEFINITIONS

For the purposes of this Part, the following definitions shall apply:

(a) "Financial institution" means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any state or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) "Financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(c) "Government authority" means any agency or department of the United States, or any officer, employee or agent thereof, except for Federal financial supervisory agencies, officers, employees, or agents, having statutory authority to examine the financial condition of a financial institution.

(d) "Person" means an individual or a partnership of five or fewer individuals.

(e) "Customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name;

(f) "Directly incurred costs" means costs incurred solely and necessarily as a consequence of searching for, reproducing or transporting books, papers, records, or data, in order to comply with legal process or a formal written request or a customer's authorization to produce a customer's financial records, but does not include proportionate allocation of fixed costs (overhead, equipment depreciation, etc.). If a financial institution has financial records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution.

§ 219.3 COST REIMBURSEMENT

Except as hereafter provided, a Government authority requiring or requesting access to financial records pertaining to a customer shall pay to the financial institution that assembles or provides the financial records a fee for reimbursement of reasonably necessary costs which have been directly incurred according to the following schedule:

(a) Search costs. (1) Reimbursement of search costs shall be the total amount of personnel direct time incurred in locating and retrieving records or information.

(2) The rate for search costs is \$5 per hour or fraction of an hour and is limited to the total amount of personnel time spent in locating and retrieving documents or information required or requested. Specific salaries of such persons shall not be included in search costs. In addition, search costs do not include salaries, fees, or similar costs for analysis of material or for managerial or legal advice, expertise, research, or time spent for any of these activities. If itemized separately, search costs may include the actual cost

of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies; however, personnel time for computer search may be paid for only at the rate specified in this paragraph.

(b) Reproduction costs. (1) Reimbursement for reproduction costs shall be for costs incurred in making copies or duplicates of documents required or requested.

(2) The rate for reproduction costs for making copies or duplicates of required or requested documents is 10 cents for each page. Photographs, films, and other materials are reimbursed at actual cost.

(c) Transportation costs. Reimbursement for transportation costs shall be for (1) necessary costs, directly incurred, to transport personnel to locate and retrieve the information required or requested; and (2) necessary costs, directly incurred solely by the need to convey the required or requested material to the place of examination.

§ 219.4 EXCEPTIONS

A financial institution shall not be reimbursed for costs incurred in assembling or providing financial records or information:

(a) as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary;

(b) in connection with a Government authority's consideration or administration of assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance program; or as an incident to processing an application for assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance agreement; or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, as necessary to permit a responsible Government authority to carry out its responsibilities under the loan, loan guaranty, or loan insurance agreement;

(c) which is not identified with or identifiable as being derived from the financial records of a particular customer;

(d) to a Federal financial supervisory agency in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution;

(e) in accordance with procedures authorized by the Internal Revenue Code, but reimbursement for disclosure of financial records to the Internal Revenue Service is provided for by procedures of that agency;

(f) required to be reported in accordance with any Federal statute or rule promulgated thereunder;

(g) sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the customer are parties;

(h) sought by a Government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of Title 5, United States Code, and to which the Government authority and the customer are parties;

(i) sought by a Government authority, in accordance with the Right to Financial Privacy Act procedures and for a legitimate law enforcement inquiry, and limited only to the name, address, account number and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)); the International Emergency Economic Powers Act (Title II, Public Law 95-223); or section 5 of the United Nations Participation Act (22 U.S.C. 287(c));

(j) sought by a Government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records or at a legal entity which is not a customer;

(k) until November 10, 1980, financial records and information sought by the Securities and Exchange Commission.

§ 219.5 CONDITIONS FOR PAYMENT

(a) Payment for reasonably necessary, directly incurred costs to financial institutions shall be limited to material required or requested.

(b) Payment shall be made only for costs that are both directly incurred and reasonably necessary. In determining whether costs are reasonably necessary, search, reproduction, and transportation costs shall be considered separately.

(c) No payment shall be made until the financial institution satisfactorily complies with the legal process or formal written request, or customer authorization, except that in the case where the legal process or formal written request is withdrawn, or the customer authorization revoked, or where the customer successfully challenges access by or disclosure to a Government authority, the financial institution shall be reimbursed for reasonably necessary costs directly incurred in assembling

financial records required or requested to be produced up to the time that the Government authority notifies the institution that the legal process or request is withdrawn or defeated, or that the customer has revoked his or her authorization.

(d) No payment shall be made unless the financial institution submits an itemized bill or invoice showing specific details concerning the search, reproduction, and transportation costs.

§ 219.6 PAYMENT PROCEDURES

(a) At the time a Government authority serves its legal process or request, the Government authority shall notify the financial institution that an itemized bill or invoice must be submitted for payment and shall furnish an office address for this purpose;

(b) If a Government authority withdraws the legal process or formal written request, or if the customer revokes his or her authorization, or if the legal process or request has been successfully challenged by the customer, the Government authority shall immediately notify the financial institution of these facts, and shall also notify the financial institution that the itemized bill or invoice must be submitted for payment of costs incurred up to the time that the financial institution receives this notice.

By order of the Board of Governors, effective August 2, 1979.

(Signed) Theodore E. Allison

Theodore E. Allison
Secretary of the Board

[SEAL]