

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 79-194
December 4, 1979

NEW 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:

Effective October 1, 1979, the Board of Governors of the Federal Reserve System adopted Regulation S to set reimbursement rates for costs incurred by financial institutions in assembling and providing customer financial records to an authority of the federal government. Under Regulation S, a financial institution's search and processing costs will be reimbursed at the rate of \$10.00 per hour per person, computed on the basis of \$2.50 per quarter hour or fraction thereof. Reproduction costs will be set at \$.15 per page, and reimbursement for transportation costs will be limited to actual costs.

Enclosed is the printed pamphlet for Regulation S. Member banks and others that maintain Regulations Binders should file this pamphlet in their binders. Any questions concerning Regulation S 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: 1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

**BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM**

**REIMBURSEMENT TO FINANCIAL INSTITUTIONS
FOR ASSEMBLING OR PROVIDING FINANCIAL RECORDS**

REGULATION S

(12 CFR 219)

As adopted effective October 1, 1979



Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve district in which the inquiry arises.

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STATUTORY AUTHORITY

This regulation is issued under the authority of section 1115 of the Right to Financial Privacy Act of 1978 (12 U.S.C. §3415), which reads as follows:

SEC 1115. (a) Except for records obtained pursuant to section 1103(d) or 1113 (a) through (h), or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by this title a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(b) This section shall take effect on October 1, 1979.

REGULATION S

(12 CFR 219)

As adopted effective October 1, 1979

REIMBURSEMENT TO FINANCIAL INSTITUTIONS FOR ASSEMBLING OR PROVIDING FINANCIAL RECORDS*

SECTION 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.

SECTION 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.

(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. "Customer" does not include corporations or partnerships comprised of more than five persons.

(f) "Directly incurred costs" means costs incurred solely and necessarily as a consequence of searching for, reproducing or transporting books, papers, records, or other 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. The term does not include any 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.

SECTION 219.3—COST REIMBURSEMENT

Except as hereinafter 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 and processing costs.** (1) Reimbursement of search and processing costs shall be the total amount of personnel direct time incurred in locating and retrieving, reproducing, packaging and preparing financial records for shipment. (2) The rate for search and processing costs is \$10 per hour per person, computed on the basis of \$2.50 per quarter hour or fraction thereof, and is limited

* This text corresponds to the Code of Federal Regulations, Title 12, Chapter II, Part 219, cited as 12 CFR 219. The words "this Part", as used herein, mean Regulation S.

to the total amount of personnel time spent in locating and retrieving documents or information or reproducing or packaging and preparing documents for shipment where required or requested by a government authority. Specific salaries of such persons shall not be included in search costs. In addition, search and processing 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 and processing 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 of documents required or requested. (2) The rate for reproduction costs for making copies of required or requested documents is 15 cents for each page, including copies produced by reader/printer reproduction processes. 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.

SECTION 219.4—EXCEPTIONS

A financial institution is not entitled to reimbursement under the Act for costs incurred in assembling or providing the following financial records or information:

(a) **Security interests, bankruptcy claims, debt collection.** Any financial records provided 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) **Government loan programs.** Financial records provided 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) **Nonidentifiable information.** Financial records that are not identified with or identifiable as being derived from the financial records of a particular customer.

(d) **Financial supervisory agencies.** Financial records disclosed to a financial supervisory agency in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

(e) **Internal Revenue summons.** Financial records disclosed in accordance with procedures authorized by the Internal Revenue Code.

(f) **Federally required reports.** Financial records required to be reported in accordance with any federal statute or rule promulgated thereunder (such as the Bank Secrecy Act).

(g) **Government civil or criminal litigation.** Financial records 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) **Administrative agency subpoenas.** Financial records 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) **Identity of accounts in limited circumstances.** Financial information 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) **Investigation of a financial institution or its noncustomers.** Financial records 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) **General Accounting Office requests.** Financial records sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

(1) **Securities and Exchange Commission requests.** Until November 10, 1980, financial records sought by the Securities and Exchange Commission.

SECTION 219.5—CONDITIONS FOR PAYMENT

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

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

(c) **Compliance with legal process, request, or authorization.** 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 is 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 prior 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) **Itemized bill or invoice.** No payment shall be made unless the financial institution submits an itemized bill or invoice showing specific details concerning the search and processing, reproduction, and transportation costs.

SECTION 219.6—PAYMENT PROCEDURES

(a) **Notice to submit invoice.** Promptly following a government authority's service of 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) **Special Notice.** 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 promptly 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 prior to the time that the financial institution receives this notice.

SECTION 219.7—EFFECTIVE DATE

This regulation shall become effective October 1, 1979.