



**FEDERAL RESERVE BANK
OF DALLAS**

HELEN E. HOLCOMB
FIRST VICE PRESIDENT AND
CHIEF OPERATING OFFICER

DALLAS, TEXAS
75265-5906

August 1, 1996

Notice 96-71

TO: The Chief Operating Officer of
each financial institution in the
Eleventh Federal Reserve District

SUBJECT

**Final Amendments to Regulation S
(Reimbursement to Financial Institutions for Assembling
or Providing Financial Records)**

DETAILS

The Board of Governors of the Federal Reserve System has issued final amendments to Subpart A of Regulation S (Reimbursement to Financial Institutions for Assembling or Providing Financial Records). These amendments, which became effective July 12, 1996, update the fees to be charged and streamline the subpart generally.

ATTACHMENT

A copy of the Board's notice as it appears on pages 29638-41, Vol. 61, No. 114, of the *Federal Register* dated June 12, 1996, is attached.

MORE INFORMATION

For more information, please contact James Dean at (214) 922-6237. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely,

Helen E. Holcomb

FEDERAL RESERVE SYSTEM**12 CFR Part 219****[Regulation S; Docket No. R-0906]****Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has approved amendments to Subpart A of Regulation S, which implements the requirement under the Right to Financial Privacy Act (RFPA) that the Board establish the rates and conditions under which payment shall be made by a government authority to a financial institution for assembling or providing financial records pursuant to RFPA. These amendments update the fees to be charged and streamline the subpart generally.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel (202/452-2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551. For users of the Telecommunication Device for the Deaf (TDD), please contact Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:**Background**

Section 1115 of the RFPA (12 U.S.C. 3415) requires the Board to establish, by regulation, the rates and conditions under which payment is made by a Government authority to a financial institution for searching for, reproducing, or transporting data required or requested under the RFPA. Shortly after the RFPA was adopted, the Board issued Regulation S (12 CFR 219) to implement this provision (44 FR 55812, September 28, 1979). In January 1995, the Board adopted a new Subpart B of Regulation S¹ and designated this part of Regulation S as Subpart A (60 FR 231, January 3, 1995). No substantive changes were made in that rulemaking to the newly designated Subpart A.

Pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325 (12 U.S.C. 4803), the Board reviewed Subpart A of Regulation S and issued for comment proposed amendments to update it (60 FR 65599,

December 20, 1995). The proposed amendments eliminated unnecessary provisions and updated the rates to be paid and the exceptions to the provisions of this Subpart.

Summary of comments: The Board received 21 comments on the proposed revisions—19 from banks or bank holding companies, one from a trade association, and one from a Federal Reserve Bank. All comments supported updating and streamlining the provisions of the regulation. Several comments, however, requested further changes in the proposed regulation. These requests for additional changes covered two categories—the proposed fee structure, and the exemptions from the fees.

Fees. Ten of the 21 comments requested further changes in the fee schedule. The current fees are \$10.00 per hour for search and processing time, and \$.15 per page for reproduction. The proposed fees provided for two levels of reimbursement for search and processing time: clerical time at \$11.00 per hour, and managerial time at \$17.00 per hour. Proposed fees for reproduction were left at \$.15 per page. Of the nine comments that specifically discussed the reimbursement rate for search and processing, six supported the proposed fees and three requested increased fees. Of the ten comments that focused on the proposed reproduction fees, two supported the proposed fees and eight requested that they be raised. The suggested reproduction fees ranged from \$.25 to \$3.00 per page for paper copies, and \$.25 to \$3.00 for microfiche copies.

Other miscellaneous comments on the fee schedule included two comments requesting that fees be periodically adjusted to account for inflation, a request for a definition of the terms "clerical/technical" and "manager/supervisory", a request that a new category be added for reimbursement for legal advice, and a request that the regulation specify that search/processing time should be billed in 15-minute increments.

Exceptions. The proposed regulation updated the list of statutory exceptions wherein a financial institution is not entitled to reimbursement under the RFPA. Eight of the 21 commenters objected to these exceptions, stating that they cover the vast majority of the searches required. These objections focused primarily on the exception for requests from the IRS, and requests for a corporation's banking records. The American Bankers Association, while acknowledging that the exceptions are set by statute, not the Board, stated that these exceptions "effectively exclude

¹ In a rulemaking issued on April 1, 1996 (61 FR 14382), the effective date of Subpart B was delayed until May 28, 1996.

98% of all situations in which banks gather such records."

Based upon the comments received, the Board has made some adjustments to the reimbursement schedule.

I. Definitions

The definitions in Subpart A reiterate the statutory definitions from the RFPA for the applicable terms of this Subpart. The definition for "directly incurred costs" has been removed and incorporated into the section concerning cost reimbursement.

II. Cost Reimbursement

This section has been streamlined and reorganized to place the rates in a separate Appendix A for clarity and ease of amendment when updating the rates. The amendments also recognize that courts issuing orders or subpoenas in connection with grand jury proceedings must pay the rates set by Subpart A.

III. Rates

The Board has established uniform rates for all depository institutions, regardless of size or location, in the belief that administration of a complex fee schedule would be difficult.

A. Reproduction

The rates for reproduction set forth in Appendix A to § 219.3 have been increased based upon the comments received. Eight out of ten comments on the duplication rates stated that they were too low. There was not a consensus, however, among the commenters on the appropriate amount of the increase: two suggested \$.25 per page, two suggested \$.50 per page, two suggested \$1.00 or more per page, and two just requested a minimal increase in the rate. The comments recommending significantly higher fees did not provide supporting information on the direct costs of duplication, and the statute provides for reimbursement of "costs * * * directly incurred in * * * reproducing * * *." A plurality of the comments, however, recommended a minimal increase in the fees, and some provided supporting information on costs. Therefore, the Board has raised the reimbursement rate for photocopying to \$.25 per page. Other commenters suggested that the reimbursement rate for duplication of microfiche also was inadequate, based upon the costs to the bank. Accordingly, the Board modified the reimbursement schedule to increase the rate for reproduction of paper copies of microfiche from \$.15 to \$.25 to match the photocopying rate, and increase the

rate for duplication of microfiche from \$.30 to \$.50 per microfiche.

B. Search and Processing

The fees for search and processing have not been changed from those issued for comment. These rates are separated into two categories—clerical/technical and manager/supervisory. Any search for sensitive customer records is likely to involve both clerical staff and managerial staff, who are paid at different levels. The rates set for this reimbursement were calculated using the 1994 Bank Cash Compensation Survey done by the Bank Administration Institute (BAI). Based upon the job descriptions in the Cash Compensation Survey, the position of Supervisor, Bookkeeping² was used to calculate the managerial rate. The calculation was made based upon the total compensation (with bonus) for all banks on a national average (\$27,600) divided by 2080 hours, adjusted up by 25% to cover benefits, and further adjusted by 3% for inflation since 1994. The clerical rate was calculated in the same way, but using an average of the two job positions of Clerk II³ (Bookkeeping and Operations @ \$18,100) and Clerk I⁴ (Bookkeeping and Operations @ \$15,100).

IV. Exceptions

This section has been updated to reflect changes in the exceptions listed by the RFPA. Although many comments were critical of the listed exceptions, the Board cannot change or eliminate them, because they are set by statute. They are merely set forth in the regulation to assist depository institutions in correctly applying the reimbursement schedule.

V. Conditions for Payment and Payment Procedures

One commenter suggested that the rule require time to be billed in 15-

²BAI describes this position as follows: "Direct supervision of assigned *nonexempt* staff in the bookkeeping area with particular emphasis on work flow to meet time deadlines. Includes training staff, planning work schedules, recommending and implementing staff needs, pay raises, etc. Coordinates the section's activities with other areas of the bank. Handles the more involved problems and calls from dissatisfied customers."

³BAI describes this position as follows: "Performs a variety of clerical duties in the bookkeeping department. Duties may include filing checks, overdrafts and stop payments, reconciling, computerized operations, preparing statements and reports, etc. May do exclusively DDA, adjustments, reconciling, etc. or a combination of activities. Handles more complex and difficult customer problems; requires *minimal* supervision."

⁴BAI describes this position as follows: "Performs the same duties of a Bookkeeping and Operations Clerk II only may have less experience. Requires *direct* supervision."

minute increments, as the existing regulation does. Accordingly, the Board has amended the section on itemized billing to state that the time should be billed in 15-minute increments. No other changes have been made to these two sections.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule confers a benefit on financial institutions, including small financial institutions, by providing for reimbursement of certain costs incurred in complying with a requirement to assemble and produce financial records.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget.

The Right to Financial Privacy Act mandates that each financial institution maintain a record of instances in which it releases a consumer's financial information to a government agency. Generally, the institution may not release records until the government agency has notified the consumer of its intent to request the record, together with the reason for the request. Normally, the agency may not obtain records unless it has a subpoena, a search warrant, or an authorization from the consumer.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with the Right to Financial Privacy Act is 7100-0203.

Because the records would be maintained at banks, no issue of confidentiality under the Freedom of Information Act arises.

This final regulation, 12 CFR part 219, has no effect upon the paperwork burden associated with the Recordkeeping and Disclosure Requirements in Connection with the Right to Financial Privacy Act. That hour burden is estimated to be 22 minutes per response. It is estimated that the frequency of response at state member banks is 30 responses per year. Thus the annual hour burden across the 1,042 state member banks is estimated to be 11,462 hours. Based on an hourly cost of \$20, the annual cost to the public is estimated to be \$229,240.

Send comments regarding the burden estimate, or any other aspect of this collection, including suggestions for reducing the burden, to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551 and to the Office of Management and Budget, Paperwork Project (7100-0203), Washington, DC 20503.

List of Subjects in 12 CFR Part 219

Banks, banking, Currency, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR Part 219, as amended at 60 FR 231 and 44144, and 61 FR 14382, effective May 28, 1996, is amended as set forth below.

PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS (REGULATION S)

Subpart A—Reimbursement to Financial Institutions for Providing Financial Records

1. The authority citation for Subpart A continues to read as follows:

Authority: 12 U.S.C. 3415.

2. Subpart A is amended by revising §§ 219.2 through 219.6 to read as follows:

§ 219.2 Definitions.

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

Customer means any person or authorized representative of that person who uses any service of a financial institution, or for whom a financial institution acts 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.

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 association, 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.

Financial record means an original or 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.

Government authority means any agency or department of the United States, or any officer, employee or agent thereof.

Person means an individual or a partnership of five or fewer individuals.

§ 219.3 Cost reimbursement.

(a) **Fees payable.** Except as provided in § 219.4, a government authority, or a court issuing an order or subpoena in connection with grand jury proceedings, seeking access to financial records pertaining to a customer shall reimburse the financial institution for reasonably necessary costs directly incurred in searching for, reproducing or transporting books, papers, records, or other data as set forth in this section. The reimbursement schedule for a financial institution is set forth in Appendix A to this section. 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 and may be included in the reimbursement.

(b) **Search and processing costs.** (1) Reimbursement of search and processing costs shall cover the total amount of personnel time spent in locating, retrieving, reproducing, and preparing financial records for shipment. Search and processing costs shall not cover analysis of material or legal advice.

(2) 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 rates specified in Appendix A to this section.

(c) **Reproduction costs.** The reimbursement rates for reproduction costs for requested documents are set forth in Appendix A to this section. Copies of photographs, films, computer tapes, and other materials not listed in Appendix A to this section are reimbursed at actual cost.

(d) **Transportation costs.** Reimbursement for transportation costs shall be for the reasonably necessary costs directly incurred to transport personnel to locate and retrieve the requested information, and to convey such material to the place of examination.

Appendix A to § 219.3—Reimbursement Schedule

Reproduction:

Photocopy, per page—\$.25

Paper copies of microfiche, per frame—\$.25

Duplicate microfiche, per microfiche—\$.50

Computer diskette—\$5.00

Search and Processing:

Clerical/Technical, hourly rate—\$11.00

Manager/Supervisory, hourly rate—\$17.00

§ 219.4 Exceptions.

A financial institution is not entitled to reimbursement under this subpart for costs incurred in assembling or providing financial records or information related to:

(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 that are necessary to permit the appropriate government authority to carry out its responsibilities under a government loan, loan guaranty or loan insurance program.

(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.

(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 5 U.S.C. 554, and to which the government authority and the customer are parties.

(i) **Investigation of financial institution or its noncustomer.** 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 an entity that is not a customer as defined in § 219.2 of this part.

(j) *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.

(k) *Federal Housing Finance Board requests.* Financial records or information sought by the Federal Housing Finance Board (FHFB) or any of the Federal home loan banks in the exercise of the FHFB's authority to extend credit to financial institutions or others.

(l) *Department of Veterans Affairs.* The disclosure of the name and address of any customer to the Department of Veterans Affairs where such disclosure is necessary to, and used solely for, the proper administration of benefits programs under laws administered by that Department.

§ 219.5 Conditions for payment.

(a) *Direct costs.* Payment shall be made only for costs that are both directly incurred and reasonably necessary to provide requested material. Search and processing, reproduction, and transportation costs shall be considered separately when determining whether the costs are reasonably necessary.

(b) *Compliance with legal process, request, or authorization.* No payment may be made to a financial institution until it satisfactorily complies with the legal process, the formal written request, or the customer authorization. When the legal process or formal written request is withdrawn, or the customer authorization is revoked, or where the customer successfully challenges disclosure to a grand jury or government authority, the financial institution shall be reimbursed for the reasonably necessary costs incurred in assembling the requested financial records prior to the time the financial institution is notified of such event.

(c) *Itemized bill or invoice.* No reimbursement is required unless a financial institution submits an itemized bill or invoice specifically detailing its search and processing, reproduction, and transportation costs. Search and processing time should be billed in 15-minute increments.

§ 219.6 Payment procedures.

(a) *Notice to submit invoice.* Promptly following a service of legal process or request, the court or government authority shall notify the financial institution that it must submit an itemized bill or invoice in order to obtain payment and shall furnish an address for this purpose.

(b) *Special notice.* If a grand jury or government authority withdraws the legal process or formal written request, or if the customer revokes the authorization, or if the legal process or request has been successfully challenged by the customer, the grand jury or government authority shall promptly notify the financial institution of these facts, and shall also notify the financial institution that it must submit an itemized bill or invoice in order to obtain payment of costs incurred prior to the time of the notice to the financial institution receives this notice.

§ 219.7 [Removed]

3: Section 219.7 is removed.

By order of the Board of Governors of the Federal Reserve System, June 5, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-14688 Filed 6-11-96; 8:45 am]

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