



**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 4**

**Docket ID OCC-2016-0033**

**RIN 1557-AE12**

**Availability of Information Under the Freedom of Information Act**

**AGENCY:** Office of the Comptroller of the Currency

**ACTION:** Interim final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its regulations governing the disclosure of information pursuant to requests made under the Freedom of Information Act (FOIA) to reflect changes to the FOIA made by the FOIA Improvement Act of 2016 and the OPEN FOIA Act of 2009 and to make other technical changes that update the OCC's FOIA regulations.

**DATES:** The interim final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments on the rule must be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments to the OCC by any of the methods set forth below. Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Availability of Information Under the Freedom of Information Act" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- Federal eRulemaking Portal—“Regulations.gov”: Go to *www.regulations.gov*.

Enter “Docket ID OCC-2016-0033” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- E-mail: *regs.comments@occ.treas.gov*.

- Mail: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.

- Hand Delivery/Courier: 400 7<sup>th</sup> Street, SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.

- Fax: (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2016-0033” in your comment. In general, the OCC will enter all comments received into the docket and publish them on the Regulations.gov website without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- Viewing Comments Electronically: Go to *www.regulations.gov*. Enter “Docket ID OCC-2016-0033” in the Search box and click “Search.” Click on “Open Docket Folder”

on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov. The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC, 400 7<sup>th</sup> Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Melissa Lisenbee, Attorney, Legislative and Regulatory Activities Division, (202) 649-5490, or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Freedom of Information Act (FOIA) sets forth the process for obtaining federal agency records, unless the records (or any portion thereof) are protected from disclosure by one of the FOIA’s nine exemptions or by one of its three special law enforcement record exclusions.<sup>1</sup>

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<sup>1</sup> 5 U.S.C. 552 *et seq.*

On June 30, 2016, the FOIA Improvement Act of 2016 (the FOIA Improvement Act or the Act)<sup>2</sup> amended the FOIA to, among other changes, require Federal agencies to make certain records electronically available, extend the time available for a requester to appeal an adverse determination, amend the circumstances under which an agency can assess search and duplication fees, establish FOIA dispute resolution procedures, and establish a new standard for the withholding of information pursuant to a FOIA exemption.

Additionally, under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),<sup>3</sup> the OCC is required to conduct a review at least once every 10 years to identify any outdated or otherwise unnecessary regulations. The OCC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is concluding the current decennial review. As part of its current EGRPRA review, the OCC issued a notice of proposed rulemaking on March 14, 2016, that included proposed technical amendments to the OCC's part 4 FOIA regulations. The OCC did not receive any specific comments on the proposed FOIA amendments, and those changes will be reflected in this rulemaking to the extent they have not been superseded by the FOIA Improvement Act.<sup>4</sup>

Finally, the OPEN FOIA Act of 2009 (the OPEN FOIA Act),<sup>5</sup> limited Exemption 3, which applies to information specifically exempted by statute. To be exempt under Exemption 3 following the OPEN FOIA Act, information must be exempt pursuant to a statute that requires: (1) that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld and, (2) if enacted after the date of enactment of the OPEN FOIA Act, specifically

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<sup>2</sup> Pub. L. 114-185 (2016).

<sup>3</sup> Pub. L. 104-208, 110 Stat. 3009 (1996).

<sup>4</sup> 81 FR 13608 (March 14, 2016).

<sup>5</sup> Pub. L. No. 111-83, 123 Stat. 2142, 2184 (2009).

cites to Exemption 3 of the FOIA. Previously, statutes did not need to specifically cite to Exemption 3 of the FOIA.

## **II. Description of the Interim Final Rule**

Twelve CFR part 4, subpart B, sets forth OCC policies regarding the availability of information under the FOIA and establishes procedures for requesters to follow when seeking information. This interim final rule amends 12 CFR part 4, subpart B, to implement the FOIA Improvement Act and the OPEN FOIA Act and to make technical changes to the regulations as a result of the OCC's EGRPRA review.

### ***Section 4.11 Purpose and scope***

As part of the EGRPRA proposed rule, the OCC proposed to remove § 4.11(b)(4), which stated that the OCC's FOIA rules did not apply to FOIA requests filed with the former Office of Thrift Supervision (OTS) before July 21, 2011, because the OTS's rules would apply to those requests instead. The OCC adopted this provision when it amended part 4 to reflect the transfer of certain powers, authorities, rights, and duties of the OTS to the OCC pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>6</sup> There are no remaining open FOIA requests that had been submitted to the OTS prior to its integration with the OCC. Therefore, § 4.11(b)(4) is no longer necessary and is removed by this interim final rule.

### ***Section 4.12 Information available under the FOIA***

Pursuant to the Act, the interim final rule amends 12 CFR 4.12 to revise the language about the availability of records in subsection (a), consistent with the FOIA Improvement Act; limit the deliberative process exemption; expand the information segregation provisions; update

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<sup>6</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

12 CFR 4.12(b)(3) to be consistent with the OPEN FOIA Act; and implement proposed clarifications from the EGRPRA review.

Section 4.12(a) currently provides that OCC records are available to the public except for records that the FOIA exempts from disclosure. The FOIA Improvement Act adds new language to the statute that relates to an agency’s decision to disclose information that is covered by an exemption. This language provides for the withholding of information pursuant to a FOIA exemption only if an agency “reasonably foresees that disclosure would harm an interest protected by an exemption” or if the disclosure is prohibited by law.<sup>7</sup>

These considerations will inform the OCC’s future determinations about whether to disclose information covered by an exemption. Accordingly, the interim final rule removes the existing reference to “exempt records” in subsection (a) and replaces it with the phrase “[e]xcept as otherwise provided by the FOIA.” This language is broad enough to encompass the “reasonable foreseeability” and the “prohibited by law” language added by the FOIA Improvement Act, and it encompasses the former reference to coverage by an exemption as well. Based on legislative history, in which the sponsors of the Act expressed their intent to preserve the longstanding protections afforded by Exemption 8,<sup>8</sup> the OCC does not anticipate that the Act

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<sup>7</sup> 5 U.S.C. 552(a)(8)(A)(i).

<sup>8</sup> The Senate Judiciary Committee report on the FOIA Improvement Act states that:

Extreme care should be taken with respect to disclosure under Exemption 8 which protects matters that are ‘contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.’ Currently, financial regulators rely on Exemption 8, and other relevant exemptions in Section 552(b), to protect sensitive information received from regulated entities, or prepared in connection with the regulation of such entities, in fulfilling their goals of ensuring safety and soundness of the financial system, compliance with federal consumer financial law, and promoting fair, orderly, and efficient financial markets.

Exemption 8 was intended by Congress, and has been interpreted by the courts, to be very broadly construed to ensure the security of financial institutions and to safeguard the relationship between the banks and their supervising agencies. The D.C. Circuit has gone so far as to state that in Exemption 8 Congress has provided “absolute protection regardless of the circumstances

or revised § 4.12(a) will alter the application of FOIA Exemption 8, which protects matters that are “contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.”<sup>9</sup>

The interim final rule also amends the deliberative process exemption in § 4.12(b)(5) to reflect the Act’s limitations on records created 25 years or more before the date of an information request. Previously, the deliberative process exemption protected all intra-agency and interagency memoranda and letters not routinely available by law to a private party in litigation, including memoranda, reports, and other documents prepared by OCC employees and records of deliberations and discussions at meetings of OCC employees. After the change, the deliberative process provision as amended by the interim final rule will exempt only those memoranda and letters created within 25 years of the date on which they were requested.

Additionally, although the OCC’s rules already provide for the separation and provision of nonexempt information, the interim final rule clarifies that, in cases in which full disclosure is not possible, the OCC considers whether partial disclosure of information is possible and takes reasonable steps necessary to segregate and release nonexempt information. This provision is consistent with current OCC practice.

The interim final rule also amends § 4.12(b)(3) to reflect the OPEN FOIA Act provision that requires that statutes enacted after the date of the enactment of the OPEN FOIA Act must

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underlying the regulatory agency’s receipt or preparation of examination, operating or condition reports.” Nothing in this legislation shall be interpreted to compromise the stability of any financial institution or the financial system, disrupt the operation of financial markets or undermine consumer protection efforts due to the release of confidential information about individuals or information that a financial institution may have, or encourage the release of confidential information about individuals. This legislation is not intended to lessen the protection under Exemption 8 created by Congress and traditionally afforded by the courts.

S. Rep. No 114-4 (February 23, 2015).

<sup>9</sup> 5 U.S.C. 552(b)(8).

specifically cite to Exemption 3 of the FOIA in order to qualify under Exemption 3. The OPEN FOIA Act was enacted on October 28, 2009, so the requirement applies to statutes enacted after that date.

Finally, the interim final rule adopts the changes to § 4.12(a) and (b) that the OCC proposed as part of its EGRPRA review. Previously, § 4.12(b)(10) exempted from disclosure any OTS information similar to that listed in the exemptions in § 4.12 (b)(1) to (b)(9) to the extent the information is in the possession of the OCC. For purposes of clarification, we are amending the § 4.12(a) disclosure standard so that it applies to OTS records, in addition to OCC records, and removing the resulting unnecessary exemption in paragraph (b)(10).

***§ Section 4.14 Public inspection in an electronic format***

Section 4.14(a) lists the types of information the OCC makes available for public inspection. Consistent with the Act's amendments to 5 U.S.C. 552(a)(2), the interim final rule adds two categories of information to § 4.14(a). New § 4.14(a)(11) specifies that the OCC will make available for public inspection in an electronic format any records, regardless of form or format, that have been released to any person under 5 U.S.C. 552(a)(3) provided that: (1) the OCC determines that, because of the nature of their subject matter, the records are or are likely to become the subject of subsequent requests for substantially the same record; or (2) the records have been requested three or more times.

New § 4.14(a)(12) states that the OCC will provide reference materials or a guide for requesting records or information from the OCC, including an index of all major OCC information systems, a description of major information and record locator systems maintained by the OCC, and a handbook for obtaining various types and categories of public information from the OCC pursuant to FOIA and chapter 35 of title 44.

Finally, the interim final rule makes clarifying and conforming changes to § 4.14, including amending § 4.14(a) and (b) to specify that information will be made available for public inspection in an electronic format to implement section 2 of the Act.

***§ Section 4.15 How to request records***

Pursuant to the Act, the interim final rule amends § 4.15, which describes the process for requesting OCC records. Specifically, to implement section 2 of the Act, the interim final rule amends § 4.15(c)(4) to specify that if a request for information is denied, the OCC will notify the requester of the right to seek dispute resolution services from the OCC's FOIA Public Liaison or the Office of Government Information Services through the processes described in new § 4.15(h).

Pursuant to the Act's amendments to 5 U.S.C. 552(a)(6)(A)(i), the interim final rule also extends the time available for administrative appeal of a denial to release records from 35 days to 90 days. Under new § 4.15(d), requesters will have 90 days after the date of an initial denial determination to submit a written administrative appeal of denial of a request for records.

Additionally, the interim final rule expands § 4.15(f), which addresses the time limits for FOIA request responses and provides for extensions in certain situations, including a 10-day extension for unusual circumstances.<sup>10</sup> Pursuant to the Act's amendments to 5 U.S.C. 552(a)(6)(A)(i), the interim final rule adds a new § 4.15(f)(4) that provides additional information and alternatives for requesters when the OCC determines that a request will require more than a 10-day extension to process. Under this provision, if unusual circumstances apply to a request for records, and the OCC determines that it cannot respond to the request within the 10-day extension, the OCC will: (1) notify the requester that the request cannot be processed within

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<sup>10</sup> 12 CFR 4.15(f)(3)(i).

the 10-day extension; (2) provide the requester with an opportunity to limit the scope of the request so that it may be processed within the 10-day period or to arrange with the OCC an alternative time frame for processing the request or a modified request; (3) make available the FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the OCC; and (4) notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services.

Finally, the interim final rule makes other clarifying and conforming changes to § 4.15, including amending § 4.15(d)(4) to specify that the OCC will provide notification of a denial of an appeal “in writing,” rather than “by mail.” The OCC expects this change will provide greater flexibility and efficiency by permitting other forms of communication, such as electronic mail. The interim final rule also amends § 4.15 to provide updated contact information for the Office of Management and Budget’s (OMB) request portal, the OCC’s Chief FOIA Officer, and the Federal Deposit Insurance Corporation.

#### ***§ Section 4.17 FOIA request fees***

Section 4.17 provides information for the assessment and payment of FOIA request fees. As stated in § 4.17(b)(1), the OCC generally charges fees to fulfill FOIA requests. However, § 4.17(b)(6) provided that the OCC will not assess search or duplication fees, as applicable, if the OCC did not respond within the time limits set forth in § 4.15(f) and no unusual or exceptional circumstances applied. The FOIA Improvement Act provided additional information about the circumstances in which an agency may charge search or duplication fees if the agency does not meet the time limits provided by the FOIA. Thus, pursuant to the Act, the interim final rule amends § 4.17(b)(6) to update the circumstances in which the OCC is permitted to assess search or duplication fees, even if the OCC does not respond within the § 4.15(f) time limits.

For example, amended § 4.17(b)(6) permits the OCC to assess search or duplication fees if the OCC has determined “unusual circumstances” (as defined in § 4.15(f)(3)(i)) apply, has provided timely written notice to the requester, and complies with the extended time limit.<sup>11</sup> The interim final rule also permits the OCC to assess search or duplication fees if the OCC has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request. In such a situation, the OCC must provide a timely written notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B) and discuss with the requester via written mail, electronic mail, or telephone (or make not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). Finally, if a court has determined that exceptional circumstances (as defined in 5 U.S.C. 552(a)(6)(C)) apply to the processing of a request, the OCC may assess search or duplication fees for the length of time provided by the court order.

The interim final rule also updates the payment of fees contact information listed in § 4.17(c).

#### ***Section 4.18 How to track a FOIA request***

The interim final rule makes a technical amendment to § 4.18(b) to provide updated contact information for the OCC’s Communications Division that requesters may use to track the progress of their requests.

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<sup>11</sup> Section 4.15(f)(3)(i) states that the OCC may extend the time limits in unusual circumstances for a maximum of 10 business days. If the OCC extends the time limits, the OCC provides written notice to the person making the request or appeal, containing the reason for the extension and the date on which the OCC expects to make a determination. Unusual circumstances exist when the OCC requires additional time to: search for and collect the requested records from field facilities or other buildings that are separate from the office processing the request or appeal; search for, collect, and appropriately examine a voluminous amount of requested records; consult with another agency that has a substantial interest in the determination of the request; or allow two or more components of the OCC that have substantial interest in the determination of the request to consult with each other....”

### **III. Effective Date/Request for Comment**

The OCC is issuing the interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).<sup>12</sup> Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>13</sup> The interim final rule’s changes to 12 CFR part 4 are limited to technical changes and those that are necessary to implement the provisions of the FOIA Improvement Act and OPEN FOIA Act. Because the OCC is not exercising discretion with respect to the interim final rule’s substantive revisions that implement the Act, the OCC believes the public interest is best served by implementing the interim final rule as soon as possible.

In addition, the OCC believes that providing a notice and comment period prior to issuance of the interim final rule is unnecessary because the OCC does not expect public objection to the regulations being promulgated, as this rule implements the substantive changes specified in the Act and technical, non-substantive updates and clarifications to part 4. Moreover, the OCC expects that the majority of the changes will provide additional services and critical updates that will assist FOIA requesters.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules that grant or recognize an exemption or relieve a restriction; (2) interpretative rules and

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<sup>12</sup> 5 U.S.C. 553.

<sup>13</sup> 5 U.S.C. 553(b)(B).

statements of policy; or (3) as otherwise provided by the agency for good cause.<sup>14</sup> The OCC concludes that, because the rules recognize an exemption, the interim final rule is exempt from the APA's delayed effective date requirement.<sup>15</sup> Additionally, the OCC finds good cause to publish the interim final rule with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),<sup>16</sup> in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), the OCC must consider any administrative burdens that such regulation would place on depository institutions and the benefits of such regulation. In addition, section 302(b) of the RCDRIA requires any such new regulation to take effect on the first day of a calendar quarter that begins on or after the date on which the regulation is published in final form, with certain exceptions, including for good cause. The OCC has considered the administrative burdens that such regulations would place on institutions and the benefits of such regulations in determining the effective date and compliance requirements. Due to the nature of the rule's changes to the OCC's existing FOIA regulations, the interim final rule does not impose additional reporting, disclosure, or other requirements on IDIs, and section 302 of the RCDRIA therefore does not apply. Therefore, for the same reasons set forth above under the discussion of section 553(b)(B) of the APA, the OCC finds good cause exists under section 302 of RCDRIA to publish the interim final rule with an immediate effective date.

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<sup>14</sup> 5 U.S.C. 553(d).

<sup>15</sup> 5 U.S.C. 553(d)(1).

<sup>16</sup> 12 U.S.C. 4802(a).

While the OCC believes there is good cause to issue the rule without notice and comment and with an immediate effective date, the OCC is interested in the views of the public and requests comment on all aspects of the interim final rule.

#### **IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA)<sup>17</sup> applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed above, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is not necessary. Accordingly, the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

#### **V. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995<sup>18</sup> states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. Because the interim final rule does not create a new, or revise an existing, collection of information, no information collection request submission needs to be made to the OMB.

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<sup>17</sup> Pub. L. 96-354, Sept. 19, 1980, codified to 5 U.S.C. 601 *et seq.*

<sup>18</sup> 44 U.S.C. 3501-3521.

## **VI. OCC Unfunded Mandates Reform Act of 1995 Determination**

Consistent with section 202 of the Unfunded Mandates Reform Act of 1995,<sup>19</sup> before promulgating any final rule for which a general notice of proposed rulemaking was published, the OCC prepares an economic analysis of the final rule. As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking was unnecessary. Accordingly, the OCC has not prepared an economic analysis of the joint interim final rules.

### **List of Subjects in 12 CFR Part 4**

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

### **Authority and Issuance**

For the reasons set forth in the preamble, the OCC hereby amends 12 CFR part 4 as set forth below.

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<sup>19</sup> 2 U.S.C. 1532.

**PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS**

1. The authority citation for part 4 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a), 1818, 1820, 1821, 1831m, 1831p-1, 1831o, 1833e, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*, 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

**§ 4.11 [Amended]**

2. Section 4.11 is amended by removing paragraph (b)(4).

3. Section 4.12 is amended by:

a. Revising paragraphs (a), (b)(3), and (b)(5);

b. In paragraph (b)(8), adding “and” at the end;

c. In paragraph (b)(9), removing “; and” at the end and adding in its place a period;

d. Removing paragraph (b)(10); and

e. Revising the first sentence of paragraph (d).

The revisions read as set forth below.

**§ 4.12 Information available under the FOIA.**

(a) *General.* Except as otherwise provided by the FOIA, OCC and Office of Thrift Supervision (OTS) records are available to the public.

(b) \* \* \*

(3) A record specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; establishes particular criteria for withholding, or refers to particular types of matters to be withheld; and, if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to 5 U.S.C. 552(b)(3);

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(5) An intra-agency or interagency memorandum or letter not routinely available by law to a private party in litigation, including memoranda, reports, and other documents prepared by OCC employees, and records of deliberations and discussions at meetings of OCC employees, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

\* \* \* \* \*

(d) \* \* \* If the OCC determines that full disclosure of a requested record is not possible, the OCC considers whether partial disclosure of information is possible and takes reasonable steps necessary to segregate and release nonexempt information. \* \* \*

4. Section 4.14 is amended by:

a. Revising the section heading and paragraphs (a) and (c); and

b. Amending paragraph (b) by removing the phrase “and copying”, and adding in its place “in an electronic format”.

The revisions read as set forth below.

**§ 4.14 Public inspection in an electronic format.**

(a) *Available information.* Subject to the exemptions listed in §4.12(b), the OCC makes the following information available for public inspection in an electronic format:

- (1) Any final order, agreement, or other enforceable document issued in the adjudication of an OCC enforcement case, including a final order published pursuant to 12 U.S.C. 1818(u);
- (2) Any final opinion issued in the adjudication of an OCC enforcement case;
- (3) Any statement of general policy or interpretation of general applicability not published in the FEDERAL REGISTER;
- (4) Any administrative staff manual or instruction to staff that may affect a member of the public as such;
- (5) A current index identifying the information referred to in paragraphs (a)(1) through (a)(4) of this section issued, adopted, or promulgated after July 4, 1967;
- (6) A list of available OCC publications;
- (7) A list of forms available from the OCC, and specific forms and instructions;<sup>1</sup>
- (8) Any public Community Reinvestment Act performance evaluation;
- (9) Any public securities-related filing required under parts 11, 16, 194 or 197 of this chapter;
- (10) Any public comment letter regarding a proposed rule;

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<sup>1</sup> Some forms and instructions that national banks and Federal savings associations use are not available from the OCC. The OCC will provide information on where persons may obtain these forms and instructions upon request.

(11) Any records, regardless of form or format, that have been released to any person under 5 U.S.C. 552(a)(3) provided that:

(i) The OCC determines that, because of the nature of their subject matter, the records are or are likely to become the subject of subsequent requests for substantially the same records; or

(ii) The records have been requested three or more times;

(12) Reference materials or a guide for requesting records or information from the OCC, including an index of all major OCC information systems, a description of major information and record locator systems maintained by the OCC, and a handbook for obtaining various types and categories of public information from the OCC pursuant to FOIA and chapter 35 of title 44;

(13) The public file (as defined in 12 CFR 5.9) with respect to a pending application described in part 5 of this chapter; and

(14) Any OTS information similar to that listed in paragraphs (a)(1) through (a)(13) of this section, to the extent this information is in the possession of the OCC.

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(c) *Addresses.* The information described in paragraphs (a)(1) through (14) of this section is available from the Chief FOIA Officer, Communications Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219. The information described in paragraph (a)(13) of this section in the case of both national banks and Federal savings associations is available from the Licensing Manager at the appropriate district office at the address listed in §4.5(a), or in the case of national banks and Federal savings associations supervised by the Large Bank Supervision Department, from the Large Bank Licensing Expert,

Licensing Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

5. Section 4.15 is amended by:

- a. Revising paragraph (b)(1), and revising paragraph (b)(2)(i) introductory text;
- b. Revising paragraphs (c)(2), (c)(4), and (d)(1) and (4);
- c. Removing “Saturday” in paragraph (f)(1) and adding it its place “Saturdays”;
- d. Adding paragraph (f)(4);
- e. Republishing paragraph (g); and
- f. Adding paragraph (h).

The additions and revisions read as set forth below.

**§ 4.15 How to request records.**

\* \* \* \* \*

(b) \* \* \* (1) *General.* Except as provided in paragraph (b)(2) of this section, a person requesting a record or filing an administrative appeal must submit the request or appeal:

- (i) Through the OCC's FOIA Web portal at <https://foia-pal.occ.gov/palMain.aspx>;
- (ii) Through the consolidated online request portal maintained by the Office of Management and Budget pursuant to 5 U.S.C. 552(m)(1); or
- (iii) Under this section to the Chief FOIA Officer, Communications Division, Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

(2) *Exceptions—(i) Records at the Federal Deposit Insurance Corporation.* A person requesting any of the following records, other than blank forms (see §4.14(a)(7)), must submit the request to the FDIC, Legal Division, FOIA/PA Group, 550-17th Street, NW, Washington, DC 20429, or fax to (703) 562-2797:

\* \* \* \* \*

(c) \* \* \*

(2) *Initial determination.* The Comptroller or the Comptroller's delegate initially determines whether to grant a request for OCC records and notifies the requester, in accordance with the time limits set forth in paragraph (f) of this section, of the determination and the reasons therefore and of the right to seek assistance from the OCC's FOIA Public Liaison.

\* \* \* \* \*

(4) *If request is denied.* If the OCC denies a request for records, in whole or in part, the OCC will notify the requester in writing. The notification is dated and contains a brief statement of the reasons for the denial, sets forth the name and title or position of the official making the decision, advises the requester of the right to seek dispute resolution services from the OCC's FOIA Public Liaison or the Office of Government Information Services, and advises the requester of the right to appeal to the Comptroller of the Currency in accordance with paragraph (d) of this section.

(d) *Administrative appeal of a denial—(1) Procedure.* A requester must submit an administrative appeal of denial of a request for records in writing within 90 days after the date of the initial determination. The appeal must include the circumstances and arguments supporting disclosure of the requested records.

\* \* \* \* \*

(4) *If appeal is denied.* If the OCC denies an appeal, in whole or in part, the OCC notifies the requester in writing. The notification contains a brief statement of the reasons for the denial, sets forth the name and title or position of the official making the decision, and advises the requester of the right to judicial review of the denial under 5 U.S.C. 552(a)(4)(B).

\* \* \* \* \*

(f) \* \* \*

(4) *Requests that require more than a 10-day extension to process.* If the OCC determines unusual circumstances apply to a request for records, and the OCC determines it cannot respond to the request within the 10-day extension set forth in paragraph (f)(3)(i) of this section, the OCC will:

(i) Notify the requester that the request cannot be processed within the time limit set forth in paragraph (f)(3)(i) of this section;

(ii) Provide the requester with an opportunity to limit the scope of the request so that it may be processed within that 10-day period or to arrange with the OCC an alternative time frame for processing the request or a modified request;

(iii) Make available the FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the OCC; and

(iv) Notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services.

(g) *Date of receipt of request or appeal.* The date of receipt of a request for records or an appeal is the date that Disclosure Services, Communications Division receives a request that satisfies the requirements of paragraph (c)(1) or (d)(1) of this section, except as provided in §4.17(d).

(h) *Dispute resolution services.* Requesters with concerns about the handling of their FOIA requests may contact the FOIA Public Liaison or the Office of Government Information Services for dispute resolution services.

(1) To apply for dispute resolution assistance from the FOIA Public Liaison, requesters should submit a written request to the FOIA Public Liaison, Communications Division, Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

(2) For dispute resolution services through the Office of Government Services, requesters should contact the Office of Government Services as set forth at 36 CFR 1250.32.

6. Section 4.17 is amended by:

a. Revising paragraph (b)(6); and

b. Amending paragraph (c)(1) by removing the phrase “Communications Division”, and adding in its place the phrase “Financial Management, Accounts Receivable”.

The revisions read as set forth below.

**§ 4.17 FOIA request fees.**

\* \* \* \* \*

(b) \* \* \*

(6) *No fee if the time limit passes and the OCC has not responded to the request.* The OCC will not assess search or duplication fees, as applicable, if it fails to respond to a requester's FOIA request within the time limits specified under 5 U.S.C. 552(a)(6) and 12 CFR 4.15(f), except as follows:

(i) *Unusual circumstances—(A) General.* If the OCC has determined that unusual circumstances (as defined in 5 U.S.C. 552(a)(6)(B) and §4.15(f)(3)(i)) apply and the OCC provides timely written notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B), the OCC may assess search or duplication fees, as applicable, for an additional 10 days. If the OCC fails to comply with the extended time limit, the OCC will not assess any search or duplication fees, as applicable.

(B) *Voluminous Requests.* Notwithstanding paragraph (b)(6)(i)(A) of this section, if the OCC has determined that unusual circumstances (as defined in 5 U.S.C. 552(a)(6)(B) and §4.15(f)(3)(i)) apply and more than 5,000 pages are necessary to respond to the request, the OCC may assess search or duplication fees, as appropriate, if the OCC provides a timely written notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B) and discusses with the requester via written mail, electronic mail, or telephone (or makes not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(ii) *In exceptional circumstances.* If a court has determined that exceptional circumstances (as defined in 5 U.S.C. 552(a)(6)(C)) apply to the processing of a request, the OCC may assess search or duplication fees, as applicable, for the length of time provided by the court order.

\* \* \* \* \*

**§ 4.18 [Amended]**

7. Section 4.18 is amended by:

- a. In paragraph (a), removing the word “Department” and adding in its place the word “Division”, wherever it appears; and
- b. In paragraph (b), removing the phrase “Disclosure Officer”, and adding in its place the phrase “Chief FOIA Officer”.

Date: December 14, 2016

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Thomas J. Curry  
Comptroller of the Currency

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