



## **FEDERAL RESERVE SYSTEM**

### **12 CFR Part 271**

#### **Rules Regarding Availability of Information**

**AGENCY:** Federal Open Market Committee, Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Federal Open Market Committee (“Committee”) is finalizing its interim final rule amending the Committee’s regulations under the Freedom of Information Act (“FOIA”). The FOIA Improvement Act of 2016 (“Improvement Act”) amended the FOIA and required each federal agency to review its FOIA regulations and to issue certain revisions by December 27, 2016. Substantive revisions to the Committee’s Rules Regarding Availability of Information (“Rules”) were made to conform to the Improvement Act, and the Committee made other technical changes to the Rules in order to clarify the existing procedures for requesting information and to update contact information. The interim final rule became effective on December 27, 2016. This rulemaking finalizes the interim rule with minor edits for consistency and clarification.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Matthew M. Luecke, Deputy Secretary, (202) 452-2576, Federal Open Market Committee, 20th Street and Constitution Avenue NW, Washington, D.C. 20551; or Amory Goldberg, Counsel, (202) 452-3124, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, D.C. 20551. Users of Telecommunications Device for Deaf (TDD) *only*, please call (202) 263-4869.

**SUPPLEMENTARY INFORMATION:**

**I. Overview of Final Rule**

On December 27, 2016, the Committee published an interim final rule<sup>1</sup> amending its existing Rules found at 12 CFR part 271, in order to comply with the statutory changes required by the FOIA Improvement Act of 2016 (“Improvement Act”).<sup>2</sup> Substantive amendments to the Committee’s Rules, which were required by the Improvement Act, included revising the Committee’s procedures for disclosing records under the FOIA, assessing fees, and notifying requestors of options for resolving disputes through the Committee’s FOIA Public Liaison and the Office of Government Information Services (“OGIS”) within the National Archives

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<sup>1</sup> 81 FR 94934 (Dec. 27, 2016).

<sup>2</sup> Pub. L. 114–185, 130 Stat. 538 (enacted June 30, 2016).

and Records Administration. In addition, the Committee made certain technical changes to the Rules to make the FOIA process easier for the public to navigate, such as making certain provisions clearer (removing obsolete language) and informing the public of additional electronic methods for submitting FOIA requests and administrative appeals. The interim final rule became effective on December 27, 2016, and the Committee accepted comments through February 27, 2017. The Committee is finalizing the interim rule with minor changes to paragraph (h)(3) of section 271.6 in response to a public comment.

## **II. Summary of Public Comments and Final Rule**

Interested persons were afforded the opportunity to participate in the rulemaking process through submission of written comments on the interim final rule during the open comment period. The Committee received one comment on the interim final rule from OGIS. OGIS asked the Committee to revise paragraph (h)(3) of section 271.6 of the Rules to require that a determination letter on an appeal inform appellants of the availability of OGIS's dispute resolution services. Although not required by the FOIA statute, this change is consistent with guidance issued by the Department of Justice's Office of Information Policy. Accordingly, the Committee has determined to edit the language in paragraph (h)(3) of section 271.6 to notify

an appealing party of the availability of OGIS's dispute resolution services as a nonexclusive alternative to litigation.

The Committee has determined not to adopt two other suggestions by OGIS. OGIS's proposed amendment would add a statement that "[d]ispute resolution is a voluntary process." This sentence appears to be unnecessary and repetitive given that the Committee is already advising appellants that dispute resolution services are available as a "nonexclusive alternative to litigation." OGIS also proposed language stating that the Committee will "actively engage as a partner to the process in an attempt to resolve the dispute" if the Committee participates in the OGIS dispute resolution process. Although active engagement in attempting to resolve a FOIA dispute is of course not unreasonable, the proposed sentence could create additional legal obligations not required under the FOIA or by the statutory amendments to the FOIA. Accordingly, aside from adding in language regarding the availability of OGIS's dispute resolution services as a nonexclusive alternative to litigation, the Committee is adopting section 271.6(h)(3) in the final rule without any further change.

### **III. Regulatory Requirements**

As the Committee noted in publishing the interim final rule, Congress required that the substantive changes to the Committee's Rules under the

Improvement Act become effective by December 27, 2016, and the other amendments to the Committee's Rules were technical in nature. Thus, the Committee determined that the prior notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), did not apply to the rule. Because no notice of proposed rulemaking is required, these regulations are not a "rule" as defined by the Regulatory Flexibility Act, 5 U.S.C. 601(2), and no initial or final regulatory flexibility analysis is required.

### **List of Subjects in 12 CFR Part 271**

Federal Open Market Committee, Freedom of information.

### **Authority and Issuance**

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the Committee is adopting the interim final rule published on December 27, 2016, at 81 FR 94934, as final with the following change:

### **PART 271 — RULES REGARDING AVAILABILITY OF INFORMATION**

- 1. The authority citation for part 271 continues to read as follows:

AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 263.

- 2. In § 271.6, paragraph (h)(3) is revised to read as follows:

**§ 271.6 Processing requests.**

\* \* \* \* \*

(h) \* \* \*

(3) The Committee, or such member of the Committee as is delegated the authority, shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Secretary. If an adverse determination is upheld on appeal, in whole or in part, the determination letter shall notify the appealing party of the right to seek judicial review and of the availability of dispute resolution services from the Office of Government Information Services as a nonexclusive alternative to litigation.

By order of the Federal Open Market Committee, September 19, 2017.

Brian F. Madigan,  
Secretary, Federal Open Market Committee.

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