

**FEDERAL RESERVE SYSTEM**

**Federal Open Market Committee**

**12 CFR Part 271**

**RULES REGARDING AVAILABILITY OF INFORMATION**

**AGENCY:** Federal Open Market Committee

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Federal Open Market Committee (Committee) invites comments on this interim final rule amending its Rules Regarding Availability of Information (Rules). These revisions conform to recent statutory amendments to the Freedom of Information Act (FOIA) made by the FOIA Improvement Act of 2016 (FOIA Improvement Act), as well as other technical changes intended to clarify existing procedures for requesting information and updating contact information.

**DATES:** This interim final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments shall be received on or before [INSERT 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim final rule, identified by “**Federal Reserve System: Federal Open Market Committee 12 CR Part 271,**” by any of the following methods:

- Electronic submission of comments: Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Committee to make them available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.
- Facsimile: (202) 452-2921.
- Mail: Mr. Brian Madigan, Secretary, Federal Open Market Committee, 20th Street and Constitution Avenue NW, Washington, D.C. 20551.
- Public Inspection of Comments: All public comments may be viewed electronically or in paper form at the Freedom of Information Office of the Board of Governors of the Federal Reserve System (Board) in Room 3515,

at 1801 K Street NW (between 18th and 19th Streets) Washington, D.C. 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments. Please be advised that your comments are part of the public record and will not be edited to remove any identifying or contact information.

**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. Background**

On June 30, 2016, the Freedom of Information Act<sup>1</sup> (FOIA) was amended by the FOIA Improvement Act of 2016<sup>2</sup> (FOIA Improvement Act). Among other things, section 3 of the FOIA Improvement Act requires each federal agency to revise its disclosure regulations and procedures for processing FOIA requests in order to conform to the substantive amendments made by section 2 of the FOIA Improvement Act by December 27, 2016. As it pertains to the Committee’s Rules Regarding Availability of Information (Rules), the Committee is required to make a number of changes to comply with the FOIA Improvement Act’s amendments. In addition, the Committee is making certain technical changes to the Rules to make the FOIA process easier for the public to navigate, to make certain provisions clearer (removing obsolete language), and inform the public of additional electronic methods for submitting FOIA requests and administrative appeals. In drafting the amendments to the Rules, the Committee consulted the “Guidance for Agency FOIA Regulations” issued

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<sup>1</sup> 5 U.S.C. 552.

<sup>2</sup> Public Law 114–185, 130 Stat. 538 (June 30, 2016).

by the U.S. Department of Justice's Office for Information Policy. The following is a section-by-section discussion of the changes.

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

This interim final rule amends the Committee's Rules, as described below.

### Section 271.3 - Published Information.

The Committee has made a technical change to section 271.3(c) of its Rules to delete certain outdated information about publishing Committee information in the Federal Reserve Bulletin and to clarify that members of the public no longer need to contact the Publications Services section of the Federal Reserve Board (Board) to obtain certain information, because such information is already made publicly available on the websites of the Board or Federal Reserve Banks.

### Section 271.4 - Records available for public inspection.

As required by the FOIA Improvement Act, the Committee is revising this section to clarify that the Committee's records, which are available for public inspection pursuant to 5 U.S.C. § 552(a)(2), specifically include records requested three or more times, and that such records will be made available in electronic format. Thus, the Committee is revising section 271.4(a) and (b) of its Rules to specifically reference the availability of records described in 5 U.S.C. § 552(a)(2) for public inspection in electronic

format. The Committee also is adding language to paragraph (b)(1) of section 271.4 to direct members of the public to the website of the Committee's electronic reading room. Additionally, in paragraph (b)(1) of section 271.4, the Committee updated information on how to obtain access to the Committee's reading room at the Board's Freedom of Information Office to reflect updated security procedures and because the Board's Freedom of Information Office has moved from the location at 20th Street and Constitution Avenue N.W. Lastly, because all the records described in 5 U.S.C. § 552(a)(2) are now required to be made available in electronic format, which necessarily would also include records created on or after 1996, the Committee removed and reserved paragraph (c) of section 271.4.

Section 271.5 - Records available to the public on request.

The Committee is adding language to section 271.5 of its Rules to inform members of the public that they have the option to electronically submit FOIA requests using the Committee's online FOIA request form.

Section 271.6 Processing requests.

The Committee is making a technical correction to paragraph (c)(2) of section 271.6 of its Rules, to remove the reference to paragraph (i) and replace it with paragraph (h).

The FOIA, as revised by the FOIA Improvement Act, requires that, whenever an agency extends the 20-day time limit to respond to a FOIA request by more than ten working days due to “unusual circumstances,” then the agency must provide the requester with an opportunity to limit the request’s scope and must notify the requester of the availability of dispute resolution services from the FOIA Public Liaison and the Office of Government Information Services (OGIS). Accordingly, the revisions to paragraph (d) of section 271.6 reflect these statutory requirements.

The Committee’s amendments to paragraph (e) of section 271.6 conform to the amendments of the FOIA Improvement Act, which require that all determination letters advise requesters of the right to seek assistance from the Committee’s FOIA Public Liaison and, in the case of an adverse determination, that requesters be informed of the right to seek dispute resolution services from the Committee’s FOIA Public Liaison or OGIS.

In order to mirror the more expansive language of the FOIA and to reflect the Committee’s current practice, the Committee also has made technical edits to paragraphs (e) and (h) of section 271.6 to clarify that a requester has the right to administratively appeal any “adverse determination” by the Secretary of the Committee (not just to appeal denials or partial denials of requests for records). The new language in

paragraph (e) provides examples of the adverse determinations that may be appealed. In paragraph (h) of section 271.6, the Committee is adding language to inform members of the public that they also have the option to submit administrative appeals via e-mail to the Secretary of the Committee and providing the e-mail address to use for such administrative appeals.

Lastly, in paragraph (g) of section 271.6, the Committee has added language providing that a requester also may be sent copies of requested records in electronic format to the requester's e-mail address. This technical change clarifies that requesters are not limited to receiving records by U.S. postal mail.

#### Section 271.9 - Fee schedules; waiver of fees.

The FOIA Improvement Act restricts an agency's ability to charge search or duplication fees in certain circumstances. The Committee has added paragraph (i) to section 271.9 to reflect the statutory restrictions on charging fees.

### **III. Request for Comments**

The Committee invites comment on all aspects of the interim final rule.



#### **IV. Administrative Law Matters**

##### **A. Administrative Procedure Act**

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” As discussed above, this interim final rule implements the substantive amendments made by the FOIA Improvement Act. Congress provided federal agencies with no discretion in amending their disclosure rules to comply with the statutory amendments made to the FOIA, and required that such conforming amendments become effective by December 27, 2016. Given that the substantive amendments to the Committee’s Rules are mandated by the FOIA Improvement Act, and that the other amendments made to the Committee’s Rules are technical in nature, the Committee for good cause finds that prior notice and comment on this rulemaking is impracticable, unnecessary, or contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). For these same reasons, the Committee finds good cause to dispense with the delayed effective date otherwise required by 5 U.S.C. 553(d)(3). While the interim final rule is effective immediately upon publication, the Committee is inviting public comment on the interim final

rule during a 60-day period and will consider all comments in developing a final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies only to rules for which an agency publishes a general notice of proposed rulemaking. Because the Committee has determined for good cause that a notice of proposed rulemaking for this rule is unnecessary, the Regulatory Flexibility Act does not apply to this final rule. 5 U.S.C. 601(2).

## 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 Federal Open Market Committee amends part 271 to 12 CFR chapter II to read as follows:

### **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. Section 271.3 (c) is revised to read as follows:

#### **§ 271.3 Published information.**

\* \* \* \* \*

- (c) Other published information. Other information relating to the Committee, including its open market operations, is made publicly available on the websites of the Board and the Federal Reserve Banks.

- 3. In Section 271.4, amend the section heading and revise paragraphs (a) through (c) to read as follows:

#### **§ 271.4 Records available for public inspection.**

- (a) Types of records made available. Unless they were published promptly and made available for sale or without charge, records

described in 5 U.S.C. 552(a)(2) shall be made available for inspection in an electronic format by the Committee.

(b) Reading room procedures.

(1) Information described in 5 U.S.C. 552(a)(2), such as statements of policy and records requested three or more times under § 271.5, is made available for public inspection in the Committee's electronic reading room at

<https://www.federalreserve.gov/foia/fomc/readingrooms.htm#rr1>,

in its conventional reading room located in the Freedom of Information Office of the Board of Governors of the Federal Reserve System, or both. For security reasons, the Board requires that visitors make an appointment to inspect documents. You may do so by calling the Board's Freedom of Information Office at (202) 452-3684.

(2) The Committee may determine that certain classes of publicly available filings shall be made available for inspection in electronic format only by the Federal Reserve Bank where those records are maintained.

(c) [RESERVED]

(d) \* \* \*

- 4. In Section 271.5, amend paragraph (b)(2) to read as follows:

**§ 271.5 Records available to the public on request.**

\* \* \* \* \*

(b) \* \* \*

(2) The request shall be submitted in writing to the Secretary of the Committee, Federal Open Market Committee, 20th & C Streets N.W., Washington, D.C. 20551; or sent by facsimile to the Secretary of the Committee, (202) 452–2921; or sent electronically using the online request form located at [www.federalreserve.gov/forms/FOMCForm.aspx](http://www.federalreserve.gov/forms/FOMCForm.aspx). The request shall be clearly marked FREEDOM OF INFORMATION ACT REQUEST.

\* \* \* \* \*

- 5. In Section 271.6, amend paragraphs (c)(2), (g)(1), introductory text to paragraph (h), and (h)(1); revise paragraphs (d)(3), (e)(4) and (e)(5) to read as follows:

**§ 271.6 Processing requests.**

\* \* \* \* \*

(c) \* \* \*

(2) In response to a request for expedited processing, the Secretary of the Committee shall notify a requester of the determination within ten working days of receipt of the request. In exceptional situations, the

Secretary of the Committee has the discretion to waive the formality of certification. If the Secretary of the Committee denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (h) of this section, and the Committee shall respond to the appeal within ten working days after the appeal was received by the Committee.

(d) \* \* \*

(3) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B), the Committee may:

(i) Extend the 20-day time limit for a period of time not to exceed 10 working days, where the Committee has provided written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; and

(ii) Extend the 20-day time limit for a period of more than 10 working days where the Committee has provided the requester with an opportunity to limit the scope of the request so that it may be processed within that time frame or with an opportunity to arrange an alternative time frame for processing the original request or a modified request, and has notified the requester that

the Committee's FOIA Public Liaison is available to assist the requester for this purpose and in the resolution of any disputes between the requester and the Committee and of the requester's right to seek dispute resolution services from the Office of Government Information Services.

(e) \* \* \*

(4) The right of the requester to seek assistance from the Committee's FOIA Public Liaison; and

(5) When an adverse determination is made (including determinations that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; the requested record is not readily reproducible in the form or format sought by the requester; to deny a fee waiver request or other fee categorization matter; and to deny a request for expedited processing), the Secretary will advise the requester in writing of that determination and will further advise the requester of:

- (i) The right to appeal to the Committee any adverse determination, as specified in paragraph (h) of this section;
- (ii) The right to seek dispute resolution services from the Committee's FOIA Public Liaison or from the Office of Government Information Services; and
- (iii) The name and title or position of the person responsible for the adverse determination.

\* \* \* \* \*

(g) Providing responsive records.

- (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, or sent in electronic format to the e-mail address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office or makes other acceptable arrangements, or the Committee deems it appropriate to send the documents by another means.

(2) \* \* \*

- (h) Appeal of an adverse determination. A requester may appeal an adverse determination by filing a written appeal with the Committee, as follows:



(1) The appeal shall prominently display the phrase FREEDOM OF INFORMATION ACT APPEAL on the first page, and shall be addressed to the Secretary of the Committee, Federal Open Market Committee, 20th and C Streets N.W., Washington, D.C. 20551; or sent by facsimile to the Secretary of the Committee, (202) 452-2921; or sent by e-mail to the Secretary of the Committee at FOMC-FOIA-Mailbox@frb.gov.

(2) \* \* \*

(3) \* \* \*

- 6. In Section 271.7, revise paragraph (a) to read as follows:

**§ 271.7 Exemptions from disclosure.**

(a) Types of records exempt from disclosure. Pursuant to 5 U.S.C.

552(b), the following records of the Committee are exempt from disclosure under this part. The Committee will withhold records or information only when it reasonably foresees that disclosure would harm an interest protected by an exemption described in 5 U.S.C.

552(b) and in this paragraph 271.7(a), or when disclosure is prohibited by law. In applying the exemption in subparagraph (a)(5) of this section, the Committee will not withhold records based on the

deliberative process privilege if the records were created 25 years or more before the date on which the records were requested.

\* \* \* \* \*

- 7. In Section 271.9, add paragraph (i) to read as follows:

**§ 271.9 Fee schedules; waiver of fees.**

\* \* \* \* \*

(i) Restrictions on charging fees.

(1) If the Committee fails to comply with the time limits specified in the FOIA in which to respond to a request, the Committee will not charge search fees, or, in the case of requests from requesters described in paragraph (c)(2) of this section, will not charge duplication fees, except as permitted under subparagraphs (i)(2) through (i)(4) of this section.

(2) If the Committee has determined that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and has provided timely written notice to the requester and subsequently responds within the additional 10 days provided in § 271.6(d)(3), the Board may charge search fees, or in the case of requesters described in paragraph (c)(2) of this section, may charge duplication fees.

(3) If the Committee has determined that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and more than 5,000 pages are necessary to respond to the request, the Committee may charge search fees, or, in the case of requesters described in paragraph (c)(2) of this section, may charge duplication fees, if the Committee has:

(i) Provided timely written notice of unusual circumstances to the requester in accordance with the FOIA; and

(ii) Discussed with the requester via written mail, e-mail, or telephone (or made 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).

(4) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

**Appendix A to § 271.9—Freedom of Information Fee Schedule**

\* \* \* \* \*

By order of the Federal Open Market Committee, December 13, 2016.

*Brian Madigan (signed)*

Brian Madigan,  
Secretary, Federal Open Market Committee.