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September 29, 2008

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Reimbursement for Providing Financial Records, Docket No. R-1325

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the Federal Reserve's proposal to adjust the fees under which banks may be reimbursed by a governmental authority for assembling or providing records under the requirements of the Right to Financial Privacy Act (RFPA). This is the first time these fees have been adjusted since 1996. ICBA greatly welcomes the proposal as we have been encouraging the federal government to take such a step for some time. Adequate fees are important since document production can be expensive and time-consuming for community banks. The adjustments are even more important in today's challenging economic environment when community banks are increasingly requested to produce documents to respond to government requests.

Overview of ICBA Comments

ICBA welcomes the proposed clarification of the rules for two reasons. First, it will help bankers understand when fees can and should be requested. More important, though, the changes will help clarify to regulators and law enforcement when fees are due. All too frequently, bankers are told that they are not entitled to fees for producing

¹ The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold more than \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

documents even though the time and expense to produce the information is substantial. It is important that government authorities consider that when requesting data. If the requestor knows and understands there are costs they are more likely to focus the request instead of issuing a broad-based scattershot approach with the hope of getting lucky.

Proposed Changes

The first change would clarify that banks are entitled to be reimbursed for producing financial records under an administrative agency request.

Since documents are increasingly produced electronically, the following changes also would be made:

- A new personnel category would be added when computer specialists are needed to retrieve and respond to production requests, with reimbursement at \$30/hour (all personnel costs are calculated using Bureau of Labor Statistics (BLS) data).
- The fees would be updated to reflect changes in personnel costs:
 - Manager/supervisor would increase from \$17/hour to \$30/hour
 - Clerical/technical would increase from \$11/hour to \$22/hour.
- The per hour personnel fees would be adjusted every five years.
- The fees would be changed to a flat fee “per electronic production” instead of “per diskette” (currently \$5/diskette).
- The Federal Reserve is considering eliminating the 50 cent fee for copying microfiche as outdated.
- Fees for paper copies would only be reimbursable at the current rate of 25 cents per page *if* it is a reproduction of documents only in paper format OR paper format is requested by the government.

Specific ICBA Comments & Recommendations

The proposal would change to using the BLS data to calculate personnel costs as a more universal standard, and ICBA supports this revision. The index is readily available and easily applied. Even though the BLS data might be lower than certain paycales in the banking industry and even though it does not adjust for regional variations, on the whole ICBA believes the BLS data offers the most appropriate index.

The changes would add a new personnel category to clearly permit reimbursement for special programming needed to produce requested data. ICBA supports this change but believes the proposed rate does not reflect true costs for hiring these programmers. This is especially important for community banks that rely on outside third-party contractors. Therefore, ICBA urges the Federal Reserve to make one important revision to this element of the proposal. While the proposed \$30 for in-house production might be adequate, ICBA strongly recommends that if the bank must rely on an outside provider to perform this service, and if the costs for hiring that outside vendor are market-rate, then the bank should be reimbursed for the actual fees incurred for the document production. ICBA members report this cost can easily be two, three or four times the proposed \$30 per hour rate and it is only fair that the bank be reimbursed for the costs it incurs for document production.

The fees for managers and supervisors would be increased under the proposal from \$17 per hour to \$30 per hour. ICBA supports this change. While in some instances, the cost may be low, ICBA believes the \$30 rate is much closer to reality than the current figure. ICBA also believes that, while these figures do not reflect geographical variations, having a uniform figure that is widely used will be less complicated and therefore ICBA supports the proposed approach.

The Federal Reserve proposes updating the figures every five years. ICBA believes that is certainly an improvement over waiting 12 years, but also is concerned that five years may be too long. ICBA urges the Federal Reserve to consider an annual revision to the fees. However, if the Federal Reserve believes that an annual adjustment is too complex, ICBA recommends that it revise the figures every other year or at least every third year.

Another change would revise the reimbursable fee from \$5 per diskette to \$5 per “electronic production.” Again, ICBA is concerned that this figure may be too low. More important, the term “electronic production” is vague and needs to be defined. Without a specific definition of what is intended, ICBA believes that the vagueness inherent in the approach will certainly lead to disputes. Since many alternative mechanisms are involved in the electronic production of documents, including memory sticks, diskettes, and so forth, ICBA recommends the final rule specify if the term is intended to mean the medium used to convey the documents and then re-assess the amount. For example, if a memory stick is used and the bank must provide that, then clearly \$5 is far too low.

The proposal would eliminate the fee for microfiche production on the basis that is an outmoded technology that is no longer used. ICBA does not object to this step, but suggests that the Federal Reserve retain this fee until the next round of revisions. Since document production can involve past records and since some older records may only exist on microfiche, then it would be appropriate to use this fee. If, however, the Federal Reserve does want to eliminate the fee, ICBA suggests adding a fee for conversion of microfiche records to a contemporary format for transmittal.

Finally, fees for production of paper would be permitted if the information only exists in paper format or the government agency requesting the information specifically requests paper. ICBA agrees this is appropriate. This will “encourage” the use of electronic documents but it also ensures that banks are entitled to reimbursement for paper production when that is the only option. This is important since production in paper format can be costly.

In addition to the existing fees, ICBA also suggests adding fees for delivery and transportation costs. This is especially important when special delivery or expedited delivery is required by the government entity seeking the documents. These costs can quickly mount, and it is only appropriate that the bank be reimbursed for those fees.

Conclusion

In closing, ICBA welcomes these proposed revisions to the fees banks may receive for document production. The time and expense to research and locate documents, especially for community banks with limited resources, can be considerable. When government entities are not required to bear any part of the costs associated with the request, they have an unfortunate tendency to issue very broad and open-ended subpoenas. If the requestor has to incur additional costs, they are much more likely to focus what they seek, making it easier on the bank to comply.

Thank you for the opportunity to comment. If you have any additional requests or need additional information, please contact the undersigned by e-mail at robert.rowe@icba.org or by telephone at 202-659-8111.

Sincerely,

Robert G. Rowe, III

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