



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

May 22, 1992

TO: Federal Open Market Committee

FROM: Normand Bernard *NB*.

Attached for your information is a copy of an Annual Report to Congress required by the Freedom of Information Act that Chairman Greenspan submitted on behalf of the Federal Open Market Committee. As has been true in other recent years, very few requests for unpublished, FOMC-related information were received during 1991. One request for such information was denied and there were no appeals during the year.

Attachment

ANNUAL REPORT TO CONGRESS

THE FREEDOM OF INFORMATION ACT

FOR THE YEAR 1991

FEDERAL OPEN MARKET COMMITTEE

The following information is submitted to the Congress by the Federal Open Market Committee of the Federal Reserve System in accordance with the requirements of the Freedom of Information Act (5 U.S.C. § 552), as amended in 1974 by Public Law 93-502.

(1) The number of determinations not to comply with requests for records made pursuant to the Committee's Rules Regarding Availability of Information and 5 U.S.C. § 552(a) and the reasons for such determinations.

During 1991, one determination was made by the staff to deny a request for records filed pursuant to the Committee's Rules Regarding Availability of Information and 5 U.S.C. § 552. The staff's denial was based upon exemption 5 of the Freedom of Information Act (5 U.S.C. § 552 (b)(5)). The section of the Act in question exempts from disclosure "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency."

No extensions of time for replying to requests for information were authorized pursuant to § 552(a)(6)(B).

(2) The number of determinations whereby the Committee did not provide records because of the request's failure to identify records adequately, or non-possession of records.

There were no such determinations during 1991.

(3) The number of appeals made by persons under 5 U.S.C. § 552(a)(6) and the Committee's Rules Regarding Availability of Information, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information.

No appeal of a staff denial of information was made during 1991.

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(4) The names and titles or positions of each person responsible for the denial of records requested under this section, with regard to either initial requests or appeals, and the number of instances of participation for each.

No appeal of a staff denial of information was made during 1991.

As indicated in Item (1) above, one request for records was denied during 1991. The person responsible for making initial determinations on requests for records is the Secretary of the Federal Open Market Committee, Mr. Donald L. Kohn. Because Mr. Kohn was absent when the above-referenced denial was decided, Mr. Normand R.V. Bernard, Deputy Secretary of the Federal Open Market Committee, was responsible for the denial.

(5) The results of each proceeding conducted pursuant to 5 U.S.C. § 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

No such proceedings were conducted; nor were there any court opinions or orders that did or could give rise to a proceeding under § 552(a)(4)(F).

(6) A copy of every rule made by such agency regarding the Freedom of Information Act.

Attached is a copy of the Committee's Rules Regarding Availability of Information.

(7) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section.

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During 1991, fees totaling \$88.50 were collected for document search and duplication. The Committee's fee schedule is attached as part of its Rules Regarding Availability of Information.

(8) Such other information as indicates efforts to administer fully this section.

The Federal Reserve Board publishes a substantial amount of statistical data relating to the operations carried out under the direction of the Committee in the monthly Federal Reserve Bulletin and in various weekly, monthly, and other informational press releases. Actions of the Committee are recorded in its Minutes of Actions, Selected List of Actions, and Record of Policy Actions. The Minutes of Actions and the Selected List of Actions are routinely made available for public inspection in the Freedom of Information Office of the Federal Reserve Board. The Records of Policy Actions are released to the press and published in the Federal Reserve Bulletin and the Board's Annual Report.

Attachments

Rules and Regulations

Federal Register

Vol. 56, No. 102

Tuesday, May 28, 1991

12 CFR Part 271

[Docket No. R-0725]

Federal Open Market Committee; Rules Regarding Availability of Information

AGENCY: Federal Open Market
Committee, FRS.

ACTION: Final Rule.

SUMMARY: The Federal Open Market Committee ("Committee") has amended its Rules Regarding Availability of Information to conform its provisions regarding fees to the requirements of the Freedom of Information Reform Act. The new fee schedule is set out in "Appendix A" and reflects the direct costs to the Committee to conduct searches, review documents, and copy documents in response to requests made under the Freedom of Information Act. In addition, these amendments update other portions of the Rules.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT:

Normand R.V. Bernard, Deputy Secretary, Federal Open Market Committee (202/452-3806); or Stephen L. Siciliano, Special Assistant to the General Counsel, Board of Governors of the Federal Reserve System (202/452-3920); or for the hearing impaired only, Telecommunications Device for the Deaf ("TDD"), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Committee last amended its Rules Regarding Availability of Information in 1977 (42 FR 13299, March 10, 1977). The

Freedom of Information Reform Act of 1986 (Pub. L. No. 99-570) ("FOI Reform Act") requires each federal agency to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests..." under the Freedom of Information Act ("FOIA"). These regulations must conform to guidelines issued by the Office of Management and Budget ("OMB"). (52 FR 10017, March 27, 1987.) The FOI Reform Act requires that the fees charged provide only for the recovery of the direct costs of search, review, and duplication. (5 U.S.C. 552(a)(4)(A)(iv)). In conformance with that Act, the Committee published a proposed fee schedule on February 13, 1991. (56 FR 5778)

In addition to conforming the Committee's fee procedures to the FOI Reform Act, the Committee proposed technical changes to update provisions of its Rules Regarding Availability of Information ("Rules"). In particular, modified definitions were proposed for "Records of the Committee" and "Search".

The Committee also proposed changes to § 271.6 of its rules to conform provisions of that section to changes in statutory exemptions from the disclosure requirements of FOIA that have been enacted since the Committee's Rules were last published. Changes were also proposed to § 271.5 to clarify its scope by referring in § 271.5(b)(3) to foreign exchange and domestic securities markets rather than only to securities markets.

The Committee received only one comment on the proposed changes from The Reporters Committee for Freedom of the Press. This comment letter objected to only one aspect of the fee schedule, but had strong objections to the proposed definition of "search."

The objection to the fee schedule concerned the amount of the routine fee waiver. Under the FOI Reform Act (5 U.S.C. 552(a)(4)(A)(iv)(I)), no fee may be charged if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. Based on the calculations of these costs, this waiver was proposed to be \$5. The commenter suggested that the Committee follow other agencies in routinely waiving \$25 in fees. The Committee has not followed this

suggestion because it has calculated the costs of routine collection and processing as \$5. Therefore, the Committee believes this is the appropriate amount of the waiver.

The commenter also objected to the proposed definition of "search," particularly the proposed exclusions to the definition of "search." Commenter believes that the Committee has based these exclusions on a recent poll by the Justice Department regarding the applicability of the FOIA to electronic records. In actuality, the proposed definition is based upon, and is virtually identical to, the FOIA regulation of the Board of Governors of the Federal Reserve System ("Board"), because the Committee expects to use Board staff when responding to FOIA requests. Commenter also stated that these exclusions are ambiguous and may lead to staff not performing a reasonable search for responsive records. These proposed exclusions are based on existing case law regarding a "reasonable search", which governs in any event. Nevertheless, the Committee has determined to evaluate the matter further and will not make this proposed change at the present time. Accordingly, the Committee has determined to eliminate the proposed exclusions to the definition of "search" set forth at § 271.2(d)(2).

Commenter's final objection focused on § 271.5 which permits the Committee to defer availability of certain information. The Committee did not propose to amend the substance of the subsection, but only proposed a revision to the reasons for deferral. Commenter claims that failure to provide documents within the statutory deadline of 10 days constitutes denial. A similar contention was considered by the Supreme Court in *Merrill v. FOMC*, 443 U.S. 340 (1979). In that case, the Court upheld the Committee's longstanding position that the release of certain information of the Committee may be delayed.

Except for the elimination of § 271.2(d)(2), the regulation is adopted in final as it appeared in the proposed rulemaking.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Committee certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendment is primarily a change in agency fees applicable to FOIA requests that would not have a substantial effect on particular small entities.

List of Subjects in 12 CFR Part 271

*Federal Open Market Committee.
Freedom of Information.*

For the reasons set forth in this notice, and pursuant to the Committee's authority under the Freedom of Information Reform Act of 1986, Public Law No. 99-570 (5 U.S.C. 552(a)(4)(A)(i)), to promulgate rules implementing the FOI Reform Act, and its authority under 12 U.S.C. 263 to issue rules regarding the conduct of its business, the Committee proposes to amend 12 CFR part 271 as follows:

PART 271—RULES REGARDING AVAILABILITY OF INFORMATION

1. The authority citation for part 271 is revised to read as follows:

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

2. Section 271.1 is revised to read as follows:

§ 271.1 Authority.

This part is issued by the Federal Open Market Committee (the "Committee") pursuant to the requirement of section 552 of title 5 of the United States Code that every agency shall publish in the *Federal Register* for the guidance of the public descriptions of the established places at which, the officers from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions, and the requirement that agencies promulgate, pursuant to notice and receipt of public comment, the fees applicable to those requests for information, and also pursuant to the Committee's authority under section 12A of the Federal Reserve Act, 12 U.S.C. 263, to issue regulations governing the conduct of its business.

3. In § 271.2, paragraph (b) is revised and paragraphs (c) and (d) are added to read as follows:

§ 271.2 Definitions.

(b) *Records of the Committee.* (1) For purposes of requests submitted pursuant to the Freedom of Information Act (5 U.S.C. 552), the term "records of the Committee" includes rules, statements, opinions, orders, memoranda, letters, reports, accounts, and other written material, as well as magnetic tapes, computer printouts of information obtained through use of existing computer programs, charts, and other materials in machine readable form that constitute a part of the Committee's official files.

(c) *Board and Federal Reserve bank.* For the purposes of this part, "Board"

means the Board of Governors of the Federal Reserve System established by the Federal Reserve Act of 1913 (38 Stat. 251), and "Federal Reserve bank" means one of the district banks authorized by that same Act, 12 U.S.C. 222, including any branch of any such bank.

(d) *Search.* (1) For the purposes of this part, "search" means a reasonable search of the Committee's files and any other files containing records of the Committee as seems reasonably likely in the particular circumstances to contain documents of the kind requested. Searches may be done manually or by computer using existing programming. For purposes of computing fees under § 271.8 of this regulation, search time includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity is distinct from "review" of material to determine whether the material is exempt from disclosure.

4. Section 271.4 is amended by revising paragraph (c) to read as follows, and by removing paragraph (f):

§ 271.4 Records available to the public on request.

(c) *Obtaining access to records.* Any person requesting access to records of the Committee shall submit such request in writing to the Secretary of the Committee. In any case in which the records requested, or copies thereof, are available at a Federal Reserve Bank, the Secretary of the Committee or his or her designee may so advise the person requesting access to the records. Every request for access to records of the Committee shall state the full name and shall describe such records in a manner reasonably sufficient to permit their identification without undue difficulty. The Secretary of the Committee or his or her designee shall determine within ten working days after receipt of a request for access to records of the Committee whether to comply with such request; and he shall immediately notify the requesting party of his decision, of the reasons therefor, and of the right of the requesting party to appeal to the Committee any refusal to make available the requested records of the Committee.

5. Section 271.5 is amended by revising paragraph (b)(3) to read as follows:

§ 271.5 Deferral of availability of certain information.

(b) * * *

(3) Result in unnecessary or unwarranted disturbances in foreign exchange or domestic securities markets;

6. Section 271.8 is amended by revising paragraphs (b) and (d), by removing the word "or" at the end of paragraph (e) and adding a semicolon in place of the period at the end of paragraph (f), and adding paragraphs (g) and (h) to read as follows:

§ 271.6 Information not disclosed.

(b) Relates solely to internal personnel rules or practices or other internal practices of the Committee within the meaning of 5 U.S.C. 552(b)(2);

(d) Is contained in inter- or intra-agency memorandums, reports, or letters that would not be routinely available by law to a party (other than an agency) in litigation with the Committee, including but not limited to:

- (1) Memorandums;
- (2) Reports;
- (3) Other documents prepared by the staff or agents of the Committee;
- (4) Records of deliberations of the Committee and of discussions at meetings of the Committee, or staff or agents of the Committee.

(g) Constitutes records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7).

(h) Constitutes a document or information that is covered by an order of a court of competent jurisdiction that prohibits its disclosure.

7. Section 271.8 is added to read as follows:

§ 271.8 Fee schedule; waiver of fees.

(a) *Fee schedule.* Records of the Committee available for public inspection and copying are subject to a written Schedule of Fees for search, review, and duplication. (See appendix A for Schedule of Fees.) The fees set forth in the Schedule of Fees reflect the full allowable direct costs of search, duplication, and review, and may be adjusted from time to time by the Secretary to reflect changes in direct costs.

(b) *Fees charged.* The fees charged only cover the full allowable direct costs of search, duplication, or review.

(1) *Direct costs* mean those expenditures which the Committee actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing)

documents to respond to a request made under § 271.4 of this regulation. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Duplication* refers to the process of making a copy of a document necessary to respond to a request for disclosure of records, or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(3) *Review* refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Commercial use.* (1) The fees in the Schedule of Fees for document search, duplication, and review apply when records are requested for commercial use.

(2) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(d) *Educational, research, or media use.* (1) Only the fees in the Schedule of Fees for document duplication apply when records are not sought for commercial use and the requester is a representative of the news media, or of an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. However, there is no charge for the first one hundred pages of duplication.

(2) *Educational institution* refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education which operates a program of scholarly research.

(3) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis

(as that term is used in paragraph (c) of this section) and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) *Representative of the news media* refers to any person who is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. "Free lance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) *Other uses.* For all other requests, the fees in the Schedule of Fees for document search and duplication apply. However, there is no charge for the first one hundred pages of duplication or the first two hours of search time.

(f) *Aggregated requests.* If the Secretary reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests, each seeking portions of a document or documents solely for the purpose of avoiding the assessment of fees, the Secretary may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(g) *Payment procedures.* (1) *Fee payment.* The Secretary may assume that a person requesting records pursuant to § 271.4 of this regulation will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (h) of this section.

(2) *Advance notification.* If the Secretary estimates that charges are likely to exceed \$25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. Upon receipt of such notice the requester may confer with the Secretary as to the possibility of reformulating the request in order to lower the costs.

(3) *Advance payment.* (i) The Secretary may require advance payment of any fee estimated to exceed \$250. The Secretary may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion.

(ii) For purposes of computing the time period for responding to requests under

§ 271.4(c) of this regulation, the running of the time period will begin only after the Secretary receives the required payment.

(4) *Late charges.* The Secretary may assess interest charges when a fee is not paid within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date of the billing. This rate of interest is published by the Secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if no responsive documents are located or if the request is denied. The Secretary shall apply the standards set out in paragraph (h) of this section in determining whether to waive or reduce fees.

(h) *Waiver or reduction of fees. (1) Standards for determining waiver or reduction.* The Secretary or his or her designee shall grant a waiver or reduction of fees chargeable under paragraph (b) of this section where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. The Secretary or his or her designee shall also waive fees that are less than the average cost of collecting fees.

(2) *Contents of request for waiver.* The Secretary shall normally deny a request for a waiver of fees that does not include:

- (i) A clear statement of the requester's interest in the requested documents;
- (ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;
- (iii) A statement of how the public will benefit from such use and from the Board's release of the requested documents; and
- (iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(3) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(4) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Committee, fees shall be waived where the total charges (including charges for information provided under the Privacy Act of 1974 (5 U.S.C. 552a) are \$50 or less; but the Secretary may waive fees in excess of that amount.

10. "Appendix A" is added to the end of part 271 to read as follows:

Appendix A to Part 271—Freedom of Information Fee Schedule

Duplication:

Photocopy, per standard page.....\$ 0.10
Paper copies of microfiche, per frame.....\$ 0.10
Duplicate microfiche, per microfiche.....\$ 0.30

Search and Review:

Clerical/Technical, hourly rate.....\$17.00
Professional/Supervisory, hourly rate.....\$32.00
Manager/Senior Professional, hourly rate.....\$53.00

Computer search and production:

Operator search time, hourly rate.....\$25.00
Cassette tapes.....\$ 5.00
PC computer output, per minute.....\$ 0.10
Mainframe computer output.....Actual cost

Special Services:

The Secretary of the Committee may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information and sending records by special methods such as express mail. The Secretary may provide self-service photocopy machines and microfiche printers as a convenience to requesters.

Fee Waivers:

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media, the Committee will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other noncommercial use requests, no fees will be assessed for review time, for the first 100 pages of reproduction, or the first two hours of search time. For requesters qualifying for 100 free pages of reproduction, the fees for duplicate microfiche will be prorated to eliminate the charge for 100 frames.

The Committee will waive in full fees that total less than \$5.

The Secretary of the Committee or his or her designee will also waive or

reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee reduction is available to employees, and applicants for employment who request records for use in prosecuting a grievance or complaint against the Committee.

By order of the Federal Open Market Committee, May 17, 1991.

Donald L. Kohn,

Secretary of the Committee.

[FR Doc. 91-12240 Filed 5-24-91; 8:45 am]

BILLING CODE 3210-01-F