

Federal Open Market Committee—Rules Regarding Availability of Information

12 CFR 271; as amended effective September 19, 2017

§ 271.1—Authority and Purpose

- (a) *Authority.* This part¹ is issued by the Federal Open Market Committee (the Committee) pursuant to the Freedom of Information Act, 5 U.S.C. 552, 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.
- (b) *Purpose.* This part sets forth the categories of information made available to the public and the procedures for obtaining documents and records.

§ 271.2—Definitions

- (a) *Board* means the Board of Governors of the Federal Reserve System established by the Federal Reserve Act of 1913 (38 Stat. 251).
- (b) *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.
- (c) *Direct costs* mean those expenditures that the Committee actually incurs in searching for, reviewing, and duplicating documents in response to a request made under § 271.5.
- (d) *Duplication* refers to the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microform, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk).
- (e) *Education 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 that operates a program of scholarly research.
- (f) *Federal Reserve Bank* means one of the District Banks authorized by the Federal Reserve Act, 12 U.S.C. 222, including any branch

of any such Bank.

(g) *Information of the Committee* means all information coming into the possession of the Committee or of any member thereof or of any officer, employee, or agent of the Committee, the Board, or any Federal Reserve Bank, in the performance of duties for, or pursuant to the direction of, the Committee.

(h) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis (as that term is used in 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.

(i) *Records of the Committee* includes rules, statements, decisions, minutes, memoranda, letters, reports, transcripts, accounts, charts, and other written material, as well as any materials in machine-readable form that constitute a part of the Committee's official files.

(j) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(1) The term "news" means information about current events or that would be of current interest to the public.

(2) Examples of news-media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of newspapers and other periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public.

(3) "Freelance" 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.

(k)(1) *Review* refers to the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release.

(2) *Review* does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(D)(1) *Search* means a reasonable search, by manual or automated means, of the Committee's official files and any other files containing records of the Committee as seem reasonably likely in the particular circumstances to contain documents of the kind requested. For purposes of computing fees under § 271.9, 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.

(2) *Search* does not mean or include research, creation of any document, or extensive modification of an existing program or system that would significantly interfere with the operation of the Committee's automated information system.

§ 271.3—Published Information

(a) *Federal Register*. The Committee publishes in the *Federal Register*, in addition to this part:

- (1) A description of its organization;
- (2) Statements of the general course and method by which its functions are channeled and determined;
- (3) Rules of procedure;
- (4) Substantive rules of general applicability, and statements of general policy and interpretations of general applicability formulated and adopted by the Committee;
- (5) Every amendment, revision, or repeal of the foregoing; and
- (6) General notices of proposed rulemaking.

(b) *Annual report to Congress*. Each annual report made to Congress by the Board includes a complete record of the actions taken by the Committee during the preceding year upon all matters of policy relating to open market operations, showing the reasons underlying the actions, and the votes taken.

(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.

§ 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 USC 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 www.federalreserve.gov/foia/fomc/readingrooms.htm#rr1, in its conventional reading room located at 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) *Privacy protection*. The Committee may delete identifying details from any record to prevent a clearly unwarranted invasion of personal privacy.

§ 271.5—Records Available to the Public on Request

(a) *Types of records made available*. All rec-

ords of the Committee that are not available under §§ 271.3 and 271.4 shall be made available upon request, pursuant to the procedures in this section and the exceptions in § 271.7.

(b) *Procedures for requesting records.*

(1) A request for identifiable records shall reasonably describe the records in a way that enables the Committee's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Committee's operations. Information that assists staff in identifying responsive records includes the subject matter and date or time frame of the information requested.

(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. The request shall be clearly marked FREEDOM OF INFORMATION ACT REQUEST.

(c) *Contents of request.* The request shall contain the following information:

(1) The name and address of the requester, and the telephone number at which the requester can be reached during normal business hours;

(2) Whether the requested information is intended for commercial use, and whether the requester represents an educational or noncommercial scientific institution, or news media;

(3) A statement agreeing to pay the applicable fees, or a statement identifying any fee limitation desired, or a request for a waiver or reduction of fees that satisfies § 271.9(f).

(d) *Defective requests.* The Committee need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this section. The Committee may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

§ 271.6—Processing Requests

(a) *Receipt of requests.* The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Committee by another agency or by a Federal Reserve Bank, is the date the secretary of the Committee actually receives the request.

(b) *Priority of responses.* The Committee shall normally process requests in the order they are received. However, in the secretary's discretion, or upon a court order in a matter to which the Committee is a party, a particular request may be processed out of turn.

(c) *Expedited processing.* Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the Committee has determined to expedite the response, the Committee shall process the request as soon as practicable.

(1) To demonstrate a compelling need for expedited processing, the requester shall provide a certified statement, a sample of which may be obtained from the Board's Freedom of Information Office. The statement, certified to be true and correct to the best of the requester's knowledge and belief, shall demonstrate that:

(i) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester is a representative of the news media, as defined in § 271.2, and there is urgency to inform the public concerning actual or alleged Committee activity.

(2) In response to a request for expedited processing, the secretary of the Committee shall notify a requester of the determination within 10 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

- 10 working days after the appeal was received by the Committee.
- (d) *Time limits.* The time for response to requests shall be 20 working days, except;
- (1) In the case of expedited treatment under paragraph (c) of this section;
 - (2) Where the running of such time is suspended for payment of fees pursuant to § 271.9(b)(2);
 - (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) *Response to request.* In response to a request that satisfies § 271.5, an appropriate search shall be conducted of records of the Committee in existence on the date of receipt of the request, and a review made of any responsive information located. The secretary shall notify the requester of:
- (1) The Committee's determination of the request;
 - (2) The reasons for the determination;
 - (3) The amount of information withheld;
 - (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.
- (f) *Referral to another agency.* To the extent a request covers documents that were created by, obtained from, or classified by another agency, the Committee may refer the request to that agency for a response and inform the requester promptly of the referral.
- (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) The Committee shall provide a copy of the record in any form or format requested if the record is readily reproducible by the Committee in that form or format, but the Committee need not provide more than one copy of any record to a requester.
- (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) An initial request for records may not be combined in the same letter with an appeal.
- (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 non-exclusive alternative to litigation.

§ 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.

- (1) *National defense.* Any information that is specifically authorized under criteria established by an executive order to be kept

secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to the executive order.

(2) *Internal personnel rules and practices.* Any information related solely to the internal personnel rules and practices of the Board.

(3) *Statutory exemption.* Any information specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), if the statute:

- (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
- (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) *Trade secrets; commercial or financial information.* Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) *Inter- or intra-agency memorandums.* Information contained in inter- or intra-agency memorandums or letters that would not be available by law to a party (other than an agency) in litigation with an agency, including, but not limited to:

- (i) Memorandums;
- (ii) Reports;
- (iii) Other documents prepared by the staffs of the Committee, Board or Federal Reserve Banks; and
- (iv) Records of deliberations of the Committee and of discussions at meetings of the Committee or its staff.

(6) *Personnel and medical files.* Any information contained in personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) *Information compiled for law enforcement purposes.* Any records or information compiled for law enforcement purposes, to the extent permitted under 5 USC 552(b)(7).

(8) *Examination, inspection, operating, or condition reports, and confidential supervisory information.* Any matter that is contained in or related to examination, operat-

ing, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, including a state financial institution supervisory agency.

(b) *Segregation of nonexempt information.* The Committee shall provide any reasonably segregable portion of a record that is requested after deleting those portions that are exempt under this section.

(c) *Discretionary release.* Except where disclosure is expressly prohibited by statute, regulation, or order, the Committee may authorize the release of records that are exempt from mandatory disclosure whenever the Committee or designated Committee members determines that such disclosure would be in the public interest.

(d) *Delayed release.* Publication in the *Federal Register* or availability to the public of certain information may be delayed if immediate disclosure would likely:

- (1) Interfere with accomplishing the objectives of the Committee in the discharge of its statutory functions;
- (2) Interfere with the orderly conduct of the foreign affairs of the United States;
- (3) Permit speculators or others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;
- (4) Result in unnecessary or unwarranted disturbances in the securities markets;
- (5) Interfere with the orderly execution of the objectives or policies of other government agencies; or
- (6) Impair the ability to negotiate any contract or otherwise harm the commercial or financial interest of the United States, the Committee, the Board, any Federal Reserve Bank, or any department or agency of the United States.

(e) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Committee or any Federal Reserve Bank shall disclose or permit the disclosure of any unpublished information of the Committee to any person (other than Committee officers, employees, or agents properly entitled to such

information for the performance of official duties).

§ 271.8—Subpoenas

(a) *Advice by person served.* If any person, whether or not an officer or employee of the Committee, of the Board of Governors of the Federal Reserve System, or of a Federal Reserve Bank, has information of the Committee that may not be disclosed by reason of § 271.7 and in connection therewith is served with a subpoena, order, or other process requiring the person's personal attendance as a witness or the production of documents or information upon any proceeding, the person should promptly inform the secretary of the Committee of such service and of all relevant facts, including the documents and information requested and any facts that may be of assistance in determining whether such documents or information should be made available; and the person should take action at the appropriate time to inform the court or tribunal that issued the process, and the attorney for the party at whose instance the process was issued, if known, of the substance of this part.

(b) *Appearance by person served.* Except as disclosure of the relevant information is authorized pursuant to this part, any person who has information of the Committee and is required to respond to a subpoena or other legal process shall attend at the time and place therein mentioned and decline to disclose such information or give any testimony with respect thereto, basing such refusal upon this part. If, notwithstanding, the court or other body orders the disclosure of such information, or the giving of such testimony, the person having such information of the Committee shall continue to decline to disclose such information and shall promptly report the facts to the Committee for such action as the Committee may deem appropriate.

§ 271.9—Fee Schedules; Waiver of Fees

(a) *Fee schedules.* The fees applicable to a

request for records pursuant to §§ 271.4 and 271.5 are set forth in appendix A to this section. These fees cover only the full allowable direct costs of search, duplication, and review. No fees will be charged where the average cost of collecting the fee (calculated at \$5.00) exceeds the amount of the fee.

(b) *Payment procedures.* The secretary may assume that a person requesting records pursuant to § 271.5 will pay the applicable fees, unless the request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (f) of this section.

(1) *Advance notification of fees.* If the estimated charges are likely to exceed \$100, the secretary of the Committee shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the secretary to reformulate the request to lower the costs.

(2) *Advance payment.* 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. The time period for responding to requests under § 271.6(d), and the processing of the request shall be suspended until the secretary receives the required payment.

(3) *Late charges.* The secretary may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717 and accrues from the date of the billing.

(c) *Categories of uses.* The fees assessed depend upon the intended use for the records requested. In determining which category is appropriate, the secretary shall look to the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the secretary may seek additional clarification before categorizing the request.

(1) *Commercial use.* The fees for search, duplication, and review apply when records

are requested for commercial use.

(2) *Educational, research, or media use.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. The first 100 pages of duplication, however, will be provided free.

(3) *All other uses.* For all other requests, the fees for document search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(d) *Nonproductive search.* Fees for search and review may be charged even if no responsive documents are located or if the request is denied.

(e) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the secretary reasonably believes that a requester is separating a request into a series of requests for the purpose of evading the assessment of fees, the secretary may aggregate any 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.

(f) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in section 271.6(d), shall not begin until a determination has been made on the request for a waiver or reduction of fees.

(1) *Standards for determining waiver or reduction.* The secretary shall grant a waiver or reduction of fees 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 operation or activities of the government, and that the disclosure of information

is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

- (i) Whether the subject of the records concerns the operations or activities of the government;
 - (ii) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;
 - (iii) Whether the requester has the intention and ability to disseminate the information to the public;
 - (iv) Whether the information is already in the public domain;
 - (v) Whether the requester has a commercial interest that would be furthered by the disclosure; and, if so,
 - (vi) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.
- (2) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include:
- (i) A clear statement of the requester's interest in the documents;
 - (ii) The use proposed for the documents and whether the requester will derive income or other benefit for such use;
 - (iii) A statement of how the public will benefit from such use and from the Committee's release of the documents;
 - (iv) A description of the method by which the information will be disseminated to the public; and
 - (v) If specialized use of the information is contemplated, a statement of the requester's qualifications that are relevant to that use.
- (3) *Burden of proof.* 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) *Determination by secretary.* The secretary shall make a determination on the request for a waiver or reduction of fees and

shall notify the requester accordingly. A denial may be appealed to the Committee in accordance with § 271.6(h).

- (g) *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.
- (h) *Special services.* The secretary 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 or overnight delivery.
- (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 (2)–(4) of this paragraph (i).
 - (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

Duplication

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

Duplicate microfiche, per microfiche \$ 0.35

Search and Review

Clerical/technical, hourly rate	\$20.00
Professional/supervisory, hourly rate	\$38.00
Manager/senior professional, hourly rate	\$65.00

Computer Search and Production

Computer operator search, hourly rate	\$32.00
Tapes (cassette), per tape	\$ 6.00
Tapes (cartridge), per tape	\$ 9.00
Tapes (reel), per tape	\$18.00
Diskettes (3 1/2"), per diskette	\$ 4.00
Diskettes (5 1/4"), per diskette	\$ 5.00
Computer output (PC), per minute	\$ 0.10
Computer output (mainframe)	actual cost

ⁱ The words “this part,” as used herein, mean these Rules Regarding Availability of Information (Code of Federal Regulations, title 12, chapter II,

part 271).