

the public comments. These actions will be taken to aid in the development of a test procedure NOPR for TVs.

DOE considers public participation to be a very important part of the process for developing test procedures. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586-2945, or via e-mail at Brenda.Edwards@ee.doe.gov.

Issued in Washington, DC, on August 27, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1101

Description of Office, Procedures, and Public Information

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Financial Institutions Examination Council (Council or FFIEC), on behalf of its members, is proposing to update its Freedom of Information Act (FOIA) regulations. The Council last made changes to its FOIA regulations in 1988. Since that time information relating to the Council has changed and there have been several amendments to the FOIA, which need to be reflected in the regulations. The proposed rules revise the procedures to be used by members of the public in requesting records maintained by the Council, the time limits in which the Council must make a determination on disclosure in response to a request for records, the time period in which a requester has the right to administratively appeal any adverse determination made on a request for records, and provides procedures to be used to request expedited processing of FOIA requests. The revisions in the proposed rules are designed to improve access to records maintained by the Council and to

provide clearer guidance to requesters on how to obtain records under the FOIA.

DATES: Comments must be submitted on or before October 4, 2010.

ADDRESSES: Because paper mail in the Washington, DC area and received by the Council is subject to delay due to heightened security precautions, commenters are encouraged to submit comments by the Federal eRulemaking Portal, if possible. Please use the title "FOIA Comments" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—“Regulations.gov”:* Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “FFIEC” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “Docket Number FFIEC-2010-0001” to submit or view public comments, and to view supporting and related materials for this notice of proposed rulemaking. The “How to Use This Site” link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *Mail:* Paul Sanford, Executive Secretary, Federal Financial Institutions Examination Council, L. William Seidman Center, Mailstop: B-7081a, 3501 Fairfax Drive, Arlington, Virginia 22226-3550.

- *Hand Delivery/Courier:* Paul Sanford, Executive Secretary, Federal Financial Institutions Examination Council, L. William Seidman Center, Mailstop: B-7081a, 3501 Fairfax Drive, Arlington, Virginia 22226-3550.

Instructions: You must include “FFIEC” as the agency name and “Docket Number FFIEC-2010-0001” in your comment. In general, the Council will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice of proposed rulemaking electronically by following these instructions: Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Document Search” option where indicated, select “FFIEC” from the agency drop-down menu, then, click “Submit.” In the “Docket ID” column, select “Docket FFIEC-2010-0001” to view public comments for this rulemaking action.

Docket: You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Paul Sanford, Executive Secretary, Federal Financial Institutions Examination Council, via telephone: (703) 516-5590, or via e-mail: PaSanford@FDIC.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Council proposes a number of substantive and technical changes to its regulations implementing the FOIA (5 U.S.C. 552, as amended) that fall within two general categories. First, the Council proposes modifying its existing regulations to reflect the amendments to the FOIA contained in the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231, 110 Stat. 3048, and the OPEN Government Act, Public Law 110-175, 121 Stat. 2524. The Electronic Freedom of Information Act Amendments increased the FOIA’s basic time limit for agency responses to FOIA requests, and provided for expedited processing of FOIA requests under certain conditions, among other procedural revisions. The OPEN Government Act also amended various FOIA administrative procedures, such as when an agency may toll the statutory time for responding to FOIA requests, and how to indicate exemptions authorizing deletion of materials under the FOIA on a responsive record.

Second, the Council proposes to revise its regulations to further clarify its policies and procedures relating to the processing of FOIA requests and the administration of its FOIA operations.

Accordingly, the Council proposes to revise its regulations implementing the FOIA and put them out for public comment. The specific amendments that the Council proposes to each section of 12 CFR Part 1101 are discussed hereafter in regulatory sequence.

II. Proposed Regulatory Revisions

In 12 CFR 1101.3(e), the Council proposes revising the paragraph by

providing the current address of the Council's offices.

In 12 CFR 1101.4(a), the Council proposes revising the paragraph by providing the current address of the Council's offices and clarifying that Council policies and interpretations may be withheld from disclosure under exemptions to the FOIA.

In 12 CFR 1101.4(b), the Council proposes minor revisions to the wording of the section heading.

In 12 CFR 1101.4(b)(1), the Council proposes minor revisions in the wording of the paragraph to explain that Council records that are not published in the **Federal Register** or available for inspection and copying at the Council's offices are available to the public upon request except to the extent that such records are exempt from disclosure under the FOIA.

In 12 CFR 1101.4(b)(1)(i), the Council proposes capitalizing the word "Order" when referring to an Executive Order.

In 12 CFR 1101.4(b)(1)(v), the Council proposes adding language to protect from disclosure records of deliberations and meetings of the Council, its committees, and staff, that are not subject to the Government in the Sunshine Act, 5 U.S.C. 552b.

In 12 CFR 1101.4(b)(1)(vii), the Council proposes revising the paragraph by substituting a reference to the statutory citation for Exemption 7 of the FOIA, 5 U.S.C. 552(b)(7), for the list of the specific substantive provisions of the exemption in the existing regulation. In addition, the term "state or federal" has been inserted to clarify that records of state financial regulatory agencies in the possession of the Council are exempt from disclosure under Exemption 7 as are the records of federal regulatory agencies.

In 12 CFR 101.4(b)(1)(viii), the Council proposes revising the paragraph by eliminating a listing of the types of financial institutions covered by Exemption 8 of the FOIA, 5 U.S.C. 552(b)(8), and inserting the term "state or federal" to clarify that records of state financial regulatory agencies in the possession of the Council are exempt from disclosure under Exemption 8.

In 12 CFR 1101.4(b)(2), the Council proposes revising the heading to reflect current FOIA terminology concerning discretionary releases of exempt information.

In 12 CFR 1101.4(b)(3)(i), the Council proposes to revise the paragraph to provide the current address of the Council's offices, to allow the submission of FOIA requests by facsimile and e-mail, and to require that requests reasonably describe the records sought.

In 12 CFR 1101.4 (b)(3)(ii) the Council proposes to revise the paragraph to specify the information that a request must contain in order to be considered a "proper FOIA request" (*i.e.*, a request to which a response is required). In addition, the Council proposes to require a requester to identify whether the information sought by a FOIA request is requested for commercial use and whether the requester is an educational or noncommercial scientific institution, or news media representative, and to address the payment of fees.

In 12 CFR 1101.4(b)(3)(iii), the Council proposes modifying the language of the paragraph to clarify that the Council need not accept or process a defective FOIA request and to provide that such a request may be returned to the requester specifying the deficiency.

In 12 CFR 1101.4(b)(3)(iv), the Council proposes to add a procedure to request the expedited treatment of FOIA requests. A requester seeking to have the processing of a request expedited must show a compelling need for expedited processing.

In 12 CFR 1101.4(b)(3)(v), the Council proposes revising its procedures to increase the time limit in which the Council must respond to a FOIA request from 10 working days to 20 working days in accordance with the Electronic Freedom of Information Act Amendments and to clarify what information the Council's response to a FOIA request must contain.

In 12 CFR 1101.4(b)(3)(vi), the Council proposes to shorten the time period in which an administrative appeal of a denied request may be brought from 35 calendar days to 10 working days, to provide for the filing of administrative appeals by facsimile, and to update the mailing address of the Council.

In 12 CFR 1101.4(b)(3)(vii), the Council proposes to clarify that the time in which the Council has to respond to an appeal runs from the actual receipt of the appeal by the Executive Secretary of the Council.

In 12 CFR 1101.4(b)(4), the Council proposes to designate the existing paragraph as paragraph 1101.4(b)(4)(i) and to make a minor grammatical change to the language of the paragraph.

The Council proposes to add 12 CFR 1101.4(b)(4)(ii) to provide that if the responsive records are to be delivered to the requester, they will be mailed to the requester unless the Executive Secretary of the Council determines that it is appropriate to send the records by some other means.

The Council proposes to add 12 CFR 1101.4(b)(4)(iii) to indicate that the

Council will provide a copy of a responsive record in the format requested by the requester if the record is "readily reproducible" in that format.

The Council proposes to add 12 CFR 1101.4(b)(4)(iv) to permit records to be provided electronically, and to provide that if the information is subject to the Privacy Act, 5 U.S.C. 552a, it will not be sent electronically unless "reasonable security measures" can be established.

In 12 CFR 1101.4(b)(5)(i)(C), the Council proposes to revise the definition of the term "Duplication" to provide examples of the forms of document reproduction that may be used by the Council.

In 12 CFR 1101.4(b)(5)(i)(D), the Council proposes to make a minor change to the wording of the paragraph replacing the character "\$" with the word "section".

In 12 CFR 1101.4(b)(5)(i)(E), the Council proposes to add a provision to allow the Executive Secretary of the Council to consider the use to which the requester will put the records, and to seek additional information on the use if necessary in order to determine whether a particular FOIA request is a "commercial use request".

In 12 CFR 1101.4(b)(5)(i)(G), the Council proposes to make a minor change to the wording of the paragraph replacing the character "\$" with the word "section".

In 12 CFR 1101.4(b)(5)(i)(H), the Council proposes revising its definition of "Representative of the news media" to reflect the definition provided in the OPEN Government Act, 5 U.S.C. 552(a)(4)(A)(ii).

In 12 CFR 1101.4(b)(5)(ii)(C)(2), the Council proposes to add computer disks to the list of examples indicating the types of materials for which a requester will be charged a fee.

In 12 CFR 1101.4(b)(5)(ii)(F), the Council proposes revising the paragraph to provide examples of "special services" for which additional fees may be charged.

In 12 CFR 1101.4(b)(5)(ii)(H), the Council proposes to revise the procedures for requesting a waiver or reduction of fees. The proposed revisions include eliminating the list of factors to be considered by the Council in determining whether the public interest requirement is met, requiring a requester to state a justification for a waiver or reduction of fees, and providing a right to administratively appeal the denial of a request for a waiver or reduction of fees.

In 12 CFR 101.4(b)(5)(iii)(A), the Council proposes to make a minor grammatical change to the language of the paragraph.

In 12 CFR 101.4(b)(5)(iv), the Council proposes to make a minor change to the statutory citation contained in the paragraph.

In 12 CFR 1101.4(b)(5)(vii)(B), the Council proposes to make a minor change to the wording of the paragraph replacing the character “§” with the word “section”.

In 12 CFR 1101.4(b)(5)(vii)(C), the Council proposes to revise the paragraph by replacing the character “§” with the word “section,” and by increasing the limit stated in the parenthetical phrase to 20 working days in accordance with subsection (a)(6) of the FOIA 5 U.S.C. 552(a)(6).

In 12 CFR 1101.4(b)(6), the Council proposes revising the paragraph to provide that referral or consultation with another agency is appropriate whenever the requested record originated with or incorporates the information of another state or federal agency.

III. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603(a), the Council must publish an initial regulatory flexibility analysis with this proposed rulemaking or certify that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA analysis or certification, financial institutions with total assets of \$175 million or less are considered to be “small entities.” The Council hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. These proposed changes do not contain any information collection requirements that require the approval of OMB.

C. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Council invites your comments on how to make this proposed regulation easier to understand. For example:

- Has the Council organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the proposed regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed regulation easier to understand? If so, what changes to the format would make the proposed regulation easier to understand?
- What else could the Council do to make the proposed regulation easier to understand?

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The Council has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

Congressional Review Act

This proposed rule will be submitted to OMB for a determination as to whether or not it constitutes a major rule under the Congressional Review Act, 5 U.S.C. 801–808, 5 U.S.C. 804(2), (3)(c), before it is issued as a final rule.

Lists of Subjects in 12 CFR Part 1101

Freedom of information, FOIA exemptions, Schedule of fees, Waivers or reductions of fees.

For the reasons set forth in the preamble, the Council proposes to amend 12 CFR part 1101 as follows:

PART 1101—DESCRIPTION OF OFFICE, PROCEDURE, PUBLIC INFORMATION

1. The authority citation for part 1101 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 3307.

2. Section 1101.3 is amended by revising paragraph (e) to read as follows:

§ 1101.3 Organization and methods of operation.

* * * * *

(e) *Council address.* Council offices are located at 3501 Fairfax Drive, Room B–7081a, Arlington, VA 22226–3550.

3. Section 1101.4 is amended:

- a. By revising paragraph (a);
- b. By revising the heading for paragraph (b) and paragraphs (b)(1) introductory text, (b)(1)(i), (v), (vii), and (viii);
- c. By revising paragraphs (b)(2), (3), and (4);
- d. By revising paragraphs (b)(5)(i)(C), (D), (E), (G), and (H) and (b)(5)(ii)(C)(2), (F), and (H); and
- e. By revising paragraphs (b)(5)(iii)(A), (b)(5)(iv), (b)(5)(iv)(B), (C), and (b)(6).

The revisions read as follows:

§ 1101.4 Disclosure of information, policies, and records.

(a) *Statements of policy published in the Federal Register or available for public inspection and copying; indices.* Under 5 U.S.C. 552(a)(1), the Council publishes general rules, policies and interpretations in the **Federal Register**. Under 5 U.S.C. 552(a)(2), policies and interpretations adopted by the Council, including instructions to Council staff affecting members of the public, and an index to the same, are available for public inspection and copying at the office of the Executive Secretary of the Council, 3501 Fairfax Drive, Room B–7081a, Arlington, VA 22226–3550, during regular business hours. Policies and interpretations of the Council may be withheld from disclosure under the principles stated in paragraph (b)(1) of this section.

(b) *Other records of the Council available to the public upon request; procedures—(1) General rule and exemptions.* Under 5 U.S.C. 552(a)(3), all other records of the Council are available to the public upon request, except to the extent exempted from disclosure as provided in this paragraph (b). Except as specifically authorized by the Council, the following records, and portions thereof, are not available to the public:

(i) A record, or portion thereof, which is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which is, in fact, properly classified pursuant to such Executive Order.

* * * * *

(v) An intra-agency or interagency memorandum or letter that would not be routinely available by law to a private party in litigation, including, but not limited to, memoranda, reports, and other documents prepared by the personnel of the Council or its constituent agencies, and records of deliberations of the Council and discussions of meetings of the Council, any Council Committee, or Council staff, that are not subject to 5 U.S.C.

552b (the Government in the Sunshine Act).

* * * * *

(vii) Records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7), including records relating to a proceeding by a financial institution's state or federal regulatory agency for the issuance of a cease-and-desist order, or order of suspension or removal, or assessment of a civil money penalty and the granting, withholding, or revocation of any approval, permission, or authority.

(viii) A record, or portion thereof, containing, relating to, or derived from an examination, operating, or condition report prepared by, or on behalf of, or for the use of any state or federal agency directly or indirectly responsible for the regulation or supervision of financial institutions.

* * * * *

(2) *Discretionary Release of Exempt Information.* Notwithstanding the applicability of an exemption, the Council or the Council's designee may elect, under the circumstances of a particular request, to disclose all or a portion of any requested record where permitted by law. Such disclosure has no precedential significance.

(3) *Procedure for records request—(i) Initial request.* Requests for records shall be submitted in writing to the Executive Secretary of the Council: (A) By sending a letter to: FFIEC, Attn: Executive Secretary, 3501 Fairfax Drive, Room B-7081a, Arlington, VA 22226-3550. Both the mailing envelope and the request should be marked "Freedom of Information Request," "FOIA Request," or the like; or (B) By facsimile clearly marked "Freedom of Information Act Request," "FOIA Request," or the like to the Executive Secretary at (703) 562-6446; or (C) By e-mail to the address provided on the FFIEC's World Wide Web page, found at: <http://www.ffiec.gov>. Requests must reasonably describe the records sought.

(ii) *Contents of request.* All requests should contain the following information: (A) the name and mailing address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(B) A statement as to whether the information is intended for commercial use, and whether the requester is an educational or noncommercial scientific institution, or news media representative;

(C) A statement agreeing to pay all applicable fees, or a statement

identifying any desired fee limitation, or a request for a waiver or reduction of fees that satisfies paragraph (5)(H)(ii) of this section.

(iii) *Defective requests.* The Council 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 Executive Secretary may return a defective request specifying the deficiency. The requester may submit a corrected request, which will be treated as an initial request.

(iv) *Expedited processing.* (A) Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the Executive Secretary has determined to expedite the response, the Executive Secretary shall process the request as soon as practicable. To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(1) 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

(2) The requester is primarily engaged in information dissemination as a main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the request.

(B) The requester's statement must be certified to be true and correct to the best of the person's knowledge and belief and explain in detail the basis for requesting expedited processing.

(C) The formality of the certification required to obtain expedited treatment may be waived by the Executive Secretary as a matter of administrative discretion.

(v) *Response to initial requests.*

(A) Except where the Executive Secretary has determined to expedite the processing of a request, the Executive Secretary will respond by mail or electronic mail to all properly submitted initial requests within 20 working days of receipt. The time for response may be extended up to 10 additional working days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requester and the Executive Secretary.

(B) In response to a request that reasonably describes the records sought and otherwise satisfies the requirements of this section, a search shall be conducted of records in existence and maintained by the Council on the date of receipt of the request, and a review made of any responsive information located. The Executive Secretary shall notify the requester of:

(1) The Executive Secretary's determination of the response to the request;

(2) The reasons for the determination;

(3) If the response is a denial of an initial request or if any information is withheld, the Executive Secretary will advise the requester in writing:

(i) If the denial is in part or in whole;

(ii) The name and title of each person responsible for the denial (when other than the person signing the notification);

(iii) The exemptions relied on for the denial; and

(iv) The right of the requester to appeal the denial to the Chairman of the Council within 10 working days following the date of issuance of the notification, as specified in paragraph (b)(3)(vi) of this section.

(vi) *Appeals of responses to initial requests.* If a request is denied in whole or in part, the requester may appeal in writing, within 10 working days of the date of issuance of a denial determination. Appeals shall be submitted to the Chairman of the Council: (A) By sending a letter to: FFIEC, Attn: Executive Secretary, 3501 Fairfax Drive, Room B-7081a, Arlington, VA 22226-3550. Both the mailing envelope and the request should be marked "Freedom of Information Act Appeal," "FOIA Appeal," or the like; or (B) By facsimile clearly marked "Freedom of Information Act Appeal," "FOIA Appeal," or the like to the Executive Secretary at (703) 562-6446. Appeals should refer to the date and tracking number of the original request and the date of the Council's initial ruling. Appeals should include an explanation of the basis for the appeal.

(vii) *Council response to appeals.* The Chairman of the Council, or another member designated by the Chairman, will respond to all properly submitted appeals within 20 working days of actual receipt of the appeal by the Executive Secretary. The time for response may be extended up to 10 additional working days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requester and the Chairman or the Chairman's designee.

(4) *Procedure for access to records if request is granted.* (i) When a request for access to records is granted, in whole or in part, a copy of the records to be disclosed will be promptly delivered to the requester or made available for inspection, whichever was requested. Inspection of records, or duplication and delivery of copies of records will be arranged so as not to interfere with their

use by the Council and other users of the records.

(ii) When delivery to the requester is to be made, copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the Executive Secretary deems it appropriate to send the documents by another means.

(iii) The Council shall provide a copy of the record in any form or format requested if the record is readily reproducible by the Council in that form or format, but the Council need not provide more than one copy of any record to a requester.

(iv) By arrangement with the requester, the Executive Secretary may elect to send the responsive records electronically if a substantial portion of the records is in electronic format. If the information requested is subject to disclosure under the Privacy Act of 1974, 5 U.S.C. 552a, it will not be sent by electronic means unless reasonable security measures can be established.

(5) * * *

(i) * * *

(C) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (e.g., magnetic tape or computer disk).

(D) *Review* means the process of examining documents located in response to a request that is for a commercial use (see section 1101.4(b)(5)(i)(E)) to determine whether any portion of any document located is permitted to be withheld and processing such documents for disclosure.

(E) *Commercial use request* means 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. In determining whether a request falls within this category, the Executive Secretary will determine the use to which a requester will put the records requested and seek additional information as the Executive Secretary deems necessary.

* * * * *

(G) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced in section 1101.4(b)(5)(i)(E), and which is operated solely for the purposes of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(H) *Representative of the news media* means any person or entity that gathers

information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Council may also consider the past publication record of the requester in making such a determination.

* * * * *

(ii) * * *

(C) * * *

(2) The fee for documents generated by computer is the hourly rate for the computer operator (at GS 7, step 5, plus 16 percent for benefits if clerical staff, and GS 13, step 5, plus 16 percent for benefits if professional staff) plus the cost of materials (computer paper, tapes, disks, labels, etc.).

* * * * *

(F) *Other services*. Complying with requests for special services such as certifying records as true copies or mailing records by express mail is entirely at the discretion of the Council. The Council will recover the full costs of providing such services to the extent it elects to provide them.

* * * * *

(H) *Waiving or reducing fees*. As part of the initial request for records, a requester may ask that the Council waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Council and is not primarily in the commercial interest of the requester. The initial request for records must also state the justification for a waiver or reduction of fees. Determinations as to a waiver or

reduction of fees will be made by the Executive Secretary of the Council and the requester will be notified in writing of his/her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the Chairman of the Council pursuant to the procedure set forth in paragraph (b)(3)(vi) of this section.

(iii) *Categories of requesters*. (A) Commercial use requesters. The Council will assess fees for commercial use requesters sufficient to recover the full direct costs of searching for, reviewing for release, the duplicating the records sought.

* * * * *

(iv) *Interest on unpaid fees*. The Council may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

* * * * *

(B) A requester has previously failed to pay a fee charged in a timely fashion. The Council may require the requester to pay the full amount owed plus any applicable interest as provided in section 1101.4(b)(5)(iv) or demonstrate that he/she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or a pending request from that requester.

(C) When the Council acts under section 1101.4(b)(5)(vii) (A) or (B), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 20 working days from receipt of initial requests, plus permissible extensions of these time limits) will begin only after the Council has received the fee payments described.

(6) *Records of another agency*. If a requested record originated with or incorporates the information of another state or federal agency or department, upon receipt of a request for the record the Council will promptly inform the requester of this circumstance and immediately shall forward the request to the originating agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

Dated at Arlington, Virginia, this 26th day of August 2010.

Federal Financial Institutions Examination Council.

Paul Sanford,

Executive Secretary.

[FR Doc. 2010-21667 Filed 9-2-10; 8:45 am]

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