

Proposed Rules

Federal Register

Vol. 89, No. 36

Thursday, February 22, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket ID OCC–2022–0008]

RIN 1557–AE76

Availability of Information Under the Freedom of Information Act

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its Freedom of Information Act (FOIA) regulations. The proposal would amend the OCC's FOIA regulations to provide for expedited processing of FOIA requests and establish procedures for requestors to appeal denials of expedited processing and fee waiver requests. The proposal also would remove the competitive harm standard for information provided to the government on an involuntary basis and make a conforming amendment to the OCC's FOIA regulations to be consistent with FOIA.

DATES: Comments must be received by April 22, 2024.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title "Availability of Information Under the Freedom of Information Act" 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 <https://regulations.gov/>. Enter "Docket ID OCC–2022–0008" in the Search Box and click "Search." Public comments can be submitted via the "Comment" box below the displayed document information or by clicking on the document title and then clicking the "Comment" box on the top-left side of the screen. For help with submitting

effective comments, please click on "Commenter's Checklist." For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email regulationshelpdesk@gsa.gov.

- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2022–0008" in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email 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 action by the following method:

- *Viewing Comments Electronically—Regulations.gov:*

Go to <https://regulations.gov/>. Enter "Docket ID OCC–2022–0008" in the Search Box and click "Search." Click on the "Dockets" tab and then the document's title. After clicking the document's title, click the "Browse All Comments" tab. Comments can be viewed and filtered by clicking on the "Sort By" drop-down on the right side of the screen or the "Refine Comments Results" options on the left side of the screen. Supporting materials can be viewed by clicking on the "Browse Documents" tab. Click on the "Sort By" drop-down on the right side of the screen or the "Refine Results" options on the left side of the screen checking the "Supporting & Related Material" checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email regulationshelpdesk@gsa.gov.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT: Kristin Merritt, Assistant Director, MaryAnn Nash, Counsel, or Christopher D'Alessio, Counsel, Chief Counsel's Office, (202) 649–5490; 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background

The Freedom of Information Act (FOIA)¹ enacted in 1966, revised the public disclosure section of the Administrative Procedure Act to allow for easier public access to government records. FOIA makes government records accessible to members of the public, unless the records (or any portion thereof) are protected from disclosure by one of FOIA's nine exemptions or by one of its three special law enforcement record exclusions.² FOIA outlines a process for members of the public to obtain records.³ This process also affords requesters administrative appeals and remedy in United States district courts.⁴

FOIA requires Federal agencies to promulgate regulations to implement the statute.⁵ The OCC's FOIA regulations create a process by which requesters can request and obtain agency records, including how to request records, the format requests must take, and the time limits for OCC response, appeals, and fees.⁶

¹ 5 U.S.C. 552.

² 5 U.S.C. 552(b)(1)–(9) (exemptions); 5 U.S.C. 552(c)(1)–(3) (exclusions).

³ 5 U.S.C. 552(a)(3) (agency obligation to search for and provide records pursuant to request); 5 U.S.C. 552(a)(4)(A) (fees); 5 U.S.C. 552(a)(6) (processing requests, including appeals).

⁴ 5 U.S.C. 552(a)(6)(A)(III)(aa) (administrative appeal); 5 U.S.C. 552(a)(4)(B)–(C) (district court).

⁵ *E.g.*, 5 U.S.C. 552(a)(4)(A)(i) (In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced.); 5 U.S.C. 552(a)(6)(E)(i) (Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records[.]).

⁶ 12 CFR 4.15 (request process, including request format, time limits for response, and appeals); 12 CFR 4.17 (fees).

II. Proposed Changes

Expedited Processing. FOIA mandates that each Federal agency promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records.⁷ However, the OCC's current FOIA regulations do not address expedited processing requests. Presently, when the OCC grants a request for expedited processing, the agency processes the request as soon as practicable. Accordingly, the proposal would amend the OCC's FOIA regulations to include procedures for expedited processing.

FOIA also provides specific requirements for agencies' expedited processing regulations. The statute requires that the regulations allow for expedited processing when the requester "demonstrates a compelling need" and "in other cases determined by the agency."⁸ The statute defines "compelling need" as either: (1) "that a failure to obtain requested 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) "urgency to inform the public concerning actual or alleged Federal Government activity" when "a request [is] made by a person primarily engaged in disseminating information[.]"⁹ FOIA requires that the requester's "demonstration of compelling need" be made by a statement certifying it is true and correct to the best of the requester's knowledge and belief.¹⁰ The statute also requires an agency to provide the requester with notice of the decision on a request for expedited processing "within 10 days after the date of the request."¹¹ Finally, the statute requires that the regulations ensure "expeditious consideration of administrative appeals" of decisions on requests for expedited processing.¹²

The OCC's proposal would address each of the statute's requirements for expedited processing regulations in new proposed paragraph 12 CFR 4.15(c)(5). Under proposed paragraph (c)(5)(i), individuals would be able to request expedited processing with their initial request for records or at any time thereafter. If the individual requests expedited processing on paper, both the envelope and the request itself would have to be labeled, "Expedited Processing Requested."

Under proposed paragraph (c)(5)(ii), the OCC would grant requests for expedited processing when they involve: (A) circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (B) an urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information;¹³ or (C) the loss of substantial due process rights. Under proposed paragraph (c)(5)(ii)(B), the "urgency to inform" standard would require that records requested pertain to a matter of current exigency to the public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public. This proposed provision would implement FOIA's requirement that each agency promulgate regulations providing for expedited processing when the requester demonstrates "compelling need," or "in other cases determined by the agency."¹⁴ The proposed standard for compelling need fulfills the requirements in FOIA¹⁵ and includes language similar to the U.S. Department of the Treasury's FOIA regulations.¹⁶

Under proposed paragraph (c)(5)(iii), a requester who seeks expedited processing would be required to submit a statement, certified to be true and correct, demonstrating the compelling need for expedited processing, which is consistent with FOIA.¹⁷ The certified statement demonstrating compelling need must address at least one of the criterion in paragraph (c)(5)(ii). Further, the proposed rule would allow the OCC to waive this certification requirement as a matter of administrative discretion. This proposed language is similar to the U.S. Department of the Treasury's FOIA regulations.¹⁸

Under proposed paragraph (c)(5)(iv), the OCC would have 10 calendar days after receipt of the request for expedited processing to notify the requester of the OCC's decision to grant or deny the request. The 10-day timetable conforms to the requirement in FOIA.¹⁹ Further, the decision to grant or deny an expedited processing request would be

based solely on the information contained in the initial letter requesting expedited processing. Under the proposal, the OCC would process the records "as soon as practicable" in conformance with FOIA.²⁰ The proposed rule also includes a provision for appeals of a denial of an expedited processing request. This provision is included in the proposal because FOIA requires that agencies' FOIA regulations ensure "expeditious consideration of administrative appeals" of decisions on requests for expedited processing.²¹ Under proposed paragraph (c)(5)(v), a requester could appeal the denial of a request for expedited processing by following the appeal procedures in 12 CFR 4.15(d). The procedures in § 4.15(d) require the requester to appeal within 90 calendar days because FOIA provides for a timetable of "not less than 90 days" for a requester to appeal an adverse determination.²² Under proposed paragraph (c)(5)(v), if the requester submits an appeal on paper, the envelope and appeal would need to be clearly marked "Appeal for Expedited Processing." In addition, the proposed rule would amend § 4.15(d), which outlines the OCC's administrative appeal procedures, to state that requesters may appeal an "adverse determination," a term which appears, but is not defined, in FOIA.²³ The proposal would amend § 4.15(d) to clarify that the denial of an expedited processing request constitutes an adverse determination and, therefore, requesters can appeal the denial of an expedited processing request. The proposal further clarifies that the Comptroller or the Comptroller's delegate would decide appeals from denials of expedited processing requests.

Finally, under proposed 12 CFR 4.15(c)(5)(vi), consistent with FOIA, the OCC would be required to expeditiously (1) consider the appeal and (2) notify the requestor of the determination. This proposed standard tracks the language of FOIA, which requires expeditious consideration of administrative appeals.²⁴

Question 1. FOIA requires that the OCC's FOIA regulations provide for expedited processing "in other cases determined by the agency."²⁵ In what situations should the OCC grant a request for expedited processing?

⁷ 5 U.S.C. 552(a)(6)(E)(i).

⁸ 5 U.S.C. 552(a)(6)(E)(i)(I)–(II).

⁹ 5 U.S.C. 552(a)(6)(E)(v)(I)–(II).

¹⁰ 5 U.S.C. 552(a)(6)(E)(vi).

¹¹ 5 U.S.C. 552(a)(6)(E)(ii)(I).

¹² 5 U.S.C. 552(a)(6)(E)(ii)(II).

¹³ Under the proposed § 4.15(c)(5)(iii)(B), a requester "primarily engaged in disseminating information" does not include individuals who are engaged only incidentally in the dissemination of information.

¹⁴ See 5 U.S.C. 552(a)(6)(E)(i)(I)–(II).

¹⁵ See 5 U.S.C. 552(a)(6)(E)(v)(I)–(II).

¹⁶ See 31 CFR 1.4(e)(1)(i)–(ii).

¹⁷ See 5 U.S.C. 552(a)(6)(E)(vi).

¹⁸ See 31 CFR 1.4(e)(3).

¹⁹ See 5 U.S.C. 552(a)(6)(E)(ii)(I).

²⁰ See 5 U.S.C. 552(a)(6)(E)(iii).

²¹ See 5 U.S.C. 552(a)(6)(E)(ii)(II).

²² See 5 U.S.C. 552(a)(6)(A)(i)(III)(aa).

²³ See 5 U.S.C. 552(a)(6)(A)(i)(III).

²⁴ See 5 U.S.C. 552(a)(6)(E)(ii)(II).

²⁵ 5 U.S.C. 552(a)(6)(E)(i)(II).

Question 2. Should the OCC provide a more specific timeline for deciding and responding to an appeal regarding expedited processing, i.e., a specific number of days, rather than “expeditiously”?

Appeal of Fee Waiver Denials. FOIA requires that each agency promulgate regulations establishing fees for processing FOIA requests.²⁶ But, under certain circumstances, the requester must be granted a fee waiver.²⁷ FOIA does not expressly state whether a requester can appeal fee waiver denials, although FOIA allows requesters to appeal “adverse determinations.”²⁸ However, the statute does not explicitly define an adverse determination. Further, FOIA requires that each agency shall promulgate regulations establishing procedures and guidelines for determining when the agency should waive or reduce fees.²⁹ In addition, FOIA specifies that a court shall determine the matter de novo in any action by a requester regarding the waiver of fees for FOIA purposes.³⁰

The statutory language discussed above does not expressly grant requesters the right to appeal the denial of a fee waiver. However, FOIA’s statement that courts consider actions regarding fee waivers de novo suggests that fee waiver denials are appealable. Additionally, the Federal Deposit Insurance Corporation, U.S. Department of the Treasury (Treasury), and U.S. Department of Justice (DOJ) have promulgated regulations that grant an express right to appeal a fee waiver denial.³¹ In addition, the DOJ Office of Information Policy’s model FOIA regulations suggest that agencies should include the right to appeal a denial of a fee waiver.³² Currently, the OCC’s FOIA regulations do not address appeals from denial of a fee waiver request. Accordingly, consistent with the statute’s requirement that courts consider actions regarding fee waivers de novo, other agencies’ regulations, and the DOJ’s model FOIA regulations, the OCC proposes to amend its regulations to explicitly grant requesters

the ability to appeal a denial of a fee waiver.

This proposed rule would amend 12 CFR 4.17(b), which governs the OCC’s standards for fee waivers by adding a provision in § 4.17(b)(4) to explicitly grant requesters the ability to appeal the denial of a fee waiver request. Furthermore, the proposed rule would amend 12 CFR 4.15(d), which outlines the OCC’s administrative appeal procedures, to clarify that the denial of a fee waiver constitutes an adverse determination and, therefore, requesters can appeal the denial of a fee waiver request. The proposal further clarifies that the Comptroller or the Comptroller’s delegate would decide appeals from denials of fee waiver requests.

Fee Waivers. FOIA requires that each agency promulgate regulations, pursuant to notice and comment, stating the agency’s fee schedule for processing FOIA requests.³³ FOIA also requires that documents shall be furnished without any charge or at a charge below the agency’s fee schedule when the applicable standard is met.³⁴ However, current 12 CFR 4.17(b)(4) states that the OCC *may* waive or reduce a fee when it determines the standard is met.³⁵ For consistency, the OCC is proposing an amendment to align its regulations with the statutory standard. Under the proposed rule, consistent with FOIA, the OCC “must” grant the requester’s request for a fee waiver if the requester meets the standard for fee waiver.

Exemption 4. FOIA Exemption 4, 5 U.S.C. 552(b)(4), protects “trade secrets and commercial or financial information obtained from a person and privileged or confidential[.]” Historically, the OCC has operated in a manner consistent with caselaw in determining whether commercial or financial information is “confidential” under Exemption 4. In *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019) (*FMI*), the Supreme Court overruled the longstanding substantial competitive harm standard for information provided to the government on an involuntary basis that was first announced in *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). In *FMI*, the Supreme Court held that commercial or financial information submitted to the government will be

considered “confidential” for purposes of FOIA Exemption 4 at least where the information is “both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy.”³⁶ Accordingly, the OCC proposes to remove all references to the competitive harm standard in 12 CFR 4.16. Because the definition of confidential commercial information in the current OCC regulation was based on the competitive harm standard, the proposal would update the definition to more closely follow FOIA and would remove references to the competitive harm standard throughout § 4.16. Additionally, the proposal would remove 12 CFR 4.16(b)(1)(i)(A), which is the requirement for the OCC to provide a submitter of information with a prompt notice of receipt of the request when the request is for confidential information submitted to the OCC, Office of Thrift Supervision, or Federal Home Loan Bank Board prior to 1988 and where the records are less than 10 years old. It is impossible for those records to be less than 10-years old today, thus, § 4.16(b)(1)(i)(A) is irrelevant. Finally, the proposal would make corresponding typographical changes for grammatical purposes.

Question 3. Should the OCC define the term “confidential commercial information” in the regulation?

Effective Date

The proposed rule would have an effective date of at least 60 calendar days after publication of the final rule in the **Federal Register** or the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form in the **Federal Register**, whichever period is longer. The OCC requests comment on the proposed effective date.

Comment Invitation

The OCC invites comment on all aspects of this proposal.

Regulatory Analysis

Paperwork Reduction Act of 1995

This notice of proposed rulemaking has been reviewed for compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). In accordance with PRA, the OCC may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid Office of Management and Budget (OMB) control number. The

²⁶ 5 U.S.C. 552(a)(4)(A)(i).

²⁷ 5 U.S.C. 552(a)(4)(A)(iii) (Documents shall be furnished without any charge).

²⁸ See 5 U.S.C. 552(a)(6)(A)(i)(III)(aa).

²⁹ 5 U.S.C. 552(a)(4)(A)(i).

³⁰ 5 U.S.C. 552(a)(4)(A)(vii).

³¹ See 12 CFR 309.5(f)(x) (FDIC); 31 CFR 1.4(h)–(i), 1.6(a) (Treasury); 28 CFR 16.6(d)–(e), 16.8(a) (DOJ).

³² See Department of Justice, Office of Information Policy, *Template for Agency FOIA Regulations*, § VI. Responses to Requests, <https://www.justice.gov/oip/template-agency-foia-regulations#Responses%20to%20Requests> (last updated Dec. 2, 2022).

³³ 5 U.S.C. 552(a)(4)(A)(i).

³⁴ Under 5 U.S.C. 552(a)(4)(A)(iii), a fee waiver must be granted when 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.

³⁵ 12 CFR 4.17(b)(4)(i)–(ii).

³⁶ 139 S. Ct. 2356, 2366 (2019).

proposed rule contains no information collection requirements under the PRA.

Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA) ³⁷ requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the U.S. Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of \$850 million or less and trust companies with total assets of \$47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 1,059 institutions (commercial banks, trust companies, Federal Savings Associations (FSAs), and branches or agencies of foreign banks, collectively banks) ³⁸ of which 661 are small entities. ³⁹ The OCC expects the costs associated with the proposed rule to be *de minimis* because the OCC is the main entity that would be impacted by reviewing and processing FOIA requests on an expedited timeframe. Furthermore, because the OCC expects the majority of those *de minimis* costs to be incurred by the OCC as it updates its policies and procedures and its FOIA tracking system and not by small entities, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal

governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation). Because the OCC's overall estimate of the total potential costs associated with this proposed rule is *de minimis*, the OCC concludes that the rule would not result in private sector costs that exceed the UMRA threshold for a significant rule. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802(a)), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC will consider, consistent with the principles of safety and soundness and the public interest: (1) any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the proposed rule. The OCC requests comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and their customers, and the benefits of the proposed rule that the OCC should consider in determining the effective date and administrative compliance requirements for a final rule.

List of Subjects in 12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

Authority and Issuance

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a, the OCC proposes to amend 12 CFR chapter I as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463,

1464 1817(a), 1818, 1820, 1821, 1831m, 1831p–1, 1831o, 1833e, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*, 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

■ 2. Amend § 4.15 by:
 ■ a. Adding paragraph (c)(5); and
 ■ b. Revising paragraphs (d)(1) and (2).
 The addition and revisions read as follows:

§ 4.15 How to request records.

* * * * *

(c) * * *

(5) *Requests for expedited processing.*

(i) An individual may submit a request for expedited processing either with the request for records or at any time thereafter. The request must be submitted in writing. In cases where a request is submitted on paper, both the envelope and the request itself must be clearly marked, “Expedited Processing Requested.”

(ii) The OCC will grant requests for expedited processing when it is determined that they involve:

(A) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(B) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information. The standard of “urgency to inform” requires that the records requested pertain to a matter of current exigency to the public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public; or

(C) The loss of substantial due process rights.

(iii) A requester who seeks expedited processing must submit a statement, certified to be true and correct, demonstrating the compelling need for expedited processing that meets at least one of the criterion in paragraph (c)(5)(ii) of this section. As a matter of administrative discretion, the OCC may waive this certification requirement.

(iv) Upon receipt by the OCC, the OCC will consider a request for expedited processing and determine whether to grant or deny the request for expedited processing. The OCC will notify the requester of the determination within 10 calendar days after the date of receipt of the request for expedited processing. The OCC will grant or deny

³⁷ 5 U.S.C. 601 *et seq.*

³⁸ Based on data accessed using FINDRS on August 30, 2023.

³⁹ Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an institution as a small entity. The OCC used December 31, 2022, to determine size because a “financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See footnote 8 of the U.S. Small Business Administration’s *Table of Standards*.

a request for expedited processing solely on the information contained in the initial letter requesting expedited treatment. When the OCC grants a request for expedited processing, the OCC will process the records as soon as practicable.

(v) If the OCC denies a request for expedited processing, the requester may appeal the denial in accordance with paragraph (d) of this section. If the requester submits an appeal on paper, both the envelope and the appeal itself must be clearly marked, "Appeal for Expedited Processing."

(vi) The OCC will expeditiously consider the appeal and notify the requestor of the determination.

* * * * *

(d) * * *

(1) *Procedure.* A requester may appeal an adverse determination, including denials of requests for records, requests for expedited processing under paragraph (c)(5) of this section, and requests for fee waivers or reductions under § 4.17(b)(4). All appeals must be submitted in writing within 90 calendar days after the date of the initial determination. The appeal must include the circumstances and arguments supporting disclosure of the requested records. Appeals of initial determinations to deny expedited processing must also follow the procedure set forth in paragraph (c)(5)(v) of this section.

(2) *Appellate determination.* The Comptroller or the Comptroller's delegate determines whether to grant an appeal of a denial of:

- (i) A request for OCC records;
- (ii) A request for expedited processing; or
- (iii) A waiver or reduction of fees.

* * * * *

■ 3. Amend § 4.16 by:

- a. Revising and republishing paragraph (a)(1);
- b. Revising paragraph (b)(1)(i) and (ii); and
- c. Removing in paragraph (b)(2)(v), the phrase " , unless the OCC has substantial reason to believe that disclosure of the information would result in competitive harm".

The revisions and republication read as follows:

§ 4.16 Predisclosure notice for confidential commercial information.

(a) Definitions. For purposes of this section, the following definitions apply:

(1) Confidential commercial information means commercial or financial information obtained by the OCC from a submitter that may be protected from disclosure under

Exemption 4 of FOIA, 5 U.S.C. 552(b)(4).

* * * * *

(b) * * *

(1) * * *

(i) With respect to confidential commercial information submitted to the OCC or to the Federal Home Loan Bank Board, the predecessor of the OTS, prior to January 1, 1988, if the information is subject to a prior express commitment of confidentiality from the OCC or the Federal Home Loan Bank Board, the predecessor of the OTS; and

(ii) With respect to confidential commercial information submitted to the OCC or to the OTS (or the Federal Home Loan Bank Board, its predecessor agency) on or after January 1, 1988, if:

(A) The submitter in good faith designated the information as confidential commercial information; or

(B) The OCC or the OTS (or the Federal Home Loan Bank Board, its predecessor agency) designated the class of information to which the requested information belongs as confidential commercial information.

* * * * *

■ 4. Amend § 4.17 by revising paragraph (b)(4) to read as follows:

§ 4.17 FOIA request fees.

* * * * *

(b) * * *

(4) *Waiving or reducing a fee.* (i) The OCC must waive or reduce a fee under this section whenever, in its opinion, disclosure of records is in the public interest because the disclosure:

(A) Is likely to contribute significantly to public understanding of the operations or activities of the government; and

(B) Is not primarily in the commercial interest of the requester.

(ii) A requester may appeal the OCC's determination not to grant a request for a waiver or reduction of fees under this paragraph pursuant to the procedure set forth in § 4.15(d) of this section.

* * * * *

Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2024-02990 Filed 2-21-24; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-132569-17]

RIN 1545-BO40

Definition of Energy Property and Rules Applicable to the Energy Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG-132569-17) published in the **Federal Register** on November 22, 2023, containing proposed regulations that would amend the regulations relating to the energy credit for the taxable year in which eligible energy property is placed in service.

DATES: The comment period for REG-132569-17 (88 FR 82188, November 22, 2023) is reopened, and additional written or electronic comments must be received by March 25, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-132569-17). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG-132569-17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317-6853 (not a toll-free number); concerning submissions of comments, Vivian Hayes, (202) 317-6901 (not toll-free number) or by email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG-132569-17) that is the subject of this correction proposes regulations under section 48 of the Internal Revenue Code (Code) (Proposed Regulations) addressing the energy credit determined under section 48 for purposes of