

the procedures to be followed by requesters when appealing a determination by the Corporation not to grant a waiver of fees or release of records.

The FOIA established the statutory framework under which federal agencies were required to provide nonexempt records to members of the public upon request and were permitted to recover costs incurred in responding to such requests. The FOIRA significantly amended the fee provisions of the FOIA by establishing classes of FOIA requesters and providing the framework under which fees could be charged to the individual categories of requesters. The FOIRA also charged the United States Office of Management and Budget (OMB) with responsibility for issuing guidelines to be followed by federal agencies in determining the fees to be charged to requesters. OMB published its guidelines on March 27, 1987 at 52 FR 10012 and in those guidelines elaborated on the categories of requesters and stated that the fees to be charged for processing requests under FOIA should recoup the full allowable direct costs incurred in the search, review, and duplication of documents. The proposed changes to § 309.5 are intended to clarify the provisions relating to the method by which the Corporation charges fees for responding to requests under the FOIA and how requesters can obtain a list of such fees, to permit appeals of denials of waiver requests, conform the provisions of the section to the OMB guidelines, and delete an obsolete provision.

Section 309.5 has been reorganized and renumbered. The definitions applicable to § 309.5 were moved to § 309.5(a) in the proposed rule and were expanded to more fully utilize the definitions established by the OMB guidelines. For example, the last sentence in the definition of "commercial use request" was added to clarify the method by which the Corporation would determine whether a request falls under such category and to match the definition of "commercial use request" as set forth in the OMB guidelines. Likewise, the definition of "direct costs" was taken from the OMB guidelines and added to the proposed rule since the proposed fee provision found at § 309.5(c) utilizes such term in arriving at the fees to be charged. The remaining definitions were also expanded in conformity with the OMB guidelines.

Proposed § 309.5(b)(1) was modified, consistent with the OMB guidelines, to provide that the Corporation would not require the payment of fees by a

requester when the cost of responding to a request is less than the Corporation's cost of processing the requester's remittance.

The provisions of § 309.5(b)(2) and § 309.5(b)(3) were not changed except for renumbering within the provisions.

Proposed § 309.5(c)(1) was modified to clarify that fees would not be assessed under circumstances where the total costs involved with responding to a request for records amount to less than the Corporation's cost of processing the requester's remittance; that requests made to the Corporation are for "records" maintained by the Corporation; that an aggregation of requests will be made for purposes of determining fees when the same "group of requesters" submits multiple requests for similar or related records; that a requester must agree in writing to pay costs prior to the initiation of a search; that advance payment might be required when a requester has previously failed to pay fees assessed within 30 days following mailing of the invoice; that a requester who has an outstanding fee balance may be required to pay all amounts outstanding prior to the initiation of any additional records search; that the time in which the Corporation must respond to a request for records would be extended until the written agreement, advance payment, or outstanding charge issues are resolved; that the Corporation may assess interest on outstanding bills beginning on the 31st day after mailing of the invoice and which interest assessment would relate back to the date of the invoice; and appeals of determinations not to grant a waiver or reduction of fees under § 309.5(c)(1)(ix) may be appealed to the FDIC's General Counsel.

Proposed § 309.5(c)(2)(iii) was revised to limit the charging of fees to "the full reasonable direct cost of search and duplication" as consistent with the OMB guidelines.

At 12 CFR 309.5(c)(3), the FDIC distinguishes among the various categories of requesters consistent with the requirements of the FOIRA and the OMB guidelines. However, the FDIC's fee schedule, as set forth at § 309.5(b)(4) of the current rule, no longer complies with the guidelines since it does not provide for the recovery by the Corporation of its direct costs associated with searches for records as required. Proposed 309.5(c)(3) would replace the fee schedule set forth in the current rule and would establish the method by which the Corporation would determine the fees to be charged requesters for search, review, and duplication of records. As provided in the proposed rule, a list of fees would be generated

annually by the Corporation's Division of Finance and would be made available to all requesters at no charge through the Office of the Executive Secretary. The proposed changes to the rule would also establish the method by which the Corporation would charge the various categories of requesters for services to be provided thereby providing for continuing conformity with the FOIRA and the OMB guidelines.

In proposed § 309.5(d), a technical correction was made by the elimination of the parenthetical expression contained in § 309.5(d)(3).

Paragraph 309.5(h) of the current rule contains obsolete procedures and information and was deleted from the proposed rule.

6. *Disclosure of exempt records (§ 309.6).* In order to clarify the exempt record disclosure provisions and eliminate a redundancy, paragraph 309.6(a) as set forth in the current rule was deleted in the proposed rule and the paragraphs renumbered accordingly.

In proposed § 309.6(a), the second sentence was added to clarify that FDIC exempt records remain the property of the FDIC regardless of custody and that disclosure would be prohibited without the written permission of the Director of the FDIC's Division which holds primary authority over such records. A similar provision appears at § 309.6(b) of the current rule.

In proposed § 309.6(b), a revision was made to the current § 309.6(c) to reflect changes in the FDIC's organizational structure and the person to whom authority to disclose or authorize disclosure of exempt records would be delegated. Additionally, much of current § 309.6(c) has been removed in the proposed rule, because the provision unnecessarily repeats provisions set forth in other sections of the rule.

Proposed § 309.6(b)(1) has been modified to provide that exempt records pertaining to a depository institution may be disclosed to that depository institution by the FDIC Division Director having primary authority over those records. Similarly, proposed § 309.6(b)(2) has been modified to provide that exempt records pertaining to a state-chartered depository institution may be disclosed to the state banking authority that supervises that institution by the FDIC Division Director having primary authority over that record. Other exempt records may also be disclosed if requested in writing for a legitimate supervisory or regulatory purpose.

Under the current rule, § 309.6(c)(3) permits certain FDIC officials to disclose exempt records to other supervisory agencies. Proposed § 309.6(b)(3)