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(2) No more than two premiums per account are given within a 12-month period; and

(3) The value of the premium or, in the case, of articles of merchandise, the total cost (including taxes, shipping, warehousing, packaging, and handling costs) does not exceed $10 for deposits of less than $5,000 or $20 for deposits of $5,000 or more.

The costs of premiums may not be averaged. The member bank should retain sufficient supporting documentation showing that the total cost of a premium, including shipping, warehousing, packaging, and handling costs, does not exceed the applicable $10/$20 limitations and that no portion of the total cost of any premium has been attributed to development, advertising, promotional, or other expenses. A member bank is not permitted directly or indirectly to solicit or promote deposits from customers on the basis that the funds will be divided into more than one account by the institution for the purpose of providing more than two premiums per deposit within a 12-month period.

(b) Notwithstanding paragraph (a) of this section, any premium that is not, directly or indirectly, related to or dependent on the balance in a demand deposit account and the duration of the account balance shall not be considered the payment of interest on a demand deposit account and shall not be subject to the limitations in paragraph (a) of this section.

[52 FR 47698, Dec. 16, 1987. Redesignated at 57 FR 43336, Sept. 21, 1992; 62 FR 26737, May 15, 1997]

PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS (REGULATION S)

Subpart A—Reimbursement to Financial Institutions for Providing Financial Records

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AUTHORITY: 12 U.S.C. 3415.

SOURCE: 44 FR 55813, Sept. 28, 1979, unless otherwise noted.

Subpart A—Reimbursement to Financial Institutions for Providing Financial Records

§ 219.1 Authority, purpose and scope.

This subpart of Regulation S (12 CFR part 219, subpart A) is issued by the Board of Governors of the Federal Reserve System (the Board) under section 1115 of the Right to Financial Privacy Act (the Act) (12 U.S.C. 3415). It establishes the rates and conditions for reimbursement of reasonably necessary costs directly incurred by financial institutions in assembling or providing customer financial records to a government authority pursuant to the Act.

[60 FR 233, Jan. 3, 1995]

§ 219.2 Definitions.

For the purposes of this subpart, the following definitions shall apply:

Customer means any person or authorized representative of that person who uses any service of a financial institution, or for whom a financial institution acts or has acted as a fiduciary in relation to an account maintained in the person's name. Customer does not include corporations or partnerships comprised of more than five persons.

Financial institution means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

Financial record means an original or copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

Government authority means any agency or department of the United States, or any officer, employee or agent thereof.

Person means an individual or a partnership of five or fewer individuals.

[Reg. S, 61 FR 29640, June 12, 1996]

§ 219.3 Cost reimbursement.

(a) *Fees payable.* Except as provided in § 219.4, a government authority, or a court issuing an order or subpoena in connection with grand jury proceedings, seeking access to financial records pertaining to a customer shall reimburse the financial institution for reasonably necessary costs directly incurred in searching for, reproducing or transporting books, papers, records, or other data as set forth in this section. The reimbursement schedule for a financial institution is set forth in Appendix A to this section. If a financial institution has financial records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution and may be included in the reimbursement.

(b) *Search and processing costs.* (1) Reimbursement of search and processing costs shall cover the total amount of personnel time spent in locating, retrieving, reproducing, and preparing financial records for shipment. Search and processing costs shall not cover analysis of material or legal advice.

(2) If itemized separately, search and processing costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies; however, personnel time for computer search may be paid for only at the rates specified in Appendix A to this section.

(c) *Reproduction costs.* The reimbursement rates for reproduction costs for requested documents are set forth in Appendix A to this section. Copies of photographs, films, computer tapes, and other materials not listed in Appendix A to this section are reimbursed at actual cost.

(d) *Transportation costs.* Reimbursement for transportation costs shall be for the reasonably necessary costs directly incurred to transport personnel to locate and retrieve the requested information, and to convey such material to the place of examination.

APPENDIX A TO § 219.3—REIMBURSEMENT SCHEDULE

Reproduction:
- Photocopy, per page—$.25
- Paper copies of microfiche, per frame—$.25
- Duplicate microfiche, per microfiche—$.50
- Computer diskette—$5.00

Search and Processing:
- Clerical/Technical, hourly rate—$11.00
- Manager/Supervisory, hourly rate—$17.00

[Reg. S, 61 FR 29640, June 12, 1996]

§ 219.4 Exceptions.

A financial institution is not entitled to reimbursement under this subpart for costs incurred in assembling or providing financial records or information related to:

(a) *Security interests, bankruptcy claims, debt collection.* Any financial records provided as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary.

(b) *Government loan programs.* Financial records that are necessary to permit the appropriate government authority to carry out its responsibilities under a government loan, loan guaranty or loan insurance program.

(c) *Nonidentifiable information.* Financial records that are not identified with or identifiable as being derived from the financial records of a particular customer.

(d) *Financial supervisory agencies.* Financial records disclosed to a financial supervisory agency in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

(e) *Internal Revenue summons.* Financial records disclosed in accordance with procedures authorized by the Internal Revenue Code.

(f) *Federally required reports.* Financial records required to be reported in accordance with any federal statute or rule promulgated thereunder.

(g) *Government civil or criminal litigation.* Financial records sought by a government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the government authority and the customer are parties.

(h) *Administrative agency subpoenas.* Financial records sought by a government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to 5 U.S.C. 554, and to which the government authority and the customer are parties.

(i) *Investigation of financial institution or its noncustomer.* Financial records sought by a government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records, or at an entity that is not a *customer* as defined in §219.2 of this part.

(j) *General Accounting Office requests.* Financial records sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination, or audit directed at a government authority.

(k) *Federal Housing Finance Board requests.* Financial records or information sought by the Federal Housing Finance Board (FHFB) or any of the Federal home loan banks in the exercise of the FHFB's authority to extend credit to financial institutions or others.

(l) *Department of Veterans Affairs.* The disclosure of the name and address of any customer to the Department of Veterans Affairs where such disclosure is necessary to, and used solely for, the proper administration of benefits programs under laws administered by that Department.

[Reg. S, 61 FR 29640, June 12, 1996]

§219.5 Conditions for payment.

(a) *Direct costs.* Payment shall be made only for costs that are both directly incurred and reasonably necessary to provide requested material. Search and processing, reproduction, and transportation costs shall be considered separately when determining whether the costs are reasonably necessary.

(b) *Compliance with legal process, request, or authorization.* No payment may be made to a financial institution until it satisfactorily complies with the legal process, the formal written request, or the customer authorization. When the legal process or formal written request is withdrawn, or the customer authorization is revoked, or where the customer successfully challenges disclosure to a grand jury or government authority, the financial institution shall be reimbursed for the reasonably necessary costs incurred in assembling the requested financial records prior to the time the financial institution is notified of such event.

(c) *Itemized bill or invoice.* No reimbursement is required unless a financial institution submits an itemized bill or invoice specifically detailing its search and processing, reproduction, and transportation costs. Search and processing time should be billed in 15-minute increments.

[Reg. S, 61 FR 29641, June 12, 1996]

§219.6 Payment procedures.

(a) *Notice to submit invoice.* Promptly following a service of legal process or request, the court or government authority shall notify the financial institution that it must submit an itemized bill or invoice in order to obtain payment and shall furnish an address for this purpose.

(b) *Special notice.* If a grand jury or government authority withdraws the legal process or formal written request, or if the customer revokes the authorization, or if the legal process or request has been successfully challenged by the customer, the grand jury or government authority shall promptly notify the financial institution of these facts, and shall also notify the financial institution that it must submit an itemized bill or invoice in order to obtain payment of costs incurred prior to the time the financial institution receives this notice.

[Reg. S, 61 FR 29641, June 12, 1996; 61 FR 32317, June 24, 1996]