

business days from the receipt of a request for records and 20 business days from the receipt of an administrative appeal, plus any permissible extension) begin only after the OCC receives a revised request under paragraph (c)(2) of this section, an assurance of payment under paragraph (c)(3)(i) of this section, or the required payments under paragraph (c)(3)(i) or (c)(4) of this section.

(e) *Aggregating requests.* When the OCC reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of a fee, the OCC may aggregate the requests and assess a fee accordingly.

[60 FR 57322, Nov. 15, 1995, as amended at 75 FR 17850, Apr. 8, 2010]

#### § 4.18 How to track a FOIA request.

(a) *Tracking number.* (1) *Internet requests.* The OCC will issue a tracking number to all FOIA requesters automatically upon receipt of the request (as described in § 4.15(g)) by the OCC's Communications Department via the OCC's Freedom of Information Request Portal, <https://appsec.occ.gov/publicaccesslink/palMain.aspx>. The tracking number will be sent via electronic mail to the requester.

(2) *If a requester does not have Internet access.* The OCC will issue a tracking number to FOIA requesters without Internet access within 5 days of the receipt of the request (as described in § 4.15(g)) in the OCC's Communications Department. The OCC will mail the tracking number to the requester's physical address, as provided in the FOIA request.

(b) *Status of request.* FOIA requesters may track the progress of their requests via the OCC's Freedom of Information Request Portal, <https://appsec.occ.gov/publicaccesslink/palMain.aspx>. Requesters without Internet access may continue to contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, at (202) 874-4700 to check the status of their FOIA request(s).

[76 FR 43562, July 21, 2011]

### Subpart C—Release of Non-Public OCC Information

#### § 4.31 Purpose and scope.

(a) *Purpose.* The purposes of this subpart are to:

(1) Afford an orderly mechanism for the OCC to process expeditiously requests for non-public OCC information; to address the release of non-public OCC information without a request; and, when appropriate, for the OCC to assert evidentiary privileges in litigation;

(2) Recognize the public's interest in obtaining access to relevant and necessary information and the countervailing public interest of maintaining the effectiveness of the OCC supervisory process and appropriate confidentiality of OCC supervisory information;

(3) Ensure that the OCC's information is used in a manner that supports the public interest and the interests of the OCC;

(4) Ensure that OCC resources are used in the most efficient manner consistent with the OCC's statutory mission;

(5) Minimize burden on national banks Federal savings associations, the public, and the OCC;

(6) Limit the expenditure of government resources for private purposes; and

(7) Maintain the OCC's impartiality among private litigants.

(b) *Scope.* (1) This subpart applies to requests for, and dissemination of, non-public OCC information, including requests for records or testimony arising out of civil lawsuits and administrative proceedings to which the OCC is not a party and the release of non-public OCC information without a specific request. Lawsuits and administrative proceedings to which the OCC is not a party include proceedings in which a Federal agency is a party in opposition to the private requester.

(2) This subpart does not apply to:

(i) A request for a record or testimony in a proceeding in which the OCC is a party; or

(ii) A request for a record that is required to be disclosed under the Freedom of Information Act (FOIA) (5 U.S.C. 552), as described in § 4.12.

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(3) A request for a record or testimony made by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, a government agency of the United States or a foreign government, a state agency with authority to investigate violations of criminal law, or a state bank or state savings association regulatory agency is governed solely by § 4.37(c).

(4) For purposes of §§ 4.35(a)(1), 4.36(a) and 4.37(c) of this part, the OCC's decision to disclose records or testimony involving a Suspicious Activity Report (SAR) filed pursuant to the regulations implementing 12 U.S.C. 5318(g), or any information that would reveal the existence of a SAR, is governed by 12 CFR 21.11(k).

(5) This subpart does not apply to requests for non-public information filed with the Office of Thrift Supervision (OTS) before July 21, 2011. These requests are subject to the rules of the OTS in effect on July 20, 2011.

[60 FR 57322, Nov. 15, 1995, as amended at 63 FR 62929, Nov. 10, 1998; 64 FR 29216, June 1, 1999; 75 FR 75576, Dec. 3, 2010; 76 FR 43562, July 21, 2011]

### § 4.32 Definitions.

(a) *Complete request* means a request containing sufficient information to allow the OCC to make an informed decision.

(b) *Non-public OCC information*. Non-public OCC information:

(1) Means information that the OCC is not required to release under the FOIA (5 U.S.C. 552) or that the OCC has not yet published or made available pursuant to 12 U.S.C. 1818(u) and includes:

(i) A record created or obtained:

(A) By the OCC in connection with the OCC's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a national bank, a Federal savings association, a bank holding company, a savings and loan holding company, or an affiliate; or

(B) By the OTS in connection with the OTS's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a Federal savings asso-

ciation, a savings and loan holding company, or an affiliate;

(ii) A record compiled by the OCC or the OTS in connection with either agency's enforcement responsibilities;

(iii) A report of examination, supervisory correspondence, an investigatory file compiled by the OCC or OTS in connection with an investigation, and any internal agency memorandum, whether the information is in the possession of the OCC or some other individual or entity;

(iv) Confidential OCC information obtained by a third party or otherwise incorporated in the records of a third party, including another government agency;

(v) Testimony from, or an interview with, a current or former OCC employee, officer, or agent or a former OTS employee, officer, or agent concerning information acquired by that person in the course of his or her performance of official duties with the OCC or OTS or due to that person's official status at the OCC or OTS; and

(vi) Confidential information relating to operating and no longer operating national banks, Federal savings associations, and savings and loan holding companies as well as their subsidiaries and their affiliates.

(2) Is the property of the Comptroller.

(c) *Relevant* means could contribute substantially to the resolution of one or more specifically identified issues in the case.

(d) *Show a compelling need* means, in support of a request for testimony, demonstrate with as much detail as is necessary under the circumstances, that the requested information is relevant and that the relevant material contained in the testimony is not available from any other source. Sources, without limitation, include the books and records of other persons or entities and non-public OCC records that have been, or might be, released.

(e) *Supervised entity* includes a national bank or Federal savings association, a subsidiary of a national bank or Federal savings association, or a Federal branch or agency of a foreign bank licensed by the OCC as defined under 12 CFR 28.11(g) and (h), or any other entity supervised by the OCC.

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(f) *Testimony* means an interview or sworn testimony on the record.

[60 FR 57322, Nov. 15, 1995, as amended at 63 FR 62929, Nov. 10, 1998; 64 FR 29216, June 1, 1999; 75 FR 75576, Dec. 3, 2010; 76 FR 43562, July 21, 2011]

### § 4.33 Requirements for a request of records or testimony.

(a) *Generally*—(1) *Form of request*. A person seeking non-public OCC information must submit a request in writing to the OCC. The requester must explain, in as detailed a description as is necessary under the circumstances, the bases for the request and how the requested non-public OCC information relates to the issues in the lawsuit or matter.

(2) *Expedited request*. A requester seeking a response in less than 60 days must explain why the request was not submitted earlier and why the OCC should expedite the request.

(3) *Request arising from adversarial matters*. Where the requested information is to be used in connection with an adversarial matter:

(i) The OCC generally will require that the lawsuit or administrative action has been filed before it will consider the request;

(ii) The request must include:

(A) A copy of the complaint or other pleading setting forth the assertions in the case;

(B) The caption and docket number of the case;

(C) The name, address, and phone number of counsel to each party in the case; and

(D) A description of any prior judicial decisions or pending motions in the case that may bear on the asserted relevance of the requested information;

(iii) The request must also:

(A) Show that the information is relevant to the purpose for which it is sought;

(B) Show that other evidence reasonably suited to the requester's needs is not available from any other source;

(C) Show that the need for the information outweighs the public interest considerations in maintaining the confidentiality of the OCC information and outweighs the burden on the OCC to produce the information;

(D) Explain how the issues in the case and the status of the case warrant that the OCC allow disclosure; and

(E) Identify any other issue that may bear on the question of waiver of privilege by the OCC.

(b) *Request for records*. If the request is for a record, the requester must adequately describe the record or records sought by type and date.

(c) *Request for testimony*—(1) *Generally*. A requester seeking testimony:

(i) Must show a compelling need for the requested information; and

(ii) Should request OCC testimony with sufficient time to obtain the testimony in deposition form.

(2) *Trial or hearing testimony*. A requester seeking testimony at a trial or hearing must show that a deposition would not suffice.

### § 4.34 Where to submit a request.

(a) *A request for non-public OCC information*. A person requesting information under this subpart, requesting authentication of a record under § 4.39(d), or submitting a notification of the issuance of a subpoena or compulsory process under § 4.37, shall send the request or notification to: Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, Attention: Director, Litigation Division.

(b) *Combined requests for non-public and other OCC information*. A person requesting public OCC information and non-public OCC information under this subpart may submit a combined request for both to the address in paragraph (a) of this section. If a requester decides to submit a combined request under this section, the OCC will process the combined request under this subpart and not under subpart B of this part (FOIA).

(c) *Request by government agencies*. A request made pursuant to § 4.37(c) must be submitted:

(1) In a civil action, to the Director of the OCC's Litigation Division at the Washington office; or

(2) In a criminal action, to the appropriate district counsel or the Director of the OCC's Enforcement and Compliance Division at the Washington office.

[60 FR 57322, Nov. 15, 1995, as amended at 64 FR 29216, June 1, 1999]

**§ 4.35 Consideration of requests.**

(a) *In general*—(1) *OCC discretion*. The OCC decides whether to release non-public OCC information based on its weighing of all appropriate factors including the requestor's fulfilling of the requirements enumerated in § 4.33. Each decision is at the sole discretion of the Comptroller or the Comptroller's delegate and is a final agency decision. OCC action on a request for non-public OCC information exhausts administrative remedies for discovery of the information.

(2) *Bases for denial*. The OCC may deny a request for non-public OCC information for reasons that include the following:

(i) The requester was unsuccessful in showing that the information is relevant to the pending matter;

(ii) The requester seeks testimony and the requestor did not show a compelling need for the information;

(iii) The request arises from an adversarial matter and other evidence reasonably suited to the requester's need is available from another source;

(iv) A lawsuit or administrative action has not yet been filed and the request was made in connection with potential litigation;

(v) The production of the information would be contrary to the public interest or unduly burdensome to the OCC; or

(vi) When prohibited by law.

(3) *Additional information*. A requester must submit a complete request. The OCC may require the requester to provide additional information to complete a request. Consistent with the purposes stated in § 4.31, the OCC may inquire into the circumstances of any case underlying the request and rely on sources of information other than the requester, including other parties.

(4) *Time required by the OCC to respond*. The OCC generally will process requests in the order in which they are received. The OCC will notify the requester in writing of the final decision. Absent exigent or unusual circumstances, the OCC will respond to a request within 60 days from the date that the OCC receives a request that it deems a complete request. Consistent with § 4.33(a)(2), the OCC weighs a request to respond to provide informa-

tion in less than 60 days against the unfairness to other requesters whose pending requests may be delayed and the burden imposed on the OCC by the expedited processing.

(5) *Notice to subject national banks and Federal savings associations*. Following receipt of a request for non-public OCC information, the OCC generally notifies the national bank or Federal savings association that is the subject of the requested information, unless the OCC, in its discretion, determines that to do so would advantage or prejudice any of the parties in the matter at issue.

(b) *Testimony*. (1) The OCC generally will not authorize a current OCC employee to provide expert or opinion evidence for a private party.

(2) The OCC may restrict the scope of any authorized testimony and may act to ensure that the scope of testimony given by the OCC employee adheres to the scope authorized by the OCC.

(3) Once a request for testimony has been submitted, and before the requested testimony occurs, a party to the relevant case, who did not join in the request and who wishes to question the witness beyond the scope of testimony sought by the request, shall timely submit the party's own request for OCC information pursuant to this subpart.

(4) The OCC may offer the requester the employee's written declaration in lieu of testimony.

(c) *Release of non-public OCC information by others*. In appropriate cases, the OCC may respond to a request for information by authorizing a party to the case who is in possession of non-public OCC information to release the information to the requester. An OCC authorization to release records does not preclude the party in possession from asserting its own privilege, arguing that the records are not relevant, or asserting any other argument for which it has standing to protect the records from release.

[60 FR 57322, Nov. 15, 1995, 75 FR 75576, Dec. 3, 2010; 76 FR 43563, July 21, 2011]

**§ 4.36 Disclosure of non-public OCC information.**

(a) *Discretionary disclosure of non-public OCC information*. The OCC may

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make non-public OCC information available to a supervised entity and to other persons, that in the sole discretion of the Comptroller may be necessary or appropriate, without a request for records or testimony.

(b) *OCC policy.* It is the OCC's policy regarding non-public OCC information that such information is confidential and privileged. Accordingly, the OCC will not normally disclose this information to third parties.

(c) *Conditions and limitations.* The OCC may impose any conditions or limitations on disclosures under this section, including the restrictions on dissemination contained in § 4.38, that it determines are necessary to effect the purposes of this section.

(d) *Unauthorized disclosures prohibited.* All non-public OCC information remains the property of the OCC. No supervised entity, government agency, person, or other party to whom the information is made available, or any officer, director, employee, or agent thereof, may disclose non-public OCC information without the prior written permission of the OCC, except in published statistical material that does not disclose, either directly or when used in conjunction with other publicly available information, the affairs of any individual, corporation, or other entity. Except as authorized by the OCC, no person obtaining access to non-public OCC information under this section may make a copy of the information and no person may remove non-public OCC information from the premises of the institution, agency, or other party in authorized possession of the information.

[63 FR 62929, Nov. 10, 1998, as amended at 64 FR 29216, June 1, 1999]

### **§ 4.37 Persons and entities with access to OCC information; prohibition on dissemination.**

(a) *Current and former OCC employees or agents; former OTS employees or agents—(1) Generally.* Except as authorized by this subpart or otherwise by the OCC, no current or former OTS employee or agent may, in any manner, disclose or permit the disclosure of any non-public OCC information to anyone other than an employee or agent of the

Comptroller for use in the performance of OCC duties.

(2) *Duty of person served.* Any current or former OTS employee or agent subpoenaed or otherwise requested to provide information covered by this subpart must immediately notify the OCC as provided in this paragraph. The OCC may intervene, attempt to have the compulsory process withdrawn, and register appropriate objections when a current or former OTS employee or agent receives a subpoena and the subpoena requires the current or former employee or agent to appear or produce OCC information. If necessary, the current or former employee or agent must appear as required and respectfully decline to produce the information sought, citing this subpart as authority and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). The current or former OTS employee or agent must immediately notify the OCC if subpoenaed or otherwise asked for non-public OCC information:

(i) In a civil action, by notifying the Director of the OCC's Litigation Division at the Washington office; or

(ii) In a criminal action, by notifying the appropriate district counsel for current and former district employees or agents; or the Director of the OCC's Enforcement and Compliance Division at the Washington office, for current and former Washington employees or agents and former OTS employees or agents.

(b) *Non-OCC employees or entities—(1) Generally.* (i) Without OCC approval, no person, national bank, Federal savings association or other entity, including one in lawful possession of non-public OCC information under paragraph (b)(2) of this section, may disclose information covered by this subpart in any manner, except:

(A) After the requester has sought the information from the OCC pursuant to the procedures set forth in this subpart; and

(B) As ordered by a Federal court in a judicial proceeding in which the OCC has had the opportunity to appear and oppose discovery.

(ii) Any person who discloses or uses non-public OCC information except as expressly permitted by the Comptroller

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of the Currency or as ordered by a Federal court, under paragraph (b)(1)(i) of this section, may be subject to the penalties provided in 18 U.S.C. 641.

(2) *Exception for national banks and Federal savings associations.* When necessary or appropriate for business purposes, a national bank, Federal savings association, or holding company, or any director, officer, or employee thereof, may disclose non-public OCC information, including information contained in, or related to, OCC reports of examination, to a person or organization officially connected with the bank or Federal savings association as officer, director, employee, attorney, auditor, or independent auditor. A national bank, Federal savings association, or holding company or a director, officer, or employee thereof, may also release non-public OCC information to a consultant under this paragraph if the consultant is under a written contract to provide services to the bank or Federal savings association and the consultant has a written agreement with the bank or Federal savings association in which the consultant:

(i) States its awareness of, and agreement to abide by, the prohibition on the dissemination of non-public OCC information contained in paragraph (b)(1) of this section; and

(ii) Agrees not to use the non-public OCC information for any purpose other than as provided under its contract to provide services to the bank or Federal savings association.

(3) *Duty of person or entity served.* Any person, national bank, Federal savings association, or other entity served with a request, subpoena, order, motion to compel, or other judicial or administrative process to provide non-public OCC information shall:

(i) Immediately notify the Director of the OCC's Litigation Division at the Washington, DC office and inform the Director of all relevant facts, including the documents and information requested, so that the OCC may intervene in the judicial or administrative action if appropriate;

(ii) Inform the requester of the substance of these rules and, in particular, of the obligation to follow the request procedures in §§ 4.33 and 4.34; and

(iii) At the appropriate time, inform the court or tribunal that issued the process of the substance of these rules.

(4) *Actions of the OCC following notice of service.* Following receipt of notice pursuant to paragraph (b)(3) of this section, the OCC may direct the requester to comply with §§ 4.33 and 4.34, intervene in the judicial or administrative action, attempt to have the compulsory process withdrawn, or register other appropriate objections.

(5) *Return of records.* The OCC may require any person in possession of OCC records to return the records to the OCC.

(c) *Disclosure to government agencies.* When not prohibited by law, the Comptroller may make available to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and, in the Comptroller's sole discretion, to certain other government agencies of the United States and foreign governments, state agencies with authority to investigate violations of criminal law, and state bank and state savings association regulatory agencies, a copy of a report of examination, testimony, or other non-public OCC information for their use, when necessary, in the performance of their official duties. All non-public OCC information made available pursuant to this paragraph is OCC property, and the OCC may condition its use on appropriate confidentiality protections, including the mechanisms identified in § 4.38.

(d) *Intention of OCC not to waive rights.* The possession by any of the entities or individuals described in paragraphs (a), (b), and (c) of this section of non-public OCC information does not constitute a waiver by the OCC of its right to control, or impose limitations on, the subsequent use and dissemination of the information.

[60 FR 57322, Nov. 15, 1995. Redesignated and amended at 63 FR 62929, Nov. 10, 1998; 64 FR 29217, June 1, 1999; 75 FR 75576, Dec. 3, 2010; 76 FR 43563, July 21, 2011]

#### § 4.38 Restrictions on dissemination of released information.

(a) *Records.* The OCC may condition a decision to release non-public OCC information on entry of a protective order by the court or administrative

tribunal presiding in the particular case or, in non-adversarial matters, on a written agreement of confidentiality. In a case in which a protective order has already been entered, the OCC may condition approval for release of non-public OCC information upon the inclusion of additional or amended provisions in the protective order. The OCC may authorize a party who obtained records for use in one case to provide them to another party in another case.

(b) *Testimony.* The OCC may condition its authorization of deposition testimony on an agreement of the parties to appropriate limitations, such as an agreement to keep the transcript of the testimony under seal or to make the transcript available only to the parties, the court, and the jury. Upon request or on its own initiative, the OCC may allow use of a transcript in other litigation. The OCC may require the requester, at the requester's expense, to furnish the OCC with a copy of the transcript. The OCC employee whose deposition was transcribed does not waive his or her right to review the transcript and to note errors.

[60 FR 57322, Nov. 15, 1995. Redesignated at 63 FR 62929, Nov. 10, 1998]

**§ 4.39 Notification of parties and procedures for sharing and using OCC records in litigation.**

(a) *Responsibility of litigants to notify parties of a request for testimony.* Upon submitting a request to the OCC for the testimony of an OCC employee or former OCC or OTS employee, the requester shall notify all other parties to the case that a request has been submitted.

(b) *Responsibility of litigants to share released records.* The requester shall promptly notify other parties to a case of the release of non-public OCC information obtained pursuant to this subpart, and, upon entry of a protective order, shall provide copies of OCC information, including OCC information obtained pursuant to § 4.15, to the other parties.

(c) *Retrieval and destruction of released records.* At the conclusion of an action:

(1) The requester shall retrieve any non-public OCC information from the court's file as soon as the court no longer requires the information;

(2) Each party shall destroy the non-public OCC information covered by the protective order; and

(3) Each party shall certify to the OCC that the non-public OCC information covered by the protective order has been destroyed.

(d) *Authentication for use as evidence.* Upon request, the OCC authenticates released records to facilitate their use as evidence. Requesters who require authenticated records or certificates of nonexistence of records should, as early as possible, request certificates from the OCC's Litigation Division pursuant to § 4.34(a).

[60 FR 57322, Nov. 15, 1995. Redesignated at 63 FR 62929, Nov. 10, 1998; 76 FR 43563, July 21, 2011]

**§ 4.40 Fees for services.**

(a) *Fees for records search, copying, and certification.* The requester shall pay a fee to the OCC, or to a commercial copier under contract to the OCC, for any records search, copying, or certification in accordance with the standards specified in § 4.17. The OCC may require a requester to remit payment prior to providing the requested information.

(b) *Witness fees and mileage.* A person whose request for testimony of a current OCC employee is approved shall, upon completion of the testimonial appearance, tender promptly to the OCC payment for the witness fees and mileage. The litigant shall compute these amounts in accordance with 28 U.S.C. 1821. A litigant whose request for testimony of a former OCC employee is approved shall tender promptly to the witness any witness fees or mileage due in accordance with 28 U.S.C. 1821.

[60 FR 57322, Nov. 15, 1995. Redesignated at 63 FR 62929, Nov. 10, 1998]

APPENDIX A TO SUBPART C OF PART 4—  
MODEL STIPULATION FOR PROTECTIVE ORDER AND MODEL PROTECTIVE ORDER

I. MODEL STIPULATION

CASE CAPTION

*Model Stipulation for Protective Order*

Whereas, counsel for \_\_\_\_\_ have applied to the Comptroller of the Currency (hereinafter "Comptroller") pursuant to 12

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CFR part 4, Subpart C, for permission to have made available, in connection with the captioned action, certain records; and

Whereas, such records are deemed by the Comptroller to be confidential and privileged, pursuant to 12 U.S.C. 481; 5 U.S.C. 552(b)(8); 18 U.S.C. 641, 1906; and 12 CFR 4.12, and part 4, Subpart C; and

Whereas, following consideration by the Comptroller of the application of the above described party, the Comptroller has determined that the particular circumstances of the captioned action warrant making certain possibly relevant records as denoted in appendix "A" to this Stipulation [records to be specified by type and date] available to the parties in this action, provided that appropriate protection of their confidentiality can be secured;

Therefore, it is hereby stipulated by and between the parties hereto, through their respective attorneys that they will be bound by the following protective order which may be entered by the Court without further notice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Attorney for Defendant

**II. MODEL PROTECTIVE ORDER**

**CASE CAPTION**

*Model Protective Order*

Whereas, counsel for \_\_\_\_\_ have applied to the Comptroller of the Currency (hereinafter Comptroller") pursuant to 12 CFR part 4, Subpart C, for permission to have made available, in connection with the captioned action, certain records; and

Whereas, such records are deemed by the Comptroller to be confidential and privileged, pursuant to 12 U.S.C. 481; 5 U.S.C. 552(b)(8); 18 U.S.C. 641, 1906; and 12 CFR 4.12, and part 4, Subpart C;

Whereas, following consideration by the Comptroller of the application of the above described party, the Comptroller has determined that the particular circumstances of the captioned action warrant making certain possibly relevant records available to the parties in this action, provided that appropriate protection of their confidentiality can be secured;

Now, Therefore, it is Ordered That:

1. The records, as denoted in appendix "A" to the Stipulation for this Protective Order, upon being furnished [or released for use] by the Comptroller, shall be disclosed only to the parties to this action, their counsel, and the court [and the jury].

2. The parties to this action and their counsel shall keep such records and any information contained in such records con-

fidential and shall in no way divulge the same to any person or entity, except to such experts, consultants and non-party witnesses to whom the records and their contents shall be disclosed, solely for the purpose of properly preparing for and trying the action.

3. No person to whom information and records covered by this Order are disclosed shall make any copies or otherwise use such information or records or their contents for any purpose whatsoever, except in connection with this action.

4. Any party or other person who wishes to use the information or records or their contents in any other action shall make a separate application to the Comptroller pursuant to 12 CFR part 4, Subpart C.

5. Should any records covered by this Order be filed with the Court or utilized as exhibits at depositions in the captioned action, or should information or records or their contents covered by this Order be disclosed in the transcripts of depositions or the trial in the captioned action, such records, exhibits and transcripts shall be filed in sealed envelopes or other sealed containers marked with the title of this action, identifying each document and article therein and bearing a statement substantially in the following form:

**CONFIDENTIAL**

Pursuant to the Order of the Court dated \_\_\_\_\_ this envelope containing the above-identified papers filed by (the name of the party) is not to be opened nor the contents thereof displayed or revealed except to the parties to this action or their counsel or by further Order of the Court.

6. FOR JURY TRIAL: Any party offering any of the records into evidence shall offer only those pages, or portions thereof, that are relevant and material to the issues to be decided in the action and shall block out any portion of any page that contains information not relevant or material. Furthermore, the name of any person or entity contained on any page of the records who is not a party to this action, or whose name is not otherwise relevant or material to the action, shall be blocked out prior to the admission of such page into evidence. Any disagreement regarding what portion of any page that should be blocked out in this manner shall be resolved by the Court *in camera*, and the Court shall decide its admissibility into evidence.

7. At the conclusion of this action, all parties shall certify to the Comptroller that the records covered by this Order have been destroyed. Furthermore, counsel for \_\_\_\_\_, pursuant to 12 CFR 4.39(c), shall retrieve any records covered by this Order that may have been filed with the Court.

So Ordered:

\_\_\_\_\_  
Judge

## Comptroller of the Currency, Treasury

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Date

[60 FR 57322, Nov. 15, 1995, as amended at 64 FR 29217, June 1, 1999]

### Subpart D—Minority-, Women-, and Individuals With Disabilities-Owned Business Contracting Outreach Program; Contracting for Goods and Services

#### § 4.61 Purpose.

Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Sec. 1216(c), Pub. L. 101-73, 103 Stat. 183, 529 (12 U.S.C. 1833e(c)) and consistent with the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*), this subpart establishes the OCC Minority-, Women-, and Individuals with Disabilities-Owned Business Contracting Outreach Program (Outreach Program). The Outreach Program is intended to ensure that firms owned and operated by minorities, women, and individuals with disabilities have the opportunity to participate, to the maximum extent possible, in all contracting activities of the OCC.

#### § 4.62 Definitions.

(a) *Minority- and/or women-owned (small and large) businesses and entities owned by minorities and women (MWOB)* means firms at least 51 percent unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. Additionally, for the foregoing cases, the management and daily business operations must be controlled by one or more such individuals.

(b) *Minority* means any African American, Native American (*i.e.*, American Indian, Eskimo, Aleut and Native Ha-

waiian), Hispanic American, Asian-Pacific American, or Subcontinent-Asian American.

(c) *Individual with disabilities-owned (small and large) businesses and entities owned by individuals with disabilities (IDOB)* means firms at least 51 percent unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members who are individuals with disabilities and who are citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. Additionally, for the foregoing cases, the management and daily business operations must be controlled by one or more such individuals.

(d) *Individual with disabilities* means any person who has a physical or mental impairment that substantially limits one or more of such person's major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of this part, it does not include an individual who is currently engaging in the illegal use of drugs nor an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job as defined by the IDOB.

(e) *Unconditional ownership* means ownership that is not subject to conditions or similar arrangements which cause the benefits of the Outreach Program to accrue to persons other than the participating MWOB or IDOB.

#### § 4.63 Policy.

The OCC's policy is to ensure that MWOBs and IDOBs have the opportunity to participate, to the maximum extent possible, in contracts awarded by the OCC. The OCC awards contracts consistent with the principles of full and open competition and best value