

## Harry S. Truman Scholarship Foundation

## § 1803.11

with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Executive Secretary.

(d) The Foundation shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Foundation may extend this time period for good cause.

(e) If the Foundation receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Foundation shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is used by the Foundation that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) The Foundation shall notify the complainant of the results of the investigation within 90 days of the receipt of a complete complaint over which it has

jurisdiction. Notification must be in a letter, and must include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation discovered; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by paragraph (f) of this section. The Foundation may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the General Counsel.

(j) The Foundation shall notify the complainant of the results of the appeal within 90 days of the receipt of the request. If the Foundation determines that it needs additional information from the complainant, it shall have 90 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (h) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Foundation may delegate its authority for conducting complaint investigations to other federal agencies, but may not delegate to another agency the authority for making the final determination.

## PARTS 1804–1899 [RESERVED]



## CHAPTER XXI—COMMISSION OF FINE ARTS

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## PART 2100 [RESERVED]

### PART 2101—FUNCTIONS AND ORGANIZATION

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AUTHORITY: Pub. L. 81-808, 64 Stat. 903; 10 U.S.C. 4594; 36 U.S.C. 124; 40 U.S.C. 72, 104, 106, 121, 1001; E.O. 1259 of October 25, 1910; E.O. 1862 of November 28, 1913; and E.O. 3524 of July 28, 1921.

SOURCE: 62 FR 4646, Jan. 31, 1997, unless otherwise noted.

#### Subpart A—Functions and Responsibilities of the Commission

##### § 2101.1 Statutory and Executive Order Authority.

The Commission of Fine Arts (referred to as the "Commission") functions pursuant to statutes of the United States and Executive Orders of Presidents, as follows:

(a) *Public buildings, other structures, and parklands.* (1) For public buildings to be erected in the District of Columbia by the federal government and for other structures to be so erected which affect the appearance of the city, the Commission comments and advises on the plans and on the merits of the designs before final approval or action;

(2) For statues, fountains and monuments to be erected in the District of Columbia under authority of the federal government, the Commission advises upon their location in public squares, streets, and parks, and the merits of their designs;

(3) For monuments to be erected at any location pursuant to the American Battle Monuments Act, the Commission approves the designs before they are accepted by the American Battle

Monuments Commission (See also § 2101.1 (g));

(4) For parks within the District of Columbia, when plans of importance are under consideration, the Commission advises upon the merits of the designs; and

(5) For the selection by the National Capital Planning Commission of lands suitable for development of the National Capital park, parkway, and playground system in the District of Columbia, Maryland, and Virginia, the Commission provides advice.

(b) *Private buildings bordering certain public areas in Washington, D.C. (Shipstead-Luce Act).* For buildings to be erected or altered<sup>1</sup> in locations which border the Capitol, the White House, the intermediate portion of Pennsylvania Avenue, the Mall Park System, Lafayette Park, the Zoological Park, Rock Creek Park or Parkway, or Potomac Park or Parkway, or are otherwise within areas defined by the official plats prepared pursuant to Sec. 2 of the Shipstead-Luce Act, the Commission reviews the plans as they relate to height and appearance, color and materials of the exteriors, and makes recommendations to the Government of the District of Columbia which, in the judgement of the Commission, are necessary to prevent reasonably avoidable impairment of the public values represented by the areas along which the buildings border. (Shipstead-Luce Act, 46 Stat. 366 as amended (40 U.S.C. 121; D.C. Code 5-410).)

(c) *Georgetown buildings (Old Georgetown Act).* For buildings to be constructed, altered, reconstructed, or razed within the area of the District of Columbia known as "Old Georgetown", the Commission reviews and reports to the District of Columbia Government on proposed exterior architectural features, height, appearance, color, and texture of exterior materials as would

<sup>1</sup>Alteration does not include razing (*Commissioner of the District of Columbia v. Bennenson*, D.C. Court of App. 1974, 329 A.2d 437). Partial demolition, however, is viewed as an alteration (*The Committee to Preserve Rhodes Tavern and the Natl. Processional Route v. Oliver T. Carr Company, et. al.*, U.S. Court of App. for D.C. Cir., 1979, 79-1457, Dept. Justice Brief for Fed. Appellee).

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be seen from public space; and the Commission makes recommendations to such government as to the effect of the plans on the preservation and protection of places and areas that have historic interest or that manifest exemplary features and types of architecture, including recommendations for any changes in plans necessary in the judgement of the Commission to preserve the historic value of Old Georgetown, and takes any such actions as in the judgement of the Commission are right or proper in the circumstances. (Old Georgetown Act, Public Law 81-808, 64 Stat. 903 (D.C. Code 5-801).)

(d) *United States medals, insignia, and coins.* On medals, insignia, and coins to be produced by an executive department of the United States including the Mint, the Commission advises as to the merits of their designs which shall be submitted before the executive officer having charge of the same shall approve thereof.

(e) *Heraldic services provided by the Department of the Army.* The Commission upon request advises the Heraldic Branch of the Army upon the merits of proposed designs for medals, insignia, seals, etc. prepared under the authority of the Act of August 26, 1957 to furnish heraldic services to the other departments and agencies of the government.

(f) *Questions of art with which the Federal government is concerned.* When required to do so by the President or by Committees of either House of Congress, the Commission advises generally on questions of art, and whenever questions of such nature are submitted to it by an officer or department of the federal government the Commission advises and comments.

(g) *Commemorative works.* The Commemorative Works Act provides standards for placement of commemorative works on certain federal lands in the District of Columbia and its environs, and for other purposes; and requires site and design approval of all commemorative works by the Commission of Fine Arts, National Capital Planning Commission, and (as appropriate) the Secretary of Interior or the Administrator of General Services. The sponsoring agencies therefore shall submit designs to the Commission for review

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and shall provide such design changes as may be required to obtain approval.

### §2101.2 Relationships of Commission's functions to responsibilities of other government units.

(a) *Projects involving the Capitol building and the Library of Congress.* Plans concerning the Capitol building and the buildings of the Library of Congress are outside the purview of the Commission except as to questions on which the Committees of Congress require the Commission to advise.

(b) *Other Federal government projects.* Officers and departments of the federal government responsible for finally approving or acting upon proposed projects within the purview of the Commission's functions as described in §2101.1 (a) are required first to submit plans or designs for such projects to the Commission for its advice and comments.

(c) *Projects within the jurisdiction of the District of Columbia government.* The District of Columbia seeks Commission advice on exterior alteration or new construction of public buildings or major public works within its boundaries. The District of Columbia government also shall seek Commission advice on certain private construction requiring building or demolition permits from the D.C. Permit Branch (D.C. Law 5-422). These include certain actions by the District of Columbia government pursuant to either D.C. Law 5-422 or D.C. Law 2-144 within areas subject to the Shipstead-Luce or Old Georgetown Acts (§2101.1 (b) and (c)) prior to the issuance of a permit.<sup>2</sup> Alterations of buildings, demolition, or new construction at individually designated landmarks or within historic districts are further subject to the permit requirements of the Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2-144). Upon request, advice will be given on the subject of lot subdivisions.

<sup>2</sup>Provisions of the Shipstead-Luce Act (§2101.1 (b)) do not include full demolition, though partial demolition is viewed as an alteration.

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### Subpart B—General Organization

#### § 2101.10 The Commission.

The Commission is composed of seven members, each of whom is appointed by the President and serves for a period of four years or until his or her successor is appointed and qualified. The Chairman and Vice Chairman are elected by the members. The Commission is assisted by a staff as authorized by the Commission.

#### § 2101.11 Secretary to the Commission.

Subject to the direction of the Chairman, the Secretary to the Commission is responsible for the day-to-day operations of the agency and for supervising the staff in its support of the functions of the Commission; for preparing the agenda of Commission meetings; for organizing presentations before the Commission of plans, designs, or questions upon which it is to advise, comment, or respond; for interpreting the Commission's conclusions, advice, or recommendations on each matter submitted to it; for maintaining a liaison with other governmental entities, professionals, and the public; and for maintaining the Commission's records. The Assistant Secretary of the Commission shall carry out duties delegated to him/her by the Secretary and shall act in place of the Secretary during his/her absence or disability.

#### § 2101.12 Georgetown Board of Architectural Consultants.

To assist the Commission in carrying out the purposes of the Old Georgetown Act (§2101.1 (c)), a committee of three architects appointed for a term of three years by the Commission serves as the Board of Architectural Consultants without expense to the United States. This committee advises the Commission regarding designs and plans referred to it. The Chairman is elected by its members.

## PART 2102—MEETINGS AND PROCEDURES OF THE COMMISSION

### Subpart A—Commission Meetings

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AUTHORITY: 5 U.S.C., App. 1.

SOURCE: 62 FR 4647, Jan. 31, 1997, unless otherwise noted.

### Subpart A—Commission Meetings

#### § 2102.1 Times and places of meetings.

Regular meetings of the Commission, open to the public, are held monthly on the third Thursday of the month, beginning at 10 a.m., at its offices in Suite 312, 441 F Street, N.W. Washington, D.C. 20001, except that by action of the Commission a regular meeting in any particular month may be omitted or it may be held on another day or at a different time or place. A special meeting, open to the public, may be held in the interval between regular meetings upon call of the Chairman and five days' written notice of the time and place mailed to each member who does not in writing waive such notice. On all matters of official business, the Commission shall conduct its deliberations and reach its conclusions at such open meetings except as stated in §2101.12 provided, however, the Commission members may receive staff briefings or may have informal background discussions among themselves and the staff outside of such meetings.

#### § 2102.2 Actions outside of meetings.

Between meetings in situations of emergency, the Commission may act through a canvass by the Secretary of individual members, provided that any action so taken is brought up and ratified at the next meeting. In addition,

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the Commission members may convene away from the Commission's offices to make inspections at the site of a proposed project or at the location of a mock-up for the project and may then and there reach its conclusions respecting such project which shall be recorded in the minutes of the meeting held on the same day or, if none was then held, in the minutes of the next meeting.

#### § 2102.3 Public notice of meetings.

Notice of each meeting of the Commission shall be published in the FEDERAL REGISTER.

#### § 2102.4 Public attendance and participation.

Interested persons are permitted to attend meetings of the Commission, to file statements with the Commission at or before a meeting, and to appear before the Commission when it is in meeting, provided that an appearance is germane to the functions and policies of the Commission and to the matter or issues then before the Commission, and if the presentation or argument is made in a concise manner, within reasonable time limits and avoids duplicating information or views already before the Commission. A decision of the Chairman as to the order of appearances and as to compliance with these regulations by any person shall be final unless the Commission determines otherwise.

#### § 2102.5 Records and minutes; public inspection.

A detailed record of each meeting shall be made and kept which shall contain copies of all written, printed, or graphic materials presented. The Secretary shall have prepared minutes of each meeting which shall state the time and place it was held and attendance by Commission members and staff and which shall contain a complete summary of matters discussed and conclusions reached and an explanation of the extent of public participation, including names of persons who presented oral or written statements; and he shall send a copy to all members of the Commission for their approval. Subsequent to such approval, the minutes shall be certified by the Secretary.

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The minutes and any completed reports, studies, agenda or other documents made available to, or prepared for or by, the Commission shall be available for public inspection and, at the requesting party's expense, for copying at the offices of the Commission.

#### Subpart B—Procedures on Submissions of Plans or Designs

#### § 2102.10 Timing, scope and content of submissions for proposed projects involving land, buildings, or other structures.

(a) A party proposing a project which is within the purview of the Commission's functions under § 2101.1 (a), (b), or (c) should make a submission when concept plans for the project are ready but before detailed plans and specifications or working drawings are prepared. In order to assure that a submission will be considered at the next scheduled meeting of the Commission, it should be delivered to the Commission's offices not later than ten (10) working days before the meeting; if it is a project subject to review first by the Georgetown Board, not later than ten (10) working days before the Georgetown Board meeting. The Commission will attempt to consider a submission which is not made in conformity with this schedule, but it reserves the right to postpone consideration until its next subsequent meeting.

(b)(1) Each submission should state or disclose:

(i) The nature, location, and justification of the project, including any relevant historical information about the building or other structure to be altered or razed;

(ii) The identity of the owner or developer (or for public buildings, the governmental unit with authority to approve or act upon the plans) and of the architect;

(iii) The functions, uses, and purpose of the project; and

(iv) Other information to the extent it is relevant, such as area studies, site plans, building and landscape schematics, renderings, models, depictions or samples of exterior materials and



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components, and photographs of existing conditions to be affected by the project.

(2) Alternative proposals may be included within one submission. The information submitted shall be sufficiently complete, detailed, and accurate as will enable the Commission to judge the ultimate character, siting, height, bulk, and appearance of the project, in its entirety, including the grounds within the scope of the project, its setting and environs, and its effect upon existing conditions and upon historical and prevailing architectural values. Record drawings and photographs will be submitted by the applicant for a permanent Commission record of the submission.

(c) If a project consists of a first or intermediate phase of a contemplated larger program of construction, similar information about the eventual plans should accompany the submission. Even though a submission relates only to approval for razing or removal of a building or other structure, the project will be regarded as part of phased development, and the submission is subject to such requirement.

(d) If the project involves a statue, fountain or a monument within the purview of the Commission under § 2101.1 (a)(2), partial submissions should be made as appropriate to permit the Commission to advise on each aspect of the project as prescribed by the Commemorative Works Act (Pub. L. 99-652, H.R. 4378, 40 U.S.C. 1001).

(e) The Commission staff will advise owners and architects concerning the scope and content of particular submissions. Material relevant to the functions and policies of the Commission varies greatly depending upon the nature, size, and importance of the project to be reviewed by the Commission. Also, it is the policy of the Commission not to impose unnecessary burdens or delays on persons who make submissions to the Commission. However, the Commission at any meeting may decline to reach a conclusion about a proposed project if it deems the submission materials inadequate for its purposes, or it may condition its conclusions on the submission of further information to it at a later meeting or,

in its discretion, may delegate final action to the staff.

(f) The Commission staff, members of the Georgetown Board, interested members of the public, or the submitting party may augment any submission by additional relevant information made available to the Commission before or at the meeting where the submission is considered. The staff should also make information available concerning prior considerations or conclusions of the Commission regarding the same project or earlier versions of it.

### **§ 2102.11 Scope and content of submissions for proposed medals, insignia, coins, seals, and the like.**

Each submission of the design for a proposed item which is within the Commission's purview under § 2101.1 (d) should identify the sponsoring government unit and disclose the uses and purpose of the item, the size and forms in which it will be produced, and the materials and finishes to be used, including colors if any, along with a sketch, model, or prototype.

### **§ 2102.12 Responses of Commission to submissions.**

(a) The Commission before disposing of any project presented to it may ask for the proposed plans or designs to be changed in certain particulars and re-submitted, or for the opportunity to review plans, designs, and specifications in certain particulars at a later stage in their development, and to see samples or mock-ups of materials or components; and when appropriate in the matter of a statue or other object of art, the Commission may ask for the opportunity to see a larger or full-scale model. All conclusions, advice, or comments of the Commission which lead to further development of plans, designs, and specifications or to actual carrying out of the project are made in contemplation that such steps will conform in all substantial respects with the plans or designs submitted to the Commission, including only such changes as the Commission may have recommended; any other changes in plans or designs require further submission to the Commission.

(b) In the case of plans submitted with a permit application subject to

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the Old Georgetown Act (§2101.1(c)), if the Commission does not respond with a report on such plans within forty-five days after their receipt by the Commission, its approval shall be assumed and a permit may be issued by the government of the District of Columbia.

(1) In the case of a concept application submitted for a project subject to the Old Georgetown Act (§2101.1(c)), the Commission's approval is valid for two years. At the end of the two years, the original owner for the project may submit a new concept application requesting to extend the approval for one more year. The Commission, however, may decline to extend its approval.

(2) [Reserved]

(c) In the case of plans submitted with a permit application subject to the Shipstead-Luce Act (§2101.1(b)), if the Commission does not respond with a report on such plans within thirty days after their receipt by the Commission, its approval shall be assumed and a permit may be issued by the government of the District of Columbia.

(1) In the case of a concept application for a project subject to the Shipstead-Luce Act (§2101.1(b)), the Commission's approval is valid for two years. At the end of the two years, the original owner for the project may submit a concept application requesting to extend the approval for one more year. The Commission, however, may decline to extend its approval.

(2) [Reserved]

(d) In the event that any project or item within the Commission's purview under 2101.1 has not progressed to a substantial start of construction or production within four years following the Commission meeting date on which the final design was approved, the Commission's approval is suspended. The plans or designs previously approved or alternative plans or designs, may thereupon be resubmitted for Commission review. The Commission's subsequent approval, if granted, shall remain in effect for four years.

[62 FR 4647, Jan. 31, 1997, as amended at 73 FR 29712, May 22, 2008]

## § 2102.13 Project eligibility criteria for placement on a Consent Calendar.

With respect to submissions to the Commission for projects that meet the

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following criteria, the Secretary, at his/her discretion and in coordination with the Commission's staff, may place these projects on a Consent Calendar according to §2102.14.

(a) Additions to buildings of less than 25 percent (%) of the original structure and no more than 25,000 sq. ft.;

(b) New construction of less than 25,000 sq. ft.;

(c) Window replacement projects;

(d) Cellular or other communications antenna installations or replacements;

(e) New or replacement signs;

(f) Cleaning, routine maintenance, repairs or replacement-in-kind of exterior finish materials;

(g) Temporary utility or construction structures;

(h) And does not include new physical perimeter security items.

[70 FR 49194, Aug. 23, 2005]

## § 2102.14 Consent Calendar and Appendices procedures.

(a) The Commission shall review applications scheduled on its Meeting Agenda, Consent Calendar, or Appendices (Old Georgetown Act and Shipstead-Luce Act). Cases on the Meeting Agenda will be heard by the Commission in open session. Cases on the Consent Calendar or Appendices will be acted upon based on submitted materials and staff recommendations without further public comment.

(b) The Commission shall release the proposed Meeting Agenda, and the Consent Calendar and Appendices with staff recommendation to the public not later than five (5) calendar days before the meeting.

(c) The scheduling of cases on the Meeting Agenda, Consent Calendar, and Appendices shall be at the sole discretion of the Commission and staff, and nothing shall preclude the Commission from amending or changing the scheduling at a public meeting.

(d) The staff shall prepare a written recommendation for each case on the Consent Calendar or Appendices the Commission will review.

(e) The Commission shall conduct public review of cases in accordance with a proposed Agenda released to the public before the Commission meeting. The Commission shall dispose of other

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cases by adoption of a Consent Calendar and Appendices, as appropriate. The Commission may amend the Meeting Agenda, Consent Calendar and Appendices at the public meeting as it may deem appropriate.

(f) An application may be placed on the Consent Calendar if the applicant and staff agree that the proposed work has no known objection by an affected government agency, neighborhood organization, historic preservation organization, or affected person. Any relevant terms or modifications agreed upon by the applicant and staff may be included as conditions of the approval.

(g) At the request of any Commission member, the Chairperson may remove any case from the Consent Calendar and place it on the Meeting Agenda for individual consideration by the Commission at the meeting. A request from any other group or person to remove a case from the Consent Calendar should be made to the staff in advance of the meeting and shall be considered as a preliminary matter at the meeting.

(h) The Chairperson may also remove any case from a duly noticed Meeting Agenda and place it on the Consent Calendar, provided there is no objection from the applicant, any Commission member, or any affected group or person present and wishing to comment on the case.

(i) The Commission may approve the Consent Calendar and Appendices on a voice vote.

[70 FR 49194, Aug. 23, 2005]

### PART 2103—STATEMENTS OF POLICY

AUTHORITY: Pub. L. 81-808, 64 Stat. 903; 40 U.S.C. 72, 104, 106, and 121; E.O. 1259 of October 25, 1910; E.O. 1862 of November 28, 1913; E.O. 3524 of July 28, 1921.

#### § 2103.1 General approaches to review of plans by the Commission.

The Commission functions relate to the appearance of proposed projects within its purview as specified herein. These functions are to serve the purpose of conserving and enhancing the visual assets which contribute significantly to the character and quality of Washington as the nation's capital and

which appropriately reflect the history and features of its development over two centuries. Where existing conditions detract from the overall appearance of official Washington or historic Georgetown—such as conditions caused by temporary, deteriorated, or abandoned buildings of little or no historical or architectural value, by interrupted developments, or by vacant lots not devoted to public use as parks or squares—the Commission will favor suitable corrections to these conditions. When changes or additions are proposed in other circumstances, the Commission may consider whether the public need or value of the project or the private interests to be served thereby justify making any change or addition, and it will consider whether the project can be accomplished in reasonable harmony with the nearby area, with a minimum loss of attractive features of the existing building or site, with due deference to the historical and architectural values affected, and without creating an anomalous disturbing element in the public view of the city.

[62 FR 4649, Jan. 31, 1997]

### PART 2104—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMISSION OF FINE ARTS

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2104.171–2104.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22895, 22896, June 23, 1986, unless otherwise noted.

### § 2104.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### § 2104.102 Application.

This part applies to all programs or activities conducted by the agency.

### § 2104.103 Definition.

For purposes of this part, the term—  
*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe

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or identify (by name, if possible) the alleged victims of discrimination.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

*Handicapped person* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major

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life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

*Historic preservation programs* means programs conducted by the agency that have preservation of historic properties as a primary purpose.

*Historic properties* means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

*Qualified handicapped person* means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §2104.140.

*Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities con-

ducted by Executive agencies and not to federally assisted programs.

*Substantial impairment* means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

### §§2104.104–2104.109 [Reserved]

### §2104.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) a description of areas examined and any problems identified, and

(2) a description of any modifications made.

### §2104.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

### §§2104.112–2104.129 [Reserved]

### §2104.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied

the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a

program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

**§§ 2104.131–2104.139 [Reserved]**

**§ 2104.140 Employment.**

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of

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1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

### §§ 2104.141–2104.148 [Reserved]

#### § 2104.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 2104.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

#### § 2104.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2104.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by

a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 2104.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 2104.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

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(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

### **§ 2104.151 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established

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in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

### **§§ 2104.152–2104.159 [Reserved]**

### **§ 2104.160 Communications.**

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2104.160 would result in such alteration or burdens.



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The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

### §§ 2104.161–2104.169 [Reserved]

### § 2104.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Secretary, Commission of Fine Arts, shall be responsible for coordinating implementation of this section. Complaints may be sent to Secretary, Commission of Fine Arts, 708 Jackson Place NW., Washington, DC 20006.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable ef-

forts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §2104.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22895, 22896, June 23, 1986, as amended at 51 FR 22895, June 23, 1986]

**§§ 2104.171–2104.999**

**§§ 2104.171–2104.999 [Reserved]**

**PART 2105—REQUIREMENTS FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT**

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APPENDIX A TO PART 2105—FEE SCHEDULE

AUTHORITY: 5 U.S.C. 552, as amended by Public Law 110-175, 121 Stat. 2524 and Pub. L. 114-185, 130 Stat. 538.

SOURCE: 84 FR 27722, June 14, 2019, unless otherwise noted.

### Subpart A—Introduction

#### § 2105.1 What should you know up front?

(a) This part contains the rules that the Agency follows in processing records under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

(b) Definitions of terms used in this part are found at § 2105.67.

(c) This part should be read in conjunction with the text of the FOIA and the OMB Fee Guidelines.

(d) This part does not entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

(e) You are encouraged to review the Agency's FOIA libraries before filing a FOIA request. The material you seek may be immediately available electronically at no cost.

#### § 2105.2 What kinds of records are not covered by the regulations in this part?

In the event that the Agency identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the agency must confer with legal counsel and the Department of Justice, Office of Information Policy, to obtain approval to apply the exclusion.

### Subpart B—How To Make a Request

#### § 2105.3 Where should you send a FOIA request?

(a) To make a request for Agency records, you must contact the Agency directly.

(b) Address requests to the FOIA Officer found in the Agency contacts at <https://www.cfa.gov/foia>.

#### § 2105.4 How should you describe the records you seek?

(a) You must reasonably describe the records sought. A reasonable description contains sufficient detail to enable Agency personnel familiar with the subject matter of the request to locate the records with a reasonable amount of effort.

(b) You should include as much detail as possible about the specific records or types of records that you are seeking. This will assist the Agency in identifying the requested records (for example, time frames involved or specific personnel who may have the requested records). For example, whenever possible, identify:

(1) The date, title or name, author, recipient, and subject of any particular records you seek;

(2) The office that created the records you seek;

(3) The timeframe for which you are seeking records; and

(4) Any other information that will assist the Agency in locating the records.

(c) The Agency's FOIA Officer or Public Liaison can assist you in formulating or reformulating a request in an effort to better identify the records you seek.

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(d) If the Agency determines that your request does not reasonably describe the records sought, the Agency will inform you what additional information you need to provide in order to reasonably describe the records that you seek so the requested records can be located with a reasonable amount of effort. The Agency will also notify you that it will not be able to comply with your request unless the additional information it has requested is received from you in writing within 20 workdays after the Agency has requested it and that you may appeal its determination. If you receive this type of notification, you may wish to discuss it with the Agency's designated FOIA contact or the FOIA Public Liaison (*see* § 2105.63). If the Agency does not receive your written response containing the additional information within 20 workdays after the Agency has requested it, the Agency will presume that you are no longer interested in the records and will close the file on the request.

### **§ 2105.5 How will fee information affect the processing of your request?**

(a) Your request should state that you will pay all fees associated with processing the request, that you will pay fees up to a specified amount, and/or that you are seeking a fee waiver.

(b) If the Agency anticipates that the fees for processing the request will exceed the amount you have agreed to pay, or if you did not agree in writing to pay processing fees or request a fee waiver and the Agency anticipates the processing costs will exceed \$50 (*see* § 2105.35(g)) or will exceed your entitlements (*see* § 2105.37), the Agency will notify you:

- (1) Of the estimated processing fees;
- (2) Of its need for either an advance payment (*see* § 2105.48) or your written assurance that you will pay the anticipated fees (or fees up to a specified amount); and

(3) That it will not be able to fully comply with your request unless you provide a fee waiver request and/or the requested written assurance or advance payment.

(c) If the Agency does not receive a written response from you within 20 workdays after requesting the information in paragraph (b) of this section, it

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will presume that you are no longer interested in the records and will close the file on the request.

(d) If you are seeking a fee waiver, your request must include a justification that addresses and meets the criteria in §§ 2105.43 and 2105.46. Failure to provide sufficient justification will result in a denial of the fee waiver request. If you are seeking a fee waiver, you may also indicate the amount you are willing to pay if the fee waiver is denied. This allows the Agency to process the request for records while it considers your fee waiver request.

(e) If you are required to pay a fee and it is later determined on appeal that you were entitled to a full or partial fee waiver, you will receive an appropriate refund.

### **§ 2105.6 What information should you include about your fee category?**

(a) A request should indicate your fee category (that is, whether you are a commercial-use requester, news media, educational or noncommercial scientific institution, or other requester as described in §§ 2105.36 and 2105.37).

(b) If you submit a FOIA request on behalf of another person or organization (for example, if you are an attorney submitting a request on behalf of a client), the Agency will determine the fee category by considering the underlying requester's identity and intended use of the information.

(c) If your fee category is unclear, the Agency may ask you for additional information (*see* § 2105.49).

### **§ 2105.7 Can you ask for records to be disclosed in a particular form or format?**

(a) Generally, you may choose the form or format of disclosure for records requested. The Agency must provide the records in the requested form or format if the Agency can readily reproduce the record in that form or format.

(b) The Agency may charge you the direct costs involved in converting records to the requested format if the Agency does not normally maintain the records in that format (*see* § 2105.42).

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### §2105.8 What if your request seeks records about another person?

(a) When a request seeks records about another person, you may receive greater access by submitting proof that the person either:

(1) Consents to the release of the records to you (for example, a notarized authorization signed by that person); or

(2) Is deceased (for example, a copy of a death certificate or an obituary).

(b) The Agency can require you to supply additional information if necessary to verify that a particular person has consented to disclosure or is deceased.

### §2105.9 May you ask for the processing of your request to be expedited?

You may ask for the processing of your request to be expedited. If you are seeking expedited processing, your request must include a justification that addresses and meets the criteria in §2105.18 and includes the certification required at §2105.18(b)(2).

### §2105.10 What contact information should your request include?

A request should include your name and a way (such as a mailing or email address) for the Agency to send responsive records to you and/or to request additional information or clarification of your request. You may also wish to include a daytime telephone number (or the name and telephone number of an appropriate contact).

## Subpart C—Processing Requests

### §2105.11 What should you know about how the Agency processes requests?

(a) Except as described in §2105.12, the Agency is responsible for responding to the request and for making a reasonable effort to search for responsive records.

(b) In determining which records are responsive to a request, the Agency will include only records in its possession and control on the date that it begins its search.

(c) The Agency will make reasonable efforts to search for the requested records. As part of its reasonable efforts, the Agency will search paper and/

or electronic records (for example, emails), as appropriate. The Agency will not search for records in an electronic form or format if these efforts would significantly interfere with the operation of the Agency's automated information system.

(d) If the Agency receives a request for records in its possession that it did not create or that another Federal agency is substantially concerned with, it may undertake consultations and/or referrals as described in §2105.12.

### §2105.12 How do consultations and referrals work?

(a) Consultations and referrals generally occur outside the Agency.

(1) Paragraphs (b) through (f) of this section address consultations and referrals that occur outside the Agency when the Agency has responsive records.

(2) Paragraph (g) of this section addresses what happens when the Agency has no responsive records but believes responsive records may be in the possession of a Federal agency outside the Agency.

(b) If, while responding to a request, the Agency locates records that originated with another Federal agency, it usually will refer the request and any responsive records to that other agency for a release determination and direct response.

(c) If the Agency refers records to another agency, it will document the referral and maintain a copy of the records that it refers and notify you of the referral in writing. When the Agency notifies you of the referral, it will tell you whether the referral was for part or all of your request and provide the name and contact information for the other agency. You may treat such a response as a denial of records and file an appeal, in accordance with the procedures in §2105.56.

(d) The standard referral procedure is not appropriate where disclosure of the identity of the Agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the

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Agency that received the request will coordinate with the originating agency and seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination will then be conveyed to the requester by the Agency that originally received the request.

(e) If the Agency locates records that originated with another Federal agency while responding to a request, the Agency will make the release determination itself (after consulting with the originating agency) when:

(1) The record is of primary interest to the Agency (for example, a record may be of primary interest to the Agency if it was developed or prepared according to the Agency's regulations or directives, or in response to an Agency request);

(2) The Agency is in a better position than the originating agency to assess whether the record is exempt from disclosure;

(3) The originating agency is not subject to the FOIA; or

(4) It is more efficient or practical depending on the circumstances.

(f) On receipt of any request involving classified information, the Agency will determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable Executive order concerning the classification of records, the receiving agency will refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever the Agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the Agency will refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(g) If the Agency receives a request for records not in its possession, but that the Agency believes may be in the possession of a Federal agency outside the Agency, the Agency will return the

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request to you, may advise you to submit it directly to the other agency, will notify you that the Agency cannot comply with the request, and will close the request. If you believe this response was in error, you may file an appeal in accordance with the procedures in § 2105.56.

### Subpart D—Timing of Responses to Requests

#### § 2105.13 In what order are responses usually made?

The Agency ordinarily will respond to requests according to their order of receipt within their processing track.

#### § 2105.14 What is multitrack processing and how does it affect your request?

(a) Processing tracks are used to distinguish simple requests from more complex ones on the basis of the estimated number of workdays needed to process the request.

(b) In determining the number of workdays needed to process the request, the Agency considers factors such as the number of pages involved in processing the request or the need for consultations.

(c) The basic processing tracks are designated as follows:

(1) Simple: Requests in this track will take between one to five workdays to process;

(2) Normal: Requests in this track will take between six to twenty workdays to process;

(3) Complex: Requests in this track will take between twenty-one workdays and sixty workdays to process; or

(4) Voluminous: Requests in this track involve very complex processing challenges, which may include a large number of potentially responsive records, and will take over sixty workdays to process.

(d) The Agency also has a specific processing track for requests that are granted expedited processing under the standards in § 2105.18. These requests will be processed as soon as practicable.

(e) The Agency must advise you of the track into which your request falls and, when appropriate, will offer you an opportunity to narrow your request

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so that it can be placed in a different processing track. If you request placement in a particular processing track but the Agency places you in a different processing track, the Agency will provide you with an explanation of why you were not placed in the processing track you requested.

(f) The use of multitrack processing does not alter the statutory deadline for an Agency to determine whether to comply with your FOIA request (see §2105.15).

(g) You may inquire about the status of your request, including its estimated processing completion date, by contacting the FOIA Public Liaison, whose contact information may be found at <https://www.cfa.gov/foia>.

### **§2105.15 What is the basic time limit for responding to a request?**

(a) Ordinarily, the Agency has 20 workdays (including the date of receipt) to determine whether to comply with a request, but unusual circumstances may allow the Agency to take longer than 20 workdays (see §2105.17).

(b) A consultation or referral under §2105.12 does not restart the statutory time limit for responding to a request.

### **§2105.16 When can the Agency suspend the basic time limit?**

(a) The basic time limit in §2105.15 may be temporarily suspended for the time it takes you to respond to one written communication from the Agency reasonably asking for clarifying information.

(b) The basic time limit in §2105.15 may also repeatedly be temporarily suspended for the time it takes you to respond to written communications from the Agency that are necessary to clarify issues regarding fee assessment (see §2105.49).

### **§2105.17 When may the Agency extend the basic time limit?**

(a) The Agency may extend the basic time limit, if unusual circumstances exist, by notifying you in writing of:

(1) The unusual circumstances involved; and

(2) The date by which it expects to complete processing the request.

(b) If the processing time will extend beyond a total of 30 workdays, the Agency will:

(1) Give you an opportunity to limit the scope of the request or agree to an alternative time period for processing; and

(2) Make available its FOIA Public Liaison (see §2105.63) to assist in resolving any disputes between you and the Agency, and notify you of your right to seek dispute resolution from the Office of Government Information Services (OGIS).

(c) If the Agency extends the time limit under this section and you do not receive a response in accordance with §2105.15(a) in that time period, you may consider the request denied and file an appeal in accordance with the procedures in §2105.56.

(d) Your refusal to reasonably modify the scope of a request or arrange an alternative time frame for processing a request after being given the opportunity to do so may be considered for litigation purposes as a factor when determining whether exceptional circumstances exist.

### **§2105.18 When will expedited processing be provided and how will it affect your request?**

(a) The Agency will provide expedited processing upon request if you demonstrate to the satisfaction of the Agency that there is a compelling need for the records. The following circumstances demonstrate a compelling need:

(1) Where failure to expedite the request could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) Where there is an urgency to inform the public about an actual or alleged Federal Government activity and the request is made by a person primarily engaged in disseminating information.

(i) In most situations, a person primarily engaged in disseminating information will be a representative of the news media.

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(ii) If you are not a full time member of the news media, to qualify for expedited processing here, you must establish that your main professional activity or occupation is information dissemination, although it need not be your sole occupation.

(iii) The requested information must be the type of information which has particular value that will be lost if not disseminated quickly; this ordinarily refers to a breaking news story of general public interest.

(iv) Information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news.

(b) If you seek expedited processing, you must submit a statement that:

(1) Explains in detail how your request meets one or both of the criteria in paragraph (a) of this section; and

(2) Certifies that your explanation is true and correct to the best of your knowledge and belief.

(c) You may ask for expedited processing of your request by writing to the appropriate FOIA contact in the Agency that maintains the records requested any time before the Agency issues its final response to your request. When making a request for expedited processing of an administrative appeal, submit the request to the appropriate deciding official for FOIA appeals.

(d) The Agency must notify you of its decision to grant or deny expedited processing within 10 calendar days of receiving an expedited processing request.

(e) If expedited processing is granted, the request will be given priority, placed in the processing track for expedited requests, and be processed as soon as practicable.

(f) If expedited processing is denied, the Agency will:

(1) Inform you of the basis for the denial, including an explanation of why the expedited processing request does not meet the Agency's expedited processing criteria under this section; and

(2) Notify you of the right to appeal the decision on expedited processing in accordance with the procedures in subpart H of this part.

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(g) If you appeal the Agency's expedited processing decision, that portion of your appeal (if it is properly formatted under § 2105.56) will be processed before appeals that do not challenge expedited processing decisions.

(h) If the Agency has not responded to the request for expedited processing within 10 calendar days, you may file an appeal (for nonresponse in accordance with § 2105.54(a)(8)).

### Subpart E—Responses to Requests

#### § 2105.19 How will the Agency respond to requests?

(a) When the Agency informs you of its decision to comply with a request by granting, partially granting, or denying the request, it will do so in writing and in accordance with the deadlines in subpart D of this part. The Agency's written response will include a statement about the services offered by its FOIA Public Liaison. The Agency's written response will also include a statement about the services offered by the Office of Government Information Services (OGIS).

(b) If the Agency determines that your request will take longer than 10 workdays to process, the Agency immediately will send you a written acknowledgment that includes the request's individualized tracking number and processing track (*see* § 2105.14(e)). The acknowledgement may also include a brief description of the subject of your request.

#### § 2105.20 How will the Agency grant requests?

(a) Once the Agency makes a determination to grant a request in full or in part, it must notify you in writing.

(b) The notification will inform you of the availability of its FOIA Public Liaison to offer assistance, and of any fees charged under subpart G of this part.

(c) The Agency will release records (or portions of records) to you promptly upon payment of any applicable fees (or before then, at its discretion).

(d) If the records (or portions of records) are not included with the Agency's notification, the Agency will advise you how, when, and where the



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records will be released or made available.

### **§ 2105.21 When will the Agency deny a request or procedural benefits?**

(a) The Agency denies a request when it makes a decision that:

(1) A requested record is exempt, in full or in part;

(2) The request does not reasonably describe the records sought;

(3) A requested record does not exist, cannot be located, or is not in the Agency's possession and/or control; or

(4) A requested record is not readily reproducible in the form or format you seek.

(b) The Agency denies a procedural benefit only, and not access to the underlying records, when it makes a decision that:

(1) A fee waiver, or another fee-related issue, will not be granted; or

(2) Expedited processing will not be provided.

(c) The Agency must consult with legal counsel before it denies a fee waiver request or withholds all or part of a requested record.

### **§ 2105.22 How will the Agency deny requests?**

(a) The Agency must notify you in writing of any denial of your request.

(b) The denial notification must include:

(1) The name and title or position of the person responsible for the denial, along with an office phone number or email address;

(2) A statement of the reasons for the denial;

(3) A reference to any FOIA exemption applied by the Agency to withhold records in full or in part, along with a statement that the Agency reasonably foresees that disclosure would harm an interest protected by the applied exemption(s) or disclosure is prohibited by law;

(4) An estimate of the volume of any records withheld in full or in part (for example, by providing the number of pages or some other reasonable form of estimation), unless including an estimate would harm an interest protected by an exemption used to withhold the records and the Agency explains this harm to you;

(5) The name and title of legal counsel consulted (if the Agency is denying a fee waiver request or withholding all or part of a requested record);

(6) Advisement of the right to seek dispute resolution services from the Agency's FOIA Public Liaison and the Office of Government Information Services (OIGS); and

(7) A statement that the denial may be appealed under subpart H of this part and a description of the procedures in subpart H of this part.

### **§ 2105.23 What if the requested records contain both exempt and non-exempt material?**

If responsive records contain both exempt and nonexempt material, the Agency will consult with legal counsel, as discussed in § 2105.21(c). After consultation, the Agency will partially grant and partially deny the request by:

(a) Segregating and releasing the nonexempt information, unless the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases;

(b) Indicating on the released portion of the record the amount of information deleted and the FOIA exemption under which the deletion was made, unless doing so would harm an interest protected by the FOIA exemption used to withhold the information; and

(c) If technically feasible, indicating the amount of information deleted and the FOIA exemption under which the deletion was made at the place in the record where the deletion was made.

## **Subpart F—Handling Confidential Information**

### **§ 2105.24 May submitters of possibly confidential information designate information as confidential when making submissions?**

(a) The Agency encourages, but does not require, submitters to designate confidential information in good faith (in other words, to identify specific information as information the submitter considers protected from disclosure under Exemption 4 of the FOIA, found at 5 U.S.C. 552(b)(4)), at the time

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of submission or reasonably soon thereafter.

(b) The designations discussed in paragraph (a) of this section assist the Agency in identifying what information obtained from the submitter is possibly confidential and triggers the requirement for Agency-provided notifications under § 2105.25(a)(1).

### **§ 2105.25 When will the Agency notify a submitter of a request for their possibly confidential information?**

(a) Except as outlined in § 2105.27, an Agency must promptly notify a submitter in writing when it receives a FOIA request if:

(1) The requested information has been designated by the submitter as confidential information under § 2105.24(a); or

(2) The requested information has not been designated as confidential information by the submitter under § 2105.24(a), but the Agency identifies it as possibly confidential information.

(b) If a voluminous number of submitters are involved, the Agency may publish a notice in a manner reasonably calculated to reach the attention of the submitters (for example, in newspapers or newsletters, the Agency's website, or the FEDERAL REGISTER) instead of providing a written notice to each submitter.

### **§ 2105.26 What information will the Agency include when it notifies a submitter of a request for their possibly confidential information?**

A notice to a submitter must include:

(a) Either a copy of the request, the exact language of the request, or (for notices published under § 2105.25(b)) a general description of the request;

(b) Either a description of the possibly confidential information located in response to the request or a copy of the responsive records, or portions of records, containing the information;

(c) A description of the procedures for objecting to the release of the possibly confidential information under §§ 2105.28 and 2105.29;

(d) A time limit for responding to the Agency—no less than 10 workdays from receipt or publication of the notice (as set forth in § 2105.25(b))—to object to the release and to explain the basis for the objection;

(e) Notice that information contained in the submitter's objections may itself be subject to disclosure under the FOIA;

(f) Notice that the Agency, not the submitter, is responsible for deciding whether the information will be released or withheld;

(g) A request for the submitter's views on whether they still consider the information to be confidential if the submitter designated the material as confidential commercial or financial information 10 or more years before the request; and

(h) Notice that failing to respond within the time frame specified under paragraph (d) of this section will create a presumption that the submitter has no objection to the disclosure of the information in question.

### **§ 2105.27 When will the Agency not notify a submitter of a request for their possibly confidential information?**

The notice requirements of § 2105.26 will not apply if:

(a) The information has been lawfully published or officially made available to the public; or

(b) Disclosure of the information is required by a statute other than the FOIA or by a regulation (other than this part) issued in accordance with the requirements of Executive Order 12600.

### **§ 2105.28 How and when may a submitter object to the disclosure of confidential information?**

(a) If a submitter has any objections to the disclosure of confidential information, the submitter should provide a detailed written statement to the Agency that specifies all grounds for withholding the particular information under any FOIA exemption (see § 2105.29 for further discussion of Exemption 4 objection statements).

(b) A submitter who does not respond within the time period specified under § 2105.26(d) will be considered to have no objection to disclosure of the information. Responses received by the Agency after this time period will not be considered by the Agency unless the appropriate Agency FOIA contact determines, in his or her sole discretion, that good cause exists to accept the late response.

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### **§ 2105.29 What must a submitter include in a detailed Exemption 4 objection statement?**

If a submitter has any objections to disclosure, it should provide the Agency a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

### **§ 2105.30 How will the Agency consider the submitter's objections?**

(a) The Agency must carefully consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(b) The Agency, not the submitter, is responsible for deciding whether the information will be released or withheld.

### **§ 2105.31 What if the Agency determines it will disclose information over the submitter's objections?**

If the Agency decides to disclose information over the objection of a submitter, the Agency must notify the submitter by certified mail or other traceable mail, return receipt requested. The notification must be sent to the submitter's last known address and must include:

(a) The specific reasons why the Agency determined that the submitter's disclosure objections do not support withholding the information;

(b) Copies of the records or information the Agency intends to release; and

(c) Notice that the Agency intends to release the records or information no less than 10 workdays after receipt of the notice by the submitter.

### **§ 2105.32 Will a submitter be notified of a FOIA lawsuit?**

If you file a lawsuit seeking to compel the disclosure of confidential information, the Agency must promptly notify the submitter.

### **§ 2105.33 Will you receive notification of activities involving the submitter?**

If any of the following occur, the Agency will notify you:

(a) The Agency provides the submitter with notice and an opportunity to object to disclosure;

(b) The Agency notifies the submitter of its intent to disclose the requested information; or

(c) A submitter files a lawsuit to prevent the disclosure of the information.

### **§ 2105.34 Can an Agency release information protected by Exemption 4?**

If an Agency determines that the requested information is protected from release by Exemption 4 of the FOIA, the Agency has no discretion to release the information. Release of information protected from release by Exemption 4 is prohibited by the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

## Subpart G—Fees

### **§ 2105.35 What general principles govern fees?**

(a) The Agency will charge for processing requests under the FOIA in accordance with this subpart and with the OMB Fee Guidelines.

(b) The Agency may contact you for additional information to resolve fee issues.

(c) The Agency ordinarily will collect all applicable fees before sending copies of records to you.

(d) You may usually pay fees by check, certified check, or money order made payable to the "Department of Treasury."

(e) The Agency should ensure that it conducts searches, review, and duplication in the most efficient and the least expensive manner so as to minimize costs for both you and the Agency.

(f) If the Agency does not comply with any of the FOIA's statutory time limits:

(1) Except as provided in paragraph (f)(2) of this section, the Agency cannot assess any search fees (or, if you are in the fee category of a representative of the news media or an educational and noncommercial scientific institution, duplication fees).

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(2)(i) If the Agency has determined that unusual circumstances apply (as the term is defined in §2105.67) and the Agency provided you a timely written notice to extend the basic time limit in accordance with §2105.17, the non-compliance is excused for an additional 10 workdays.

(ii) If the Agency has determined that unusual circumstances exist and more than 5,000 pages are necessary to respond to the request, the noncompliance is excused if the Agency has provided you a timely written notice in accordance with §2105.17 and has discussed with you via written mail, email, or telephone (or made not less than 3 good-faith attempts to do so) how you could effectively limit the scope of the request.

(iii) If a court has determined that exceptional circumstances exist (as that term is defined in §2105.67), the noncompliance is excused for the length of time provided by the court order.

(g) If the fee for processing your request is less than \$50, you will not be charged unless multiple requests are aggregated under §2105.52 to an amount that is \$50 or more.

(h) If you fail to pay any FOIA-related fee within 30 calendar days of the date of billing, the processing of any new or ongoing requests and/or appeals from you shall ordinarily be suspended.

(i) If you would like to reformulate your request so it will meet your needs at a lower cost, you may wish to seek

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assistance from the Agency's designated FOIA contact or its FOIA Public Liaison (*see* §2105.63).

### § 2105.36 What are the requester fee categories?

(a) There are three categories of requesters for the purposes of determining fees:

(1) Commercial-use;

(2) Educational and noncommercial scientific institutions and representatives of news media; and

(3) All others.

(b) If you do not submit sufficient information in your FOIA request for the Agency to determine your proper fee category, the Agency may ask you to provide additional information (*see* §2105.49). If you request placement in a particular fee category but the Agency places you in a different fee category, the Agency will provide you with an explanation of why you were not placed in the fee category you requested (for example, if you were placed in the commercial use requester category rather than the category you requested, the Agency will describe how the records would further your commercial, trade, or profit interests).

(c) See §2105.67 for the definitions of each of these fee categories.

### § 2105.37 How does your requester category affect the fees you are charged?

You will be charged as shown in the following table:

TABLE 1 TO §2105.37

Requester category	Search fees	Review fees	Duplication fees
Commercial use requester .....	Yes .....	Yes .....	Yes.
Educational and noncommercial scientific institutions and representative of news media requester.	No .....	No .....	Yes (first 100 pages, or equivalent volume, free).
All other requesters .....	Yes (first two hours free) .....	No .....	Yes (first 100 pages, or equivalent volume, free).

### § 2105.38 How will fee amounts be determined?

(a) The Agency will charge the types of fees discussed in this subpart unless a waiver of fees is required under §2105.37 or has been granted under §2105.43.

(b) Because the types of fees discussed in this subpart already account for the overhead costs associated with a given fee type, the Agency should not add any additional costs to those charges.

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### § 2105.39 What search fees will you have to pay?

(a) The Agency will charge search fees for all requests, subject to the restrictions of §§ 2105.35(f), 2105.37, and 2105.38(a). The Agency may charge you for time spent searching even if it does not locate any responsive records or if it determines that the records are entirely exempt from disclosure.

(b) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be the average hourly General Schedule (GS) base salary, plus the District of Columbia locality payment, plus 16 percent for benefits, of employees in the following three categories, as applicable:

(1) Clerical—Based on GS-6, Step 5, pay (all employees at GS-7 and below are classified as clerical for this purpose);

(2) Professional—Based on GS-11, Step 7, pay (all employees at GS-8 through GS-12 are classified as professional for this purpose); and

(3) Managerial—Based on GS-14, Step 2, pay (all employees at GS-13 and above are classified as managerial for this purpose).

(c) You can review the current fee schedule for the categories discussed in paragraph (b) of this section at <https://www.cfa.gov/foia>.

(d) Some requests may require retrieval of records stored at a Federal records center operated by the National Archives and Records Administration. For these requests, the Agency will charge additional costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

### § 2105.40 What duplication fees will you have to pay?

(a) The Agency will charge duplication fees, subject to the restrictions of §§ 2105.35(f), 2105.37, and 2105.38(a).

(b) If photocopies or scans are supplied, the Agency will provide one copy per request at the cost determined by the table in appendix A to this part.

(c) For other forms of duplication, the Agency will charge the actual costs of producing the copy, including the

time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under § 2105.39(b).

(d) If the Agency must scan paper records to accommodate your preference to receive records in an electronic format or print electronic records to accommodate your preference to receive records in a paper format, you will pay both the per page amount noted in appendix A to this part and the time spent by personnel scanning or printing the requested records. For each quarter hour spent by personnel scanning or printing the requested records, the fees will be the same as those charged for a search under § 2105.39(b).

### § 2105.41 What review fees will you have to pay?

(a) The Agency will charge review fees if you make a commercial-use request, subject to the restrictions of §§ 2105.35(f), 2105.37, and 2105.38(a).

(b) The Agency will assess review fees in connection with the initial review of the record (the review conducted by the Agency to determine whether an exemption applies to a particular record or portion of a record).

(c) The Agency will not charge for reviews at the administrative appeal stage of exemptions applied at the initial review stage. However, if the appellate authority determines that an exemption no longer applies, any costs associated with the Agency's re-review of the records to consider the use of other exemptions may be assessed as review fees.

(d) The Agency will charge review fees at the same rates as those charged for a search under § 2105.39(b).

(e) The Agency can charge review fees even if the record(s) reviewed ultimately is not disclosed.

### § 2105.42 What fees for other services will you have to pay?

(a) Although not required to provide special services, if the Agency chooses to do so as a matter of administrative discretion, it will charge you the direct costs of providing the service.

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(b) Examples of these services include providing multiple copies of the same record, converting records that are not already maintained in a requested format to the requested format, obtaining research data under § 2105.66, sending records by means other than first class mail, and conducting a search that requires the creation of a new computer search program to locate the requested records.

(c) The Agency will notify you of these fees before they accrue and will obtain your written assurance of payment or an advance payment before proceeding (*see* §§ 2105.47 and 2105.48).

#### **§ 2105.43 When will the Agency waive fees?**

(a) The Agency will release records responsive to a request without charge (in other words, it will give you a full fee waiver) or at a reduced charge (in other words, it will give you a partial fee waiver, as discussed further in paragraph (b) of this section) if the Agency determines, based on all available information, that you have demonstrated (by addressing and meeting each of the criteria listed in § 2105.46) that disclosing the information is:

(1) In the public interest because it is likely to contribute significantly to public understanding of Government operations or activities, and

(2) Not primarily in your commercial interest.

(b) A partial fee waiver may be appropriate if some but not all of the requested records are likely to contribute significantly to public understanding of the operations and activities of the Government.

(c) When deciding whether to waive or reduce fees, the Agency will rely on the fee waiver justification submitted in your request letter. If the letter does not include sufficient justification, the Agency will deny the fee waiver request. The Agency may, at its discretion, request additional information from you (*see* § 2105.49).

(d) The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis under the criteria discussed in paragraph (a) of this section and § 2105.46. If you have received a fee waiver in the past, that does not mean

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you are automatically entitled to a fee waiver for every request submitted.

(e) The Agency must not make value judgments about whether the information at issue is “important” enough to be made public; it is not the Agency’s role to attempt to determine the level of public interest in requested information.

#### **§ 2105.44 When may you ask the Agency for a fee waiver?**

(a) You should request a fee waiver when your request is first submitted to the Agency (*see* § 2105.5).

(b) You may submit a fee waiver request at a later time if the Agency has not yet completed processing your request.

#### **§ 2105.45 How will the Agency notify you if it denies your fee waiver request?**

If the Agency denies your request for a fee waiver, it will notify you, in writing, of the following:

(a) The basis for the denial, including a full explanation of why the fee waiver request does not meet the Agency’s fee waiver criteria in § 2105.46;

(b) The name and title or position of each person responsible for the denial;

(c) The name and title of legal counsel consulted;

(d) Advisement of the right to seek dispute resolution services from the Agency’s FOIA Public Liaison and the Office of Government Information Services (OIGS);

(e) Your right to appeal the denial under subpart H of this part and a description of the requirements set forth therein, within 30 workdays from the date of the fee waiver denial letter; and

(f) Your anticipated fees, in accordance with § 2105.47.

#### **§ 2105.46 How will the Agency evaluate your fee waiver request?**

(a) In deciding whether your fee waiver request meets the requirements of § 2105.43(a)(1), the Agency will consider the criteria listed in paragraphs (a)(1) through (4) of this section.

(1) How the records concern the operations or activities of the Federal Government.

(2) How disclosure is likely to contribute to public understanding of

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those operations or activities, including:

(i) How the contents of the records are meaningfully informative;

(ii) The logical connection between the content of the records and the operations or activities;

(iii) How disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding;

(iv) Your identity, vocation, qualifications, and expertise regarding the requested information and information that explains how you plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding; and

(v) Your ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject (for example, how and to whom do you intend to disseminate the information). If we have categorized you as a representative of the news media under §2105.36, we will presume you have this ability and intent.

(3) How disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding, including:

(i) Whether the information being requested is new;

(ii) Whether the information would confirm or clarify data that has been released previously;

(iii) How disclosure will increase the level of public understanding of the operations or activities of the Agency that existed prior to disclosure; and

(iv) Whether the information is already publicly available. If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the internet, or as part of the administrative record for a particular issue, it is less likely that there will be a significant contribution from release.

(4) How the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.

(b) In deciding whether the fee waiver meets the requirements in §2105.43(a)(2), the Agency will consider any commercial interest of yours that would be furthered by the requested disclosure.

(1) You are encouraged to provide explanatory information regarding this consideration.

(2) The Agency will not find that disclosing the requested information will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure.

(3) If you do have a commercial interest that would be furthered by disclosure, explain how the public interest in disclosure would be greater than any commercial interest you or your organization may have in the documents.

(i) Your identity, vocation, and intended use of the requested records are all factors to be considered in determining whether disclosure would be primarily in your commercial interest.

(ii) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest.

(iii) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

### §2105.47 When will you be notified of anticipated fees?

(a) The Agency will notify you under this section unless:

(1) The anticipated fee is less than \$50 (see §2105.35(g));

(2) You have been granted a full fee waiver; or

(3) You have previously agreed to pay all the fees associated with the request.

(b) If none of the exceptions in paragraph (a) of this section apply, the Agency will:

(1) Promptly notify you of the estimated costs for search, review, and/or duplication;

(2) Ask you to provide written assurance within 20 workdays that you will

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pay all fees or fees up to a designated amount;

(3) Notify you that it will not be able to comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(c) If the Agency does not receive your written response containing the additional information that resolves any fee issues, in accordance with paragraphs (b)(2) and/or (4) of this section, within 20 workdays after the Agency has requested it, the Agency will presume that you are no longer interested in the records and will close the file on the request.

(d) After the Agency begins processing a request, if it finds that the actual cost will exceed the amount you previously agreed to pay, the Agency will:

(1) Stop processing the request;

(2) Promptly notify you of the higher amount and ask you to provide written assurance of payment; and

(3) Notify you that it will not be able to fully comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(e) If you wish to modify your request in an effort to reduce fees, the Agency's FOIA Officer or Public Liaison can assist you.

### **§ 2105.48 When will the Agency require advance payment?**

(a) The Agency may require advance payment before starting further work when it finds the estimated fee is over \$250.

(1) When the Agency determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that you make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Agency may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) If you have previously failed to pay a properly charged FOIA fee within 30 calendar days of the billing date, the

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Agency may require that you pay the full amount due, plus any applicable interest on that prior request. The Agency may require that you make an advance payment of the full amount of any anticipated fee before it begins to process a new request or continues to process a pending request or any pending appeal.

(b) If the Agency believes that you did not pay a previous FOIA fee within 30 calendar days of the date of billing, the Agency will require you to either:

(1) Demonstrate you paid prior fee within 30 calendar days of the date of billing; or

(2) Pay any unpaid amount of the previous fee, plus any applicable interest penalties (see § 2105.51), and pay in advance the estimated fee for the new request.

(c) When the Agency notifies you that an advance payment is due under paragraph (a) of this section, it will give you an opportunity to reduce the fee by modifying the request.

(d) Your payment of the funds you owe the Agency for work it has already completed before records are sent to you is not an advance payment under paragraph (a) of this section.

(e) If the Agency requires advance payment, it will start further work only after receiving the advance payment. It will also notify you that it will not be able to comply with your FOIA request unless you provide the advance payment. Unless you pay the advance payment within 20 workdays after the date of the Agency's fee letter, the Agency will presume that you are no longer interested and will close the file on the request.

### **§ 2105.49 What if the Agency needs clarification about fee issues?**

If your FOIA request does not contain sufficient information for the Agency to determine your proper fee category or leaves another fee issue unclear, the Agency may ask you to provide additional clarification. If it does so, the Agency will notify you that it will not be able to comply with your FOIA request unless you provide the clarification requested.



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### § 2105.50 How will you be billed?

If you are required to pay a fee associated with a FOIA request, the Agency will send a bill for collection.

### § 2105.51 How will the Agency collect fees owed?

(a) The Agency may charge interest on any unpaid bill starting on the 31st day following the billing date.

(b) The Agency will assess interest charges at the rate provided in 31 U.S.C. 3717 and interest will accrue from the billing date until the Agency receives payment.

(c) The Agency will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset to collect overdue amounts and interest.

(d) This section does not apply if you are a state, local, or tribal government.

### § 2105.52 When will the Agency combine or aggregate requests?

(a) The Agency may aggregate requests and charge accordingly when it reasonably believes that you, or a group of requesters acting in concert with you, are attempting to avoid fees by dividing a single request into a series of requests on a single subject or related subjects.

(1) The Agency may presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(2) The Agency may aggregate requests separated by a longer period only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved.

(b) The Agency will not aggregate multiple requests involving unrelated matters.

### § 2105.53 What if other statutes require the Agency to charge fees?

(a) The fee schedule in appendix A to this part does not apply to fees charged under any statute that specifically requires the Agency to set and collect fees for particular types of records.

(b) If records otherwise responsive to a request are subject to a statutorily-

based fee schedule, the Agency will inform you whom to contact to obtain the records.

## Subpart H—Administrative Appeals

### § 2105.54 When may you file an appeal?

(a) You may file an appeal when:

(1) The Agency withholds records, or parts of records;

(2) The Agency informs you that your request has not adequately described the records sought;

(3) The Agency informs you that it does not possess or cannot locate responsive records and you have reason to believe this is incorrect or that the search was inadequate;

(4) The Agency did not address all aspects of the request for records;

(5) You believe there is a procedural deficiency (for example, fees are improperly calculated or you have been placed in the wrong fee category);

(6) The Agency denied your request for a fee waiver;

(7) The Agency did not make a decision within the time limits in § 2105.15 or, if applicable, § 2105.16; or

(8) The Agency denied, or was late in responding to, a request for expedited processing filed under the procedures in § 2105.18.

(b) An appeal under paragraph (a)(8) of this section relates only to the request for expedited processing and does not constitute an appeal of the underlying request for records. Special procedures apply to requests for expedited processing of an appeal (*see* § 2105.60).

(c) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response, the Agency's FOIA Officer, and/or the FOIA Public Liaison to see if the issue can be resolved informally. However, appeals must be received by the FOIA Appeals Officer within the time limits in § 2105.55 or they will not be processed.

### § 2105.55 How long do you have to file an appeal?

(a) Appeals covered by § 2105.54(a)(1) through (5) must be received by the FOIA Appeals Officer no later than 90

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days from the date of the final response.

(b) Appeals covered by § 2105.54(a)(6) must be received by the FOIA Appeals Officer no later than 90 days from the date of the letter denying the fee waiver.

(c) Appeals covered by § 2105.54(a)(7) may be filed any time after the time limit for responding to the request has passed.

(d) Appeals covered by § 2105.54(a)(8) should be filed as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

### **§ 2105.56 How do you file an appeal?**

(a) You must submit the appeal in writing by mail, fax or email to the FOIA Appeals Officer (using the address available at <https://www.cfa.gov/foia/>). Your failure to send an appeal directly to the FOIA Appeals Officer may delay processing.

(b) The appeal must include:

(1) Copies of all correspondence between you and the Agency concerning the FOIA request, including the request and the Agency's response (if there is one); and

(2) An explanation of why you believe the Agency's response was in error.

(c) The appeal should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the Agency needs additional information or clarification.

(d) An appeal concerning a denial of expedited processing or a fee waiver denial should also demonstrate fully how the criteria in § 2105.18 or §§ 2105.43 and 2105.46 are met.

(e) All communications concerning an appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL."

(f) The Agency will reject an appeal that does not attach all correspondence required by paragraph (b)(1) of this section, unless the FOIA Appeals Officer determines, in his or her sole discretion, that good cause exists to accept the defective appeal. The time limits for responding to an appeal will not

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begin to run until the correspondence is received.

### **§ 2105.57 Who makes decisions on appeals?**

(a) The FOIA Appeals Officer is the deciding official for FOIA appeals.

(b) When necessary, the appropriate deciding official for FOIA appeals will consult other appropriate offices, including legal counsel, for denials of records and fee waivers.

(c) The deciding official for FOIA appeals normally will not make a decision on an appeal if the request becomes a matter of FOIA litigation.

### **§ 2105.58 How are decisions on appeals issued?**

(a) A decision on an appeal must be made in writing.

(b) A decision that upholds the Agency's determination in whole or in part must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must provide you with notification of the statutory right to file a lawsuit and will inform you of the dispute resolution services offered by the Office of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the Agency's decision is remanded or modified on appeal, the Agency will notify you of that determination in writing. The Agency will then further process the request in accordance with that appeal determination and will respond directly to you.

(c) Dispute resolution is a voluntary process. If the Agency agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

### **§ 2105.59 When can you expect a decision on your appeal?**

(a) The basic time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2105.56.

(b) If the Agency is unable to reach a decision on your appeal within the given time limit for response, the appropriate deciding official for FOIA appeals will notify you of your statutory

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right to seek review in a United States District Court.

### § 2105.60 Can you receive expedited processing of appeals?

(a) To receive expedited processing of an appeal, you must demonstrate to the Agency's satisfaction that the appeal meets one of the criteria under § 2105.18 and include a statement that the need for expedited processing is true and correct to the best of your knowledge and belief.

(b) The appropriate deciding official for FOIA appeals will advise you whether the Agency will grant expedited processing within 10 calendar days of receiving the appeal.

(c) If the appropriate deciding official for FOIA appeals decides to grant expedited processing, he or she will give the appeal priority over other pending appeals and process it as soon as practicable.

### § 2105.61 Must you submit an appeal before seeking judicial review?

Before seeking review by a court of the Agency's adverse determination, you generally must first submit a timely administrative appeal.

## Subpart I—General Information

### § 2105.62 Where are records made available?

Records that are required by the FOIA to be made proactively available for public inspection and copying are accessible on the Agency's website. They may also be available at the Agency's office location.

### § 2105.63 What are public liaisons?

(a) The Agency has a FOIA Officer or Public Liaison who can assist requesters who have concerns about the service they received when seeking records or who are seeking assistance under § 2105.3 or § 2105.35(i).

(b) FOIA Public Liaisons report to the Agency's Chief FOIA Officer and you can raise concerns to them about the service you have received.

(c) FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in resolving disputes.

(d) A list of the Agency's FOIA Public Liaisons is available at <https://www.cfa.gov/foia>.

### § 2105.64 When will the Agency make records available without a FOIA request?

(a) Each Agency must:

(1) Determine which of its records must be made publicly available under the FOIA (for example, certain frequently requested records);

(2) Identify additional records of interest to the public that are appropriate for public disclosure; and

(3) Post those records in FOIA libraries.

(b) Because of these proactive disclosures, you are encouraged to review the Agency's FOIA libraries before filing a FOIA request. The material you seek may be immediately available electronically at no cost.

### § 2105.65 How will FOIA materials be preserved?

(a) Each Agency must preserve all correspondence pertaining to the requests that it receives under subpart B of this part, as well as copies of all requested records, until disposition or destruction is authorized by the General Records Schedule 4.2 of the National Archives and Records Administration (NARA) or another NARA-approved records schedule.

(b) Materials that are identified as responsive to a FOIA request will not be disposed of or destroyed while the request or a related appeal or lawsuit is pending. This is true even if they would otherwise be authorized for disposition or destruction under the General Records Schedule 4.2 of NARA or another NARA-approved records schedule.

### § 2105.66 How will an Agency handle a request for federally-funded research data?

(a) If you request research data that were used by the Federal Government in developing certain kinds of agency actions, and the research data relate to published research findings produced under an award, in accordance with OMB Circular A-110:

(1) If the Agency was the awarding agency, it will request the research data from the recipient;

(2) The recipient must provide the research data within a reasonable time; and

(3) The Agency will review the research data to see if it can be released under the FOIA.

(b) If the Agency obtains the research data solely in response to your FOIA request, the Agency may charge you a reasonable fee equaling the full incremental cost of obtaining the research data.

(1) This fee should reflect costs incurred by the Agency, the recipient, and applicable subrecipients.

(2) This fee is in addition to any fees the Agency may assess under the FOIA.

(c) The Agency will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with these FOIA regulations. The recipient will forward a copy of any responsive records that are located, along with any recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data.

(d) The Agency will review and consider the recommendations of the recipient regarding the releasability of the requested research data. However, the Agency, not the recipient, is responsible for deciding whether the research data will be released or withheld.

**§ 2105.67 What definitions apply to this part?**

For the purposes of this part, the following definitions apply:

*Agency* means the Commission of Fine Arts.

*Commercial interest* means a commercial, trade, or profit interest as these terms are commonly understood. Your status as profitmaking or non-profitmaking is not the deciding factor in determining whether you have a commercial interest.

*Commercial use* means a use that furthers your commercial, trade or profit interests or that of the person on whose behalf the request is made.

*Confidential information* means trade secrets or commercial or financial information (that is privileged or confidential and obtained by the Agency from a person) that may be protected from disclosure under Exemption 4 of the FOIA.

*Direct costs* means those resources that the Agency expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility.

*Duplication* means reproducing a copy of a record or of the information contained in it necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

*Educational institution* means any school that operates a program of scholarly research. In order to fall within this category, you must show that the request is authorized by and made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

*Exceptional circumstances* means a delay that does not result from a predictable workload of requests (unless the Agency demonstrates reasonable progress in reducing its backlog of pending requests).

*Exempt* means the record in question, or a portion thereof, is not subject to disclosure due to one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)–(9).

*Exemption* means one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)–(9).

*Expedited processing* means giving a FOIA request priority and processing it ahead of other requests pending in the Agency because you have shown a compelling need for the records.

*Fee category* means one of the three categories, discussed in §§ 2105.36 and

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2105.37, that agencies place you in for the purpose of determining whether you will be charged fees for search, review, and duplication.

*FOIA* means the Freedom of Information Act, 5 U.S.C. 552, as amended.

*FOIA libraries* means a physical or electronic compilation of records required to be made available to the public for inspection and copying under 5 U.S.C. 552(a)(2). It also includes a physical or electronic compilation of records that the Agency, at its discretion, makes available to the public for inspection and copying.

*Frequently requested records* means records that have been released to any person in response to a FOIA request and that have been requested, or that the Agency anticipates will be requested, at least two more times under the FOIA.

*Multitrack processing* means placing simple requests, requiring relatively minimal review, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are ordinarily processed on a first-in/first-out basis.

*Noncommercial scientific institution* means an institution that is not operated for commerce, trade or profit, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, you must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

*OMB Fee Guidelines* means the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987.

*Published* means, for the purposes of §2105.66 only, when:

(1) Research findings are published in a peer-reviewed scientific or technical journal; or

(2) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

*Recipient* means, for the purposes of §2105.66 only, an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include Government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are Government-owned or controlled, or are designated as federally-funded research and development centers.

*Record* means an agency record that is either created or obtained by an agency and is under agency possession and control at the time of the FOIA request, or is maintained by an entity under Government contract for the purposes of records management.

*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. The term news as used in this definition means information that is about current events or that would be of current interest to the public. Examples of news media entities are newspapers, television, websites, 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. As methods of news delivery evolve, alternative representatives of news media may come into being. A freelance journalist will qualify as a news-media entity if he or she can demonstrate a solid basis for expecting publication through that entity,

whether or not the journalist is actually employed by that entity (for example, a publication contract would present a solid basis for such an expectation).

*Research data means*, for the purposes of §2105.66 only, the recorded factual material commonly accepted in the historic and/or architectural communities as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. The term recorded as used in this definition excludes physical objects (*e.g.*, laboratory samples). Research data also do not include:

(1) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(2) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

*Review* means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential information submitter under subpart G

of this part, but it excludes time spent resolving general legal or policy issues regarding the application of FOIA exemptions.

*Search* means the process of looking for and retrieving records responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve electronic records.

*Submitter* means any person or entity outside the Federal Government from whom the Agency obtains confidential information, directly or indirectly. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments.

*Unusual circumstances* means the need to search for and collect requested records from field facilities or other establishments that are separate from the office processing the request; the need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation, which shall be conducted with all practicable speed, with another agency, or among two or more components of the Agency, having a substantial interest in the determination of the request.

*Workday* means a regular Federal workday. It excludes Saturdays, Sundays, or Federal legal public holidays. Items arriving or delivered after 5 p.m. Eastern Time will be deemed received on the next workday.

*You* means a person requesting records, or filing an appeal, under the FOIA.

## APPENDIX A TO PART 2105—FEE SCHEDULE

Types of records	Fee
(1) Physical records:	
Pages no larger than 8.5 x 14 inches, when reproduced by standard office copying machines or scanned into an electronic format.	\$15 per page (\$30 for double-sided copying).
Color copies of pages no larger than 8.5 x 11 inches .....	\$90 per page.
Pages larger than 8.5 x 14 inches .....	Direct cost to CFA.
Color copies of pages no larger than 11 x 17 inches .....	\$150 per page.
Photographs and records requiring special handling (for example, because of age, size, or format).	Direct cost to CFA.
(2) Electronic records:	
Charges for services related to processing requests for electronic records .....	Direct cost to CFA.
(3) Certification:	
Each certificate of verification attached to authenticate copies of records .....	\$25.

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Types of records	Fee
(4) Postage: Charges that exceed the cost of first class postage, such as express mail or overnight delivery.	Postage or delivery charge.
(5) Other Services: Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them.	Direct cost to CFA.

### PART 2106—RULES FOR COMPLIANCE WITH 5 U.S.C. 552a, THE PRIVACY ACT OF 1974

#### Sec.

- 2106.1 Rules for determining if an individual is the subject of a record.
- 2106.2 Requests for access.
- 2106.3 Access to the accounting of disclosures from records.
- 2106.4 Requests for copies of records.
- 2106.5 Requests to amend records.
- 2106.6 Request for review.
- 2106.7 Schedule of fees.

AUTHORITY: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 52369, Nov. 10, 1975, unless otherwise noted. Redesignated and amended at 51 FR 23056, June 25, 1986.

#### § 2106.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Commission of Fine Arts contains a record pertaining to them should address their inquiries to the Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, DC 20006. The written inquiry should contain a specific reference to the system of records maintained by CFA listed in the CFA Notices of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of CFA Systems of Records will be made in the FEDERAL REGISTER and copies of the notices will be available upon request to the Secretary when so published. A compilation of such notices will also be made and published by the Office of the Federal Register in accordance with section 5 U.S.C. 552a(f).

(b) At a minimum, the request should contain sufficient identifying information to allow CFA to determine if there is a record pertaining to the individual making the request in a particular system of records. In instances where

identification is insufficient to insure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, CFA reserves the right to solicit from the requester additional identifying information.

(c) Ordinarily the requester will be informed whether the named system of records contains a record pertaining to the requester within 10 days of the receipt of such a request (excluding Saturdays, Sundays, and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within 10 days, the Secretary will inform the requester of the reasons for the delay and the date by which a response may be anticipated.

#### § 2106.2 Requests for access.

(a) *Requirement for written requests.* Individuals desiring to gain access to a record pertaining to them in a system of records maintained by CFA must submit their request in writing in accordance with the procedures set forth in paragraph (b) of this section.

(b) *Procedures.* (1) Content of the request. The request for access to a record in a system of records shall be addressed to the Secretary, at the address cited above; and shall name the system of records or contain a description (as concise as possible) of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of such a statement, if the request is for a record pertaining to the requester maintained by CFA in a system of records, the request will be presumed to be made under the Privacy Act of 1974. The requester should include any other information which may assist in the rapid identification of the record

for which access is being requested (e.g., maiden name, dates of employment, etc.).

(2) Requirements for identification will normally be limited to the presentation of any standard picture and signature or signature identification card, such as driver's license, so that a comparison of the signature and the signature on the original request may be made. The appearing individual will be read paragraph (3), subsection (i) to title 5 U.S.C. 552a which specifies the penalty for knowingly or willfully requesting or obtaining a record concerning an individual from an agency under false pretenses and asked to sign a statement attesting to the fact that he or she understands the paragraph and that he or she is, in fact, the individual who made the request (or the individual authorized to receive the disclosure by the requesting individual). This signature will be compared with the other two. If the appearing individual is other than the requesting individual, then he or she must also present a letter of introduction signed by the requesting individual so that the comparison of signature may be made.

(c) *CFA action on request.* (1) A request for access will ordinarily be answered within 10 days (excluding Saturdays, Sundays, and legal Federal holidays), except when the Secretary determines otherwise, in which case the requester will be informed of the reason for the delay and an anticipated date by which the request will be answered. When the request can be answered within 10 days, it shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the system of records maintained by CFA;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the requester is unable to meet the specified date and time, alternate arrangements may be made with the official specified in paragraph (b)(1) of this section;

(iii) A statement, when appropriate, that examination in person will be the

sole means of granting access only when the Secretary has determined that it would not unduly impede the requester's right of access;

(iv) The amount of fees charged, if any (see §§2106.4 and 2106.7); and

(v) The name, title, and telephone number of the CFR official having operational control over the record.

(A) *Access by the parent of a minor, or legal guardian.* A parent of a minor, upon presenting suitable personal identification, may access on behalf of the minor any record pertaining to the minor maintained by CFA in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of documents authorizing the legal guardian to so act; and upon suitable personal identification of the guardian.

(B) *Granting access when accompanied or represented by another individual.* When an individual requesting access to his or her record in a system of records maintained by CFA wishes to be accompanied or represented by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record a signed statement authorizing that person access to the record.

(C) *Access in response to congressional inquiries.* Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(vi) *Medical records.* The records in a system of records which are medical records shall be disclosed to the individual in such a manner and following such procedures as the Secretary shall direct. When CFA, in consultation with a physician, determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, CFA may transmit such information to a physician named by the individual.



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(vii) *Exceptions.* Nothing in this section shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of a civil action or proceeding.

[40 FR 52369, Nov. 10, 1975, as amended at 41 FR 2385, Jan. 16, 1976]

### § 2106.3 Access to the accounting of disclosures from records.

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records outlined in § 2106.2 of this part.

### § 2106.4 Requests for copies of records.

Rules governing requests for copies of records are the same as those for the granting of access to the records outlined in § 2106.2 of this part (see also § 2106.7 for rules regarding fees).

### § 2106.5 Requests to amend records.

(a) *Requirements for written requests.* Individuals desiring to amend a record that pertains to them in a system of records maintained by CFA must submit their request in writing in accordance with the procedures set forth herein unless the requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions; however, individuals who believe that such records are inaccurate may bring this to the attention of the CFA.

(b) *Procedures.* (1)(i) The request to amend a record in a system of records shall be addressed to the Secretary. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record as set forth above, copies of previous correspondence between the requester and CFA will serve in lieu of a separate description of the record.

(ii) Individuals desiring assistance in the preparation of a request to amend a record should contact the Secretary at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended

should be clearly indicated. If possible, the proposed alternative language should also be set forth, or, at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete, should be set forth with such particularity as to permit CFA not only to understand the individual's basis for the request, but also to make an appropriate amendment to the record.

(iv) The request must also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by CFA of personal information merely to permit the verification of records, the burden of persuading CFA to amend a record will be upon the individual. The individual must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record.

(2) *CFA action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days (excluding Saturdays, Sundays, and legal Federal holidays). In the event that a decision cannot be made within this time frame, the individual making the request will be informed within the 10 days of the expected date for a decision. The decision upon a request for amendment will include the following:

(i) The decision of the Commission of Fine Arts whether to grant in full, or deny any part of the request to amend the record;

(ii) The reasons for the determination for any part of the request which is denied;

(iii) The name and address of the official with whom an appeal of the denial may be lodged;

(iv) The name and address of the official designated to assist, as necessary, and upon the request of, the individual making the request in preparation of the appeal;

(v) A description of the review of the appeal within CFA (see § 2106.6); and

(vi) A description of any other procedures which may be required of the individual in order to process an appeal.

## § 2106.6

## 45 CFR Ch. XXI (10–1–23 Edition)

### § 2106.6 Request for review.

(a) Individuals wishing to request a review of the decision by CFA with regard to an initial request to amend a record in accordance with the provisions of § 2106.5 of this part, should submit the request for review in writing and, to the extent possible, include the information specified in paragraph (a) of this section. Individuals desiring assistance in the preparation of their request for review should contact the Secretary at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from CFA in which the request to amend was denied and also the reasons why the requester believes that the disputed information should be amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons as required by § 2106.5 of this part set forth by CFA in its decision denying the amendment. Appeals filed without a complete statement by the requester setting forth the reasons for the review will, of course, be processed. However, in order to make the appellate process as meaningful as possible, the requester's disagreement should be understandably set forth. In order to avoid the unnecessary retention of personal information, CFA reserves the right to dispose of the material concerning the request to amend a record if no request for review in accordance with this section is received by CFA within 180 days of the mailing by CFA of its decision upon an initial request. A request for review received after the 180-day period may, at the discretion of the Secretary, be treated as an initial request to amend a record.

(c) The request for review should be addressed to the Secretary.

(d) Upon receipt of a request for review, the Secretary will convene a review group composed of the Secretary and the Chairman. This group will review the basis for the requested review and will develop a recommended course of action to the office's Committee on Freedom of Information and Privacy (hereinafter referred to as the Committee). If at any time additional in-

formation is required from the requestee, the Secretary is authorized to acquire it or authorize its acquisition from the requester.

(e) The Committee is composed of:

- (1) The Chairman;
- (2) The Secretary;
- (3) The Assistant Secretary;
- (4) The Administrative Assistant.

(f) The Committee will review the request for review and the recommended course of action and will recommend a decision on the request for review to the Chairman, who has the final authority regarding appeals.

(g) The Chairman will inform the requester in writing of the decision on the request for review within 30 days (excluding Saturdays, Sundays, and legal Federal holidays) from the date of receipt by CFA of the individual's request for review unless the Chairman extends the 30-day period for good cause. The extension of and the reasons therefor will be sent by CFA to the requester within the initial 30-day period. Included in the notice of a decision being reviewed, if the decision does not grant in full the request for review, will be a description of the steps the individual may take to obtain judicial review of such a decision, and a statement that the individual may file a concise statement with CFA setting forth the individual's reasons for his disagreement with the decision upon the request for review. The Secretary has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the information in dispute will have the information in dispute clearly noted and a copy of the concise statement furnished, as well as a concise statement by CFA setting forth its reasons for not making the requested changes, if CFA chooses to file such a statement. A copy of the individual's statement, and, if it chooses, CFA's statement will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c).

**Commission of Fine Arts**

**§ 2106.7**

**§ 2106.7 Schedule of fees.**

**PARTS 2107–2199 [RESERVED]**

No fees will be charged for search, review, or copies of the record.