

## Comptroller of the Currency, Treasury

## § 4.40

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

[60 FR 57322, Nov. 15, 1995. Redesignated and amended at 63 FR 62929, Nov. 10, 1998; 64 FR 29217, June 1, 1999]

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

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

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

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

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

(a) *Responsibility of litigants to notify parties of a request for testimony.* Upon submitting a request to the OCC for the testimony of an OCC employee or former employee, the requester shall

notify all other parties to the case that a request has been submitted.

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

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

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

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

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

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

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

### § 4.40 Fees for services.

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

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

witness any witness fees or mileage due in accordance with 28 U.S.C. 1821.

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

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

I. MODEL STIPULATION

CASE CAPTION

MODEL STIPULATION FOR PROTECTIVE ORDER

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

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

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

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

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

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

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

II. MODEL PROTECTIVE ORDER

CASE CAPTION

MODEL PROTECTIVE ORDER

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

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

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

Now, Therefore, it is Ordered That:

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

2. The parties to this action and their counsel shall keep such records and any information contained in such records confidential and shall in no way divulge the same to any person or entity, except to such experts, consultants and non-party witnesses to whom the records and their contents shall be disclosed, solely for the purpose of properly preparing for and trying the action.

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

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

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

CONFIDENTIAL

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

6. FOR JURY TRIAL: Any party offering any of the records into evidence shall offer only those pages, or portions thereof, that are relevant and material to the issues to be decided in the action and shall block out any portion of any page that contains information not relevant or material. Furthermore, the name of any person or entity contained on any page of the records who is not a party