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(b) No contract shall be void or considered voidable by reason of section 29(b) of the Act (15 U.S.C. 78cc(b)) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Act (15 U.S.C. 78o(a)) or the rules and regulations thereunder based solely on the bank's status as a broker when the contract was created, if:

(1) At the time the contract was created, the bank acted in good faith and had reasonable policies and procedures in place to comply with section 3(a)(4)(B) of the Act (15 U.S.C. 78c(a)(4)(B)) and the rules and regulations thereunder; and

(2) At the time the contract was created, any violation of the registration requirements of section 15(a) of the Act by the bank did not result in any significant harm or financial loss or cost to the person seeking to void the contract.

§218.781 Exemption from the definition of "broker" for banks for a limited period of time.

A bank is exempt from the definition of the term "broker" under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) until the first day of its first fiscal year commencing after September 30, 2008.

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

Subpart A—Reimbursement to Financial Institutions for Providing Financial Records

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AUTHORITY: 12 U.S.C. 3415.

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

Subpart A—Reimbursement to Financial Institutions for Providing Financial Records

§219.1 Authority, purpose and scope.

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

[60 FR 233, Jan. 3, 1995]

§219.2 Definitions.

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

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

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

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

Government authority means any agency or department of the United

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States, or any officer, employee or agent thereof.

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

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

§219.3 Cost reimbursement.

(a) *Fees payable.* (1) Except as provided in §219.4 of this part, a government authority seeking access to financial records pertaining to a customer, by written request, through:

- (i) A court order;
- (ii) A subpoena issued pursuant to the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure; or
- (iii) Other agency administrative procedures, including administrative subpoenas, voluntary requests, or other process shall reimburse the financial institution for reasonably necessary costs directly incurred in searching for, reproducing or transporting books, papers, records, or other data as set forth in this section.

(2) The reimbursement schedule for a financial institution is set forth in appendix A to this section. If a financial institution has financial records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution and may be included in the reimbursement.

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

(2) If itemized separately, search and processing costs may include the actual cost of extracting electronically stored records, based on computer time and necessary supplies; however, personnel time for computer searches may be paid for at the rates set for computer support specialist, specified in appendix A to this section, but only when compliance with the request for information requires that the financial institution use programming or other higher level technical services of a computer support specialist in order to

reproduce electronically stored information in the format requested by the government authority.

(3) Rates for Search and Processing in appendix A shall be recalculated as follows on October 1, 2012, and on October 1 of each subsequent three-year period utilizing Bureau of Labor Statistics (“BLS”) data or equivalent data (as so designated by the Board) by replacing the existing hourly rates with the sum of:

(i) *Base labor rate recalculation*—Using the most recently available wage data from the Occupational Employment Statistics program (<http://www.bls.gov/oes/home.htm>) for the BLS industry category “Credit Intermediation and Related Activities” (NAICS Code Number 522000) (or successor category):

(A) [Clerical/Technical category] the average of the median hourly rates for the “Information and Records Clerk” and “Computer Operator” job categories (SOC Code Number 43–4199 and 43–9011) (or any successor job categories);

(B) [Manager/Supervisor category] the median hourly rate for the “first-line supervisors/managers of office” job category (SOC Code Number 43–1011) (or successor category), and

(C) [Computer Support Specialist category] the median hourly rate for the “computer support specialist” job category (SOC Code Number 15–1041) (or successor category); plus

(ii) *Benefits Adjustment*—an amount for each hourly rate category that is equal to the product of:

(A) The hourly rates set forth in paragraph (b)(3)(i) of this section, and

(B) The most recently available “percent of total compensation” represented by “total benefits” for the “Credit Intermediation and Related Activities” industry category (private sector) set out in the Employment Cost Trends section of the National Compensation Survey (<http://data.bls.gov/PDQ/outside.jsp?survey=cm>); and

(iii) If the recalculated rates for Search and Processing (including the Base labor rate and the benefits adjustment) are not a multiple of \$1, the recalculated rates shall be rounded up to the next multiple of \$1.

(c) *Reproduction costs.* The reimbursement rates for reproduction costs for

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requested information are set forth in appendix A to this section, subject to the Conditions for Payment set forth in §219.5 of this part. Copies of photographs, films and other materials not listed in appendix A to this section are reimbursed at actual cost.

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

APPENDIX A TO §219.3—REIMBURSEMENT SCHEDULE

Reproduction:	
Photocopy, per page	\$0.25
Paper copies of microfiche, per frame.	0.25
Duplicate Microfiche, per microfiche.	0.50
Storage media	Actual cost.
Search and Processing:	
Clerical/Technical, hourly rate ...	22.00
Computer Support Specialist, hourly rate.	30.00
Manager/Supervisory, hourly rate.	30.00

[Reg. S. 61 FR 29640, June 12, 1996, as amended at 74 FR 50107, Sept. 30, 2009]

§219.4 Exceptions.

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

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

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

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

(d) *Financial supervisory agencies.* Financial records disclosed to a financial supervisory agency in the exercise of

its supervisory, regulatory, or monetary functions with respect to a financial institution.

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

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

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

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

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

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

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

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

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

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§219.5 Conditions for payment.

(a) *Direct costs.* Payment shall be made only for costs that are both directly incurred and reasonably necessary to provide requested material. Search and processing, reproduction, and transportation or delivery costs shall be considered separately when determining whether the costs are reasonably necessary. Photocopying or microfiche charges are reasonably necessary only if the institution has reproduced financial records that were not stored electronically (*i.e.*, where the information requested was stored only on paper or in microfiche), or where the government authority making the request has specifically asked for printed copies of electronically stored records.

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

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

[Reg. S, 61 FR 29641, June 12, 1996, as amended at 74 FR 50108, Sept. 30, 2009]

§219.6 Payment procedures.

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

(b) *Special notice.* If a grand jury or government authority withdraws the

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

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

Subpart B—Recordkeeping and Reporting Requirements for Funds Transfers and Transmittals of Funds

AUTHORITY: 12 U.S.C. 1829b(b)(2) and (3).

SOURCE: 60 FR 233, Jan. 3, 1995, unless otherwise noted.

§219.21 Authority, purpose and scope.

This subpart of Regulation S (12 CFR part 219, subpart B) is issued by the Board under the authority of section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829b), as amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102-550, Title XV; 106 Stat. 3672, 4044), which authorizes the Board and the Secretary of the Treasury jointly to prescribe recordkeeping and reporting requirements for domestic wire transfers by insured depository institutions; and which also requires the Board and the Treasury jointly to prescribe recordkeeping and reporting requirements for international wire transfers by insured depository institutions and by nonbank financial institutions. The definitions and recordkeeping and reporting requirements referenced in this subpart are promulgated and administered jointly by the Board and the Treasury and are codified in 31 CFR 1010.100, 1010.410(e), and 1020.410(a). This subpart does not apply to a particular person or class of persons or a particular transaction or class of transactions to the extent that the Treasury has determined that 31 CFR 1010.410(e) or 1020.410(a) do not apply to that person, transaction, or class of persons or

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transactions. These recordkeeping and reporting requirements will assist in the prosecution of money laundering activities and are determined to have a high degree of usefulness in criminal, tax or regulatory investigations or proceedings.

[60 FR 233, Jan. 3, 1995, as amended by Reg. S, 61 FR 58975, Nov. 20, 1996; 77 FR 65097, Oct. 25, 2012]

§ 219.22 Definitions.

The following terms are defined in 31 CFR 1010.100 under the joint authority of the Board and the Treasury:

Accept.
Beneficiary.
Beneficiary's bank.
Established customer.
Execution date.
Funds transfer.
Intermediary bank.
Intermediary financial institution.
Originator.
Originator's bank.
Payment date.
Payment order.
Receiving bank.
Receiving financial institution.
Recipient.
Recipient's financial institution.
Sender.
Transmittal of funds.
Transmittal order.
Transmittor.
Transmittor's financial institution.

[60 FR 233, Jan. 3, 1995, as amended by Reg. S, 77 FR 65098, Oct. 25, 2012]

§ 219.23 Recordkeeping and reporting requirements.

(a) *Domestic and international funds transfers by insured depository institutions.* The Board and the Treasury are authorized to promulgate jointly recordkeeping and reporting requirements for domestic and international funds transfers by insured depository institutions whenever the agencies determine

that the maintenance of such records has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. These regulations are codified at 31 CFR 1020.410(a). For the purposes of this subpart, the provisions of 31 CFR 1020.410(a) apply only to funds transfers by insured depository institutions.

(b) *International transmittals of funds by financial institutions other than insured depository institutions.* The Board and the Treasury are required to promulgate jointly reporting and recordkeeping requirements for international transmittals of funds by financial institutions, including brokers and dealers in securities and businesses that provide money transmitting services. In prescribing these requirements, the Board and the Treasury take into account the usefulness of these records in criminal, tax, or regulatory investigations or proceedings and the effect the recordkeeping will have on the cost and efficiency of the payment system. These regulations are codified at 31 CFR 1010.410(e). For the purposes of this subpart, the provisions of 31 CFR 1010.410(e) apply only to international transmittals of funds.

[60 FR 233, Jan. 3, 1995, as amended by Reg. S, 77 FR 65098, Oct. 25, 2012]

§ 219.24 Retention period.

All records that are required to be retained by this subpart shall be retained for a period of five years. All these records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record and the amount of time that has expired since the record was made. Any records required to be retained by this subpart shall be made available to the Board upon request.