Title 12—Banks and Banking

(This book contains part 1100 to end)
CHAPTER XI—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

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PART 1100 (RESERVED)

PART 1101—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

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SOURCE: 45 FR 46794, July 11, 1980, unless otherwise noted.

§ 1101.1 Scope and purpose.
This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, with respect to the Federal Financial Institutions Examination Council (Council), and establishes related information disclosure procedures.

§ 1101.2 Authority and functions.
(a) The Council was established by the Federal Financial Institutions Examination Council Act of 1978 (Act), 12 U.S.C. 3301–3308. It is composed of the Comptroller of the Currency; the Chairman of the Federal Deposit Insurance Corporation; a Governor of the Board of Governors of the Federal Reserve System; the Chairman of the Federal Home Loan Bank Board; and the Chairman of the National Credit Union Administration Board.
(b) The statutory functions of the Council are set out at 12 U.S.C. 3305. In summary, the mission of the Council is to promote consistency and progress in federal examination and supervision of financial institutions and their affiliates. The Council is empowered to prescribe uniform principles, standards, and reporting forms and systems; make recommendations in the interest of uniformity; and conduct examiner schools open to personnel of the agencies represented on the Council and employees of state financial institutions supervisory agencies.

§ 1101.3 Organization and methods of operation.
(a) Statutory requirements relating to the Council’s organization are stated in 12 U.S.C. 3303.
(b) Council staff. Administrative support and substantive coordination for Council activities are provided by a small staff detailed on a full-time basis from the five member agencies. The Executive Secretary and Deputy Executive Secretary of the Council supervise this staff.
(c) Agency Liaison Group, Task Forces and Legal Advisory Group. Most staff support in the substantive areas of the Council’s duties is provided by interagency task forces and the Council’s Legal Advisory Group (LAG). These task forces and the LAG are responsible for securing the services, as needed, of staff experts from the five agencies; supervising research and other investigatory work for the Council; and preparing reports and recommendations for the Council. The Agency Liaison Group (ALG) is responsible for the overall coordination of the respective agencies’ staff contributions to Council business. The ALG, the task forces, and the LAG are each composed of Council member agency staff serving the Council on a part-time basis.
(d) State Liaison Committee. Under 12 U.S.C. 3306, the Council has established a State Liaison Committee, composed of five representatives of state financial institutions supervisory agencies.
(e) Council address. Council offices are located at 3501 Fairfax Drive, Room B–7061a, Arlington, VA, 22226–3550.

§ 1101.4 Disclosure of information, policies, and records.
(a) Statements of policy published in the Federal Register or available for public inspection in an electronic format; indices.
(2) Under 5 U.S.C. 552(a)(2), policies and interpretations adopted by the Council, including instructions to Council staff affecting members of the
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Public are available for public inspection in an electronic format at the office of the Executive Secretary of the Council, 3501 Fairfax Drive, Room B-7081a, Arlington, VA, 22226-3550, during regular business hours. Policies and interpretations of the Council may be withheld from disclosure under the principles stated in paragraph (b)(1) of this section.

(3) Copies of all records, regardless of form or format, are available for public inspection in an electronic format if they—
   (i) Have been released to any person under paragraph (b) of this section; and
   (ii) (A) Because of the nature of their subject matter, the Council determines that they have become or are likely to become the subject of subsequent requests for substantially the same records; or
   (B) They have been requested three or more times.

(4) An index of the records referred to in paragraphs (a)(1) through (3) of this section is available for public inspection in an electronic format.

(b) Other records of the Council available to the public upon request; procedures
   (1) General rule and exemptions. Under 5 U.S.C. 552(a)(3), all other records of the Council are available to the public upon request, except to the extent exempted from disclosure as provided in 5 U.S.C. 552(b) and described of this paragraph (b)(1), or if disclosure is prohibited by law. Unless specifically authorized by the Council, or as set forth in paragraph (b)(2) of this section, the following records, and portions thereof, are not available to the public:
      (i) A record, or portion thereof, which is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which is, in fact, properly classified pursuant to such Executive Order.
      (ii) A record, or portion thereof, relating solely to the internal personnel rules and practices of an agency.
      (iii) A record, or portion thereof, specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.
      (iv) A record, or portion thereof, containing trade secrets and commercial or financial information obtained from a person and privileged or confidential.
      (v) An intra-agency or interagency memorandum or letter that would not be routinely available by law to a private party in litigation, including, but not limited to, memoranda, reports, and other documents prepared by the personnel of the Council or its constituent agencies, and records of deliberations of the Council and discussions of meetings of the Council, any Council Committee, or Council staff, that are not subject to 5 U.S.C. 552b (the Government in the Sunshine Act). In applying this exemption, the Council will not withhold records based on the deliberative process privilege if the records were created 25 years or more before the date on which the records were requested.
      (vi) A personnel, medical, or similar record, including a financial record, or any portion thereof, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
      (vii) Records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7), including records relating to a proceeding by a financial institution’s state or federal regulatory agency for the issuance of a cease-and-desist order, or order of suspension or removal, or assessment of a civil money penalty and the granting, withholding, or revocation of any approval, permission, or authority.
      (viii) A record, or portion thereof, containing, relating to, or derived from an examination, operating, or condition report prepared by, or on behalf of, or for the use of any state or federal agency directly or indirectly responsible for the regulation or supervision of financial institutions.
      (ix) A record, or portion thereof, which contains or is related to geological and geophysical information and data, including maps, concerning wells.

(2) Discretionary release of exempt information. Notwithstanding the applicability of an exemption, the Council will
only withhold records requested under this paragraph (b) if the Council reasonably foresees that disclosure would harm an interest protected by an exemption listed in 5 U.S.C. 552(b) and described in paragraph (b)(1) of this section. In addition, whenever the Council determines that full disclosure of a requested record is not possible, the Council will consider whether partial disclosure is possible and will take reasonable steps necessary to segregate and release the nonexempt portion of a record. The Council or the Council’s designee may elect, under the circumstances of a particular request, to disclose all or a portion of any requested record where permitted by law. Such disclosure has no precedential significance.

(3) Procedure for records request—(i) Initial request. Requests for records shall be submitted in writing to the Executive Secretary of the Council:

(A) By sending a letter to: FFIEC, Attn: Executive Secretary, 3501 Fairfax Drive, Room B–7081a, Arlington, VA 22226–3550. Both the mailing envelope and the request should be marked “Freedom of Information Request,” “FOIA Request,” or the like; or

(B) By facsimile clearly marked “Freedom of Information Act Request,” “FOIA Request,” or the like to the Executive Secretary at (703) 562–6446; or

(C) By e-mail to the address provided on the FFIEC’s World Wide Web page, found at: http://www.ffiec.gov. Requests must reasonably describe the records sought.

(ii) Contents of request. All requests should contain the following information:

(A) The name and mailing address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(B) A statement as to whether the information is intended for commercial use, and whether the requester is an educational or noncommercial scientific institution, or news media representative;

(C) A statement agreeing to pay all applicable fees, or a statement identifying any desired fee limitation, or a request for a waiver or reduction of fees that satisfies paragraph (b)(5)(ii)(H) of this section.

(iii) Defective requests. The Council need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this section. The Executive Secretary may return a defective request specifying the deficiency. The requester may submit a corrected request, which will be treated as an initial request.

(iv) Expedited processing. (A) Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the Executive Secretary has determined to expedite the response, the Executive Secretary shall process the request as soon as practicable. To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(1) Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is primarily engaged in information dissemination as a main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the request.

(B) The requester’s statement must be certified to be true and correct to the best of the person’s knowledge and belief and explain in detail the basis for requesting expedited processing.

(C) The formality of the certification required to obtain expedited treatment may be waived by the Executive Secretary as a matter of administrative discretion.

(v) Response to initial requests.

(A) Except where the Executive Secretary has determined to expedite the processing of a request, the Executive Secretary will respond by mail or electronic mail to all properly submitted initial requests within 20 working days of receipt. The time for response may be extended up to 10 additional working days in unusual circumstances, as defined in 5 U.S.C. 552a(a)(6)(B), where the Council has provided written notice to the requester setting forth the reasons for the extension and the date on
which a determination is expected to be dispatched. In addition, where the extension of the 20-day time limit exceeds 10 working days, as described by the FOIA, the requester shall be provided with an opportunity to modify the scope of the FOIA request so that it can be processed within that time frame or provided an opportunity to arrange an alternative time frame for processing the request or a modified request. To aid the requester, the Council’s FOIA Public Liaison is available to assist the requester for this purpose and in the resolution of any disputes between the requester and the Council. The Council’s FOIA Public Liaison’s contact information is available at http://www.ffiec.gov/foia.htm. The requester may also seek dispute resolution services from the Office of Government Information Services.

(B) In response to a request that reasonably describes the records sought and otherwise satisfies the requirements of this section, a search shall be conducted of records in existence and maintained by the Council on the date of receipt of the request, and a review made of any responsive information located. The Executive Secretary shall notify the requester of:

(i) The Executive Secretary’s determination of the response to the request;

(ii) The reasons for the determination;

(iii) The right of the requester to seek assistance from the Council’s FOIA Public Liaison; and

(iv) When an adverse determination is made (including a determination that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; the requested record is not readily reproducible in the form or format sought by the requester; a fee waiver request or other fee categorization matter is denied; and a request for expedited processing is denied), the Executive Secretary will advise the requester in writing of that determination and will further advise the requester:

(i) If the denial is in part or in whole;
access to records is granted, in whole or in part, a copy of the records to be disclosed will be promptly delivered to the requester or made available for inspection in an electronic format, whichever was requested. Inspection of records, or duplication and delivery of copies of records will be arranged so as not to interfere with their use by the Council and other users of the records.

(ii) When delivery to the requester is to be made, copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the Executive Secretary deems it appropriate to send the documents by another means.

(iii) The Council shall provide a copy of the record in any form or format requested if the record is readily reproducible by the Council in that form or format, but the Council need not provide more than one copy of any record to a requester.

(iv) By arrangement with the requester, the Executive Secretary may elect to send the responsive records electronically if a substantial portion of the records is in electronic format. If the information requested is subject to disclosure under the Privacy Act of 1974, 5 U.S.C. 552a, it will not be sent by electronic means unless reasonable security measures can be established.

(5) Fees for document search, review, and duplication; waiver and reduction of fees—(i) Definitions—(A) Direct costs means those expenditures which the Council actually incurs in searching for, duplicating, and reviewing documents to respond to a FOIA request.

(B) Search means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(C) Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (e.g., magnetic tape or computer disk).

(D) Review means the process of examining documents located in response to a request that is for a commercial use (see paragraph (b)(5)(i)(E) of this section) to determine whether any portion of any document located is permitted to be withheld and processing such documents for disclosure.

(E) Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request falls within this category, the Executive Secretary will determine the use to which a requester will put the records requested and seek additional information as the Executive Secretary deems necessary.

(F) Educational institution means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(G) Noncommercial scientific institution means an institution that is not operated on a “commercial” basis as that term is referenced in paragraph (b)(5)(i)(E) of this section, and which is operated solely for the purposes of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(H) 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. In this clause, the term “news” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television 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. Moreover, as methods of news delivery evolve (for example, the...
adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Council may also consider the past publication record of the requester in making such a determination.

(ii) Fees to be charged. The Council will charge fees that recoup the full allowable direct costs it incurs, except that the charging of search and/or duplication fees is subject to the restrictions of paragraph (b)(5)(ii)(G) of this section. The Council may contract with the private sector to locate, reproduce, and/or disseminate records. Provided, however, that the Council has ensured that the ultimate cost to the requester is no greater than it would be if the Council performed these tasks. Fees are subject to change as costs change. In no case will the Council contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(A) Manual searches and review. The Council will charge fees at the following rates for manual searches for and review of records:

(1) If search/review is done by clerical staff, the hourly rate for GS–7, step 5, plus 16 percent of the rate to cover benefits;

(2) If search/review is done by professional staff, the hourly rate for GS–13, step 5, plus 16 percent of the rate to cover benefits.

(B) Computer searches. The Council will charge fees at the hourly rate for GS–13, step 5, plus 16 percent of the rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(C) Duplication of records. (1) The per-page fee for paper copy reproduction of a document is $.25;

(2) The fee for documents generated by computer is the hourly rate for the computer operator (at GS 7, step 5, plus 16 percent for benefits if clerical staff, and GS 13, step 5, plus 16 percent for benefits if professional staff) plus the cost of materials (computer paper, tapes, disks, labels, etc.).

(3) If any other method of duplication is used, the Council will charge the actual direct cost of duplicating the documents.

(D) If search, duplication and/or review is provided by personnel of member agencies of the Council, fees will reflect their actual hourly rates, plus 16 percent for benefits.

(E) Fees to exceed $25. If the Council estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. In the case of such notification by the Council, the requester will then have the opportunity to confer with the Council's FOIA Public Liaison with the object of reformulating the request to meet his/her needs at a lower cost.

(F) Other services. Complying with requests for special services such as certifying records as true copies or mailing records by express mail is entirely at the discretion of the Council. The Council will recover the full costs of providing such services to the extent it elects to provide them.

(G) Restriction on assessing fees. (1) The Council will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(2) If the Council fails to comply with the time limits specified in the FOIA in which to respond to a request, the Council will not charge search fees, or, in the case of a requester described in paragraph (b)(5)(iii)(B) of this section, will not charge duplication fees, except as described in paragraphs (b)(5)(ii)(G)(2)(ii) through (iv) of this section.

(ii) If the Council has determined that unusual circumstances apply (as the term is defined in the FOIA) and the Council estimated that it would cost the requester at least $25 to fill the request, the Council will notify the requester in advance that search or duplication fees will exceed $25. If the request is a full one, the Council will estimate that search and duplication costs will exceed $25 but not by more than the amount of the estimated fee.

(iii) The Council will notify the requester in advance that search and duplication costs will exceed $25 and that the estimated cost is at least $50 but not by more than the estimated fee.

(iv) If the Council estimates that search and duplication costs will exceed $25, it will notify the requester in advance that search and duplication costs will exceed $25 and that the estimated cost is at least $100 but not by more than the estimated fee.

(v) If the Council has determined that unusual circumstances apply (as the term is defined in the FOIA) and the Council has estimated that it would cost the requester at least $25 to fill the request, the Council will notify the requester in advance that search or duplication fees will exceed $25. If the request is a full one, the Council will estimate that search and duplication costs will exceed $25 but not by more than the amount of the estimated fee.

(vi) The Council will notify the requester in advance that search and duplication costs will exceed $25 and that the estimated cost is at least $50 but not by more than the estimated fee.

(vii) If the Council estimates that search and duplication costs will exceed $25, it will notify the requester in advance that search and duplication costs will exceed $25 and that the estimated cost is at least $100 but not by more than the estimated fee.
notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 working days.

(iii) If the Council has determined that unusual circumstances apply (as the term is defined in the FOIA) and more than 5,000 pages are necessary to respond to the request, the Council may charge search fees, or, in the case of requesters described in paragraph (b)(5)(iii)(B) of this section, may charge duplication fees, if the following steps are taken: The Council provided timely written notice of unusual circumstances to the requester in accordance with the FOIA; and The Council discussed with the requester via written mail, email message, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Council may charge all applicable fees incurred in the processing of the request.

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(H) Waiving or reducing fees. As part of the initial request for records, a requester may ask that the Council waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Council and is not primarily in the commercial interest of the requester. The initial request for records must also state the justification for a waiver or reduction of fees. Determinations as to a waiver or reduction of fees will be made by the Executive Secretary of the Council and the requester will be notified in writing of his/her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the Chairman of the Council pursuant to the procedure set forth in paragraph (b)(3)(vi) of this section.

(iii) Categories of requesters—(A) Commercial use requesters. The Council will assess fees for commercial use requesters sufficient to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(B) Requesters who are representatives of the news media, educational and noncommercial scientific institution requesters. The Council shall provide documents to requesters in these categories for the cost of reproduction alone, excluding fees for the first 100 pages.

(C) All other requesters. The Council shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without a fee.

(D) All requesters must specifically describe records sought.

(iv) Interest on unpaid fees. The Council may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date of the billing.

(v) Fees for unsuccessful search and review. The Council may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(vi) Aggregating requests. A requester(s) may not file multiple requests each seeking portions of a document or documents, solely in order to avoid payment of fees. If this is done, the Council may aggregate any such requests and charge accordingly. In no case will the Council aggregate multiple requests on unrelated subjects from the same requester.

(vii) Advance payment of fees. The Council will not require a requester to make an assurance of payment or an advance payment unless:

(A) The Council estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. The Council will
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notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(B) A requester has previously failed to pay a fee charged in a timely fashion. The Council may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (b)(5)(iv) of this section or demonstrate that he/she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or a pending request from that requester.

(C) When the Council acts under paragraph (b)(5)(vii) (A) or (B) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 20 working days from receipt of initial requests, plus permissible extensions of these time limits) will begin only after the Council has received the fee payments described.

(6) Records of another agency. If a requested record originated with or incorporates the information of another state or federal agency or department, upon receipt of a request for the record the Council will promptly inform the requester of this circumstance and immediately shall forward the request to the originating agency or department either for processing in accordance with the latter’s regulations or for guidance with respect to disposition.


§ 1101.5 Testimony and production of documents in response to subpoena, order, etc.

No person shall testify, in court or otherwise, as a result of activities on behalf of the Council without prior written authorization from the Council. This section shall not restrict the authority of a Council member to testify before Congress on matters within his or her official responsibilities as a Council member. No person shall furnish documents reflecting information of the Council in compliance with a subpoena, order, or otherwise, without prior written authorization from the Council. The Council may authorize testimony or production of documents after the litigant (or the litigant’s attorney) submits an affidavit to the Council setting forth the interest of the litigant and the testimony or documents desired. Authorization to testify or produce documents is limited to authority expressly granted by the Council. When the Council has not authorized testimony or production of documents, the individual to whom the subpoena or order has been directed will appear in court and respectfully state that he or she is unable to comply further with the subpoena or order by reason of this section.

PART 1102—APPRAISER REGULATION

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Subpart A—Temporary Waiver Requests

AUTHORITY: 12 U.S.C. 3348(b).
SOURCE: 57 FR 10982, Apr. 1, 1992, unless otherwise noted.

§ 1102.1 Authority, purpose and scope.

(a) Authority. This subpart is issued under section 1119(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. § 3348(b)).

(b) Purpose and scope. This subpart prescribes rules of practice and procedure governing temporary waiver proceedings under Section 1119(b) of title XI of FIRREA (12 U.S.C. § 3348(b)). These procedures apply whenever a State appraiser regulatory agency requests the

Appraisal Subcommittee of the Federal Financial Institutions Examination Council (“ASC”) for a waiver of any requirement relating to certification or licensing of a person to perform appraisals under title XI of FIRREA. They also apply whenever the ASC, based on sufficient, credible information or requests received from other persons or entities, initiates a temporary waiver proceeding.

§ 1102.2 Requirements for requests.

A request will not be deemed received by the ASC unless it fully and accurately sets out:

(a) If the requester is a State Appraiser Regulatory Agency, a written, duly authorized determination by the State Appraiser Regulatory Agency that there is a scarcity of State licensed or State certified appraisers leading to significant delays in obtaining appraisals in federally related transactions. The scarcity can relate to the entire State or to particular geographical or political subdivisions. In the absence of such a written determination, a State Appraiser Regulatory Agency must ask the ASC for such a determination;

(b) The requirement or requirements of State law from which relief is being sought;

(c) A description of all significant problems currently being encountered in efforts to comply with title XI;

(d) The nature of the scarcity of certified or licensed appraisers (including supporting documentation);

(e) The extent of the delays anticipated or experienced in obtaining the services of certified or licensed appraisers (including supporting documentation);

(f) The reasons why the requester believes that the requirement or requirements are causing the scarcity of certified or licensed appraisers and the service delays; and

(g) A specific plan for expeditiously alleviating the scarcity and the service delays.

§ 1102.3 Other requests and information submissions.

The federal financial institutions regulatory agencies and the Resolution Trust Corporation, their respective
regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, may ask the ASC for a determination under §1102.2(a) of this subpart, and may ask that the ASC exercise its discretionary authority to initiate a temporary waiver proceeding. Such regulated financial institutions and other persons or institutions do not need to comply with §1102.2(g) of this subpart, but are strongly encouraged to include meaningful suggestions and recommendations for remedying the situation. A copy of the request or informational submission shall be forwarded promptly to the State Appraiser Regulatory Agency. The ASC shall consider these submissions and requests in exercising its authority to initiate a temporary waiver procedure. When the ASC initiates a temporary waiver proceeding, these documents shall correspond to a received request under §1102.4 of this subpart.

§ 1102.4 Notice and comment.

The ASC shall publish promptly in the FEDERAL REGISTER a notice respecting:
(a) The received request; or
(b) The ASC order initiating a temporary waiver proceeding. The notice or initiation order shall contain a concise general statement of the nature and basis for the action and shall give interested persons 30 calendar days from its publication in which to submit written data, views and arguments.

§ 1102.5 Subcommittee determination.

Within 45 calendar days of the date of the publication of the notice or initiation order in the FEDERAL REGISTER, the ASC, by order, shall either grant or deny a waiver in whole, in part, and upon specified terms and conditions, including provisions for waiver termination. Such order shall respond to comments received from interested members of the public and shall provide the reasons for the ASC’s finding. The order shall be published promptly in the FEDERAL REGISTER, which, in the case of an approval order, shall be after Federal Financial Institution Examination Council concurrence. Upon the ASC’s determination that an emergency exists, the ASC may issue an interim approval order simultaneously with its action under §1102.4 of this subpart. Any ASC approval order shall be effective only upon Federal Financial Institution Examination Council concurrence.

§ 1102.6 Waiver extension.

The ASC may initiate an extension of temporary waiver relief and shall follow §§1102.4, 1102.5 and 1102.7 of this subpart. A State Appraiser Regulatory Agency also may request an extension of temporary waiver relief by forwarding an additional written request to the ASC. A request for an extension from State Appraiser Regulatory Agency shall be subject to all the requirements of this subpart.

§ 1102.7 Waiver termination.

The ASC at any time may terminate a waiver order on the finding that:
(a) The significant delays in obtaining the services of certified or licensed appraisers no longer exist; or
(b) The terms and conditions of the waiver order are not being satisfied. The ASC shall publish a finding of waiver termination promptly in the FEDERAL REGISTER, giving interested persons no less than 30 calendar days from publication in which to submit written data, views and arguments. In the absence of further ASC action to the contrary, the finding of waiver termination automatically shall become final 21 calendar days after the close of the comment period.

Subpart B—Rules of Practice for Proceedings

AUTHORITY: 12 U.S.C. 3332, 3335, 3347, and 3348(c).
SOURCE: 57 FR 31650, July 17, 1992, unless otherwise noted.

§ 1102.20 Authority, purpose, and scope.

(a) Authority. This subpart is issued under sections 1103, 1106, 1118 and 1119(c) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3332, 3335, 3347, and 3348(c)).
§ 1102.24 Filing requirements.

(a) Filing. All papers filed with the ASC in any proceeding shall be filed with the Secretary, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006.

(b) Manner of filing. Unless otherwise specifically provided in the notice of proceeding or by the ASC during the proceeding, an original and one copy of all documents and papers shall be furnished to the Secretary.
§ 1102.25 Service.

(a) Methods; appearing party. A serving party, who has made an appearance under §1102.22 of this subpart, shall use one or more of the following methods of service:

(1) Personal service;
(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery; and
(3) Mailing the papers by first class, registered, or certified mail.


§ 1102.26 When papers are deemed filed or served.

(a) Effectiveness. Filing and service are deemed effective:

(1) For personal service or same-day commercial courier delivery, upon actual delivery; and
(2) For overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in, or delivery to, an appropriate point of collection.

(b) Modification. The effective times for filing and service in paragraph (a) of this section may be modified by the ASC in the case of filing or by agreement of the parties in the case of service.

§ 1102.27 Computing time.

(a) General rule. In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not included. The last day so computed is included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall not be included in the computation.

(b) For service and filing responsive papers. Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time periods are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period; and
(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period.

§ 1102.28 Documents and exhibits in proceedings public.

Unless and until otherwise ordered by the ASC or unless otherwise provided by statute or by ASC regulation, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the Secretary in the proceeding’s public file and will be available for public inspection and copying at the address set out in §1102.24 of this subpart.

§ 1102.29 Conduct of proceedings.

(a) In general. Unless otherwise provided in the notice of proceedings, all
proceedings under this subpart shall be conducted as hereinafter provided.

(b) Written submissions. All aspects of the proceeding shall be conducted by written submissions only, with the exception of oral presentations allowed under §1102.36 of this subpart.

(c) Disqualification. A Subcommittee member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record and decision in the case.

(d) User of ASC staff. Appropriate members of the ASC’s staff who are not engaged in the performance of investigative or prosecuting functions in the proceeding may advise and assist the ASC in the consideration of the case and in the preparation of appropriate documents for its disposition.

(e) Authority of Subcommittee Chairperson. The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings in accordance with this subpart.

(f) Conferences. (1) The ASC may on its own initiative or at the request of any party, direct all parties or counsel to meet with one or more duly authorized ASC members or staff at a specified time and place, or to submit to the ASC or its designee, suggestions in writing for the purpose of considering any or all of the following:

(i) Scheduling of matters, including a timetable for the information-gathering phase of the proceeding;

(ii) Simplification and clarification of the issues;

(iii) Stipulations and admissions of fact and of the content and authenticity of documents;

(iv) Matters of which official notice will be taken; and

(v) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of persons submitting affidavits or other documents and exhibits which may be introduced into the public file of the proceeding.

(2) Such conferences will not be recorded, but the Secretary shall place in the proceeding’s public file a memorandum summarizing the results of the conference and shall provide a copy of the memorandum to each party. The memorandum shall control the subsequent course of the proceedings, unless the ASC for good cause shown by one or more parties to the conference, modifies those results and instructs the Secretary to place an amendatory memorandum to that effect in the public file.

(g) Changes or extensions of time and changes of place of proceeding. The ASC, in connection with initiating a specific proceedings under §1102.32 of this subpart, may instruct the Secretary to publish in the FEDERAL REGISTER time limits different from those specified in this subpart, and may, on its own initiative or for good cause shown, issue an exemption changing the place of the proceeding or extending any time limit prescribed by this subpart, including the date for ending the information-gathering phase of the proceeding.

(h) Call for further briefs, memoranda, statements; reopening of matters. The ASC may call for the production of further information upon any issue, the submission of briefs, memoranda and statements (together with written responses), and, upon appropriate notice, may reopen any aspect of the proceeding at any time prior to a decision on the matter.

[57 FR 31650, July 17, 1992, as amended at 57 FR 35004, Aug. 7, 1992]

§ 1102.30 Rules of evidence.

(a) In general. (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551 et seq.) and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted under this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may be deemed or ruled admissible in a proceeding conducted under
§ 1102.31 Burden of proof.

The ultimate burden of proof shall be on the respondent. The burden of going forward with a prima facie case shall be on the ASC.

§ 1102.32 Notice of Intention to Commence a Proceeding.

The ASC shall instruct the Secretary or other designated officer acting for the ASC to publish in the Federal Register a Notice of Intention to Commence A Proceeding (Notice of Intention). The Notice of Intention shall be served upon the party or parties to the proceeding and shall commence at the time of service. The Notice of Intention shall state the legal authority and jurisdiction under which the proceeding is to be held; shall contain, or incorporate by appropriate reference, a specific statement of the matters of fact or law constituting the grounds for the proceeding; and shall state a date no sooner than 25 days after service of the Notice of Intention is made for termination of the information-gathering phase of the proceeding. The Notice of Intention also must contain a bold-faced warning respecting the effect of a failure to file a Rebuttal or Notice Not To Contest under §1102.33(d) of this subpart. The ASC may amend a Notice of Intention in any manner and to the extent consistent with provisions of applicable law.

§ 1102.33 Rebuttal or Notice Not To Contest.

(a) When required. A party to the proceeding may file either a Rebuttal or a Notice Not to Contest the statements contained in the Notice of Intention or any amendment thereto with the Secretary within 15 days after being served with the Notice of Intention or an amendment to such Notice. The Secretary shall place the Rebuttal or the Notice Not To Contest in the public file.

(b) Requirements of Rebuttal; effect of failure to deny. A Rebuttal filed under this section shall specifically admit, deny or state that the party does not have sufficient information to admit or deny each statement in the Notice of Intention. A statement of lack of information shall have the effect of a denial. Any statement not denied shall be deemed to be admitted. When a party intends to deny only a part or a qualification of a statement, the party shall admit so much of it as is true and shall deny only the remainder.

(c) Notice Not To Contest. A party filing a Notice Not To Contest the statement of fact set forth in the Notice of Intention shall constitute a waiver of the party’s opportunity to rebut the facts alleged, and together with the Notice of Intention and any referenced documents, will provide a record basis on which the ASC shall decide the matter. The filing of a Notice Not To Contest shall not constitute a waiver of the right of such party to a judicial review of the ASC’s decision, findings and conclusions.

(d) Effect of failure to file Rebuttal or Notice Not To Contest. Failure of a party to file a response required by this section within the time provided shall constitute a waiver of the party’s opportunity to rebut and to contest the statements in the Notice of Intention and shall constitute authorization for the ASC to find the facts to be as presented in the Notice of Intention and to file with the Secretary a decision containing such findings and appropriate conclusions. The ASC, for good cause shown, will permit the filing of a Rebuttal after the prescribed time.

§ 1102.34 Briefs, memoranda and statements.

(a) By the parties. Until the end of the information-gathering phase of the proceeding, any party may file with the Secretary a written brief, memorandum or other statement providing
factual data and policy and legal arguments regarding the matters set out in the Notice of Intention. The filing party shall simultaneously serve other parties to the proceeding with a copy of the document. No later than ten days after such service, any party may file with the Secretary a written response to the document and must simultaneously serve a copy thereof on the other parties to the proceeding. The Secretary will receive documents and responses and will place them in the public file.

(b) By interested persons, in non-recognition proceedings. Until the end of the information-gathering phase of a proceeding under section 1118 of FIRREA (12 U.S.C. 3347), any person with a demonstrable, direct interest in the outcome of the proceeding may file with the Secretary a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention. The ASC’s Chairperson or his or her designee may not accept any such written brief, memorandum or other statement if the submitting person cannot demonstrate a direct interest in the outcome of the proceeding. Upon acceptance of the written brief, memorandum or other statement, the Secretary shall make copies of the document and forward one copy thereof to each party to the proceeding. No later than ten days after such service, any party may file with the Secretary a letter requesting that the Secretary schedule an opportunity for the party to give an oral presentation to the ASC. That letter shall include the reasons why an oral presentation is necessary.

§ 1102.35 Opportunity for informal settlement.

Any party may at any time submit to the Secretary, for consideration by the Subcommittee, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be included in the proceeding’s public file over the objection of any party to such proceeding. This paragraph shall not preclude settlement of any proceeding by the filing of a Notice Not To Contest as provided in §1102.33(c) or by the submission of the case to the ASC on a stipulation of facts.

§ 1102.36 Oral presentations.

(a) In general. A party does not have a right to an oral presentation. Under this section, a party’s request to make an oral presentation may be denied if such a denial is appropriate and reasonable under the circumstances. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding.

(b) Method and time of request. Between the commencement of the proceeding and ten days before the end of the information-gathering phase, any party to the proceeding may file with the Secretary a letter requesting that the Secretary schedule an opportunity for the party to give an oral presentation to the ASC. That letter shall include the reasons why an oral presentation is necessary.

(c) ASC processing. The Secretary must promptly forward the letter request to the Chairman of the ASC. The Chairman, after informally contacting other ASC members and the ASC’s senior staff for their views, will instruct the Secretary to forward a letter to the party either: Scheduling a date and time for the oral presentation and specifying the allowable duration of the presentation; or declining the request and providing the reasons therefor. The party’s letter request and the ASC’s response will be included in the proceeding’s public file.

(d) Procedure on presentation day. On the appropriate date and time, the party or his or her attorney (if any) will make the oral presentation before the ASC. Any ASC member may ask the party or the attorney, as the case may be, pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. The Secretary must enter promptly into the proceeding’s public file a memorandum summarizing the subjects discussed during the oral presentation.
§ 1102.37 Decision of the Subcommittee and judicial review.

At a reasonable time after the end of the information-gathering phase of the proceeding, but not exceeding 35 days, the ASC shall issue a final decision, containing specified terms and conditions as it deems appropriate, in the matter and shall cause the decision to be published promptly in the Federal Register. The final decision shall be effective on issuance. The Secretary shall serve the decision upon the parties promptly, shall place it in the proceeding’s public file and shall furnish it to such other persons as the ASC may direct. Pursuant to the provisions of chapter 7 of title 5 of the U.S. Code and section 1118(c)(3) of title XI of FIRREA (12 U.S.C. 3348(c)(3)), a final decision of the ASC is a prerequisite to seeking judicial review.

§ 1102.38 Compliance activities.

(a) Where, from complaints received from members of the public, communications from Federal or State agencies, examination of information by the ASC, or otherwise, it appears that a person has violated, is violating or is about to violate title XI of FIRREA or the rules or regulations thereunder, the ASC staff may commence an informal, preliminary inquiry into the matter. If, upon such inquiry, it appears that one or more allegations relate to possible violations of regulations administered by another agency or instrumentality of the Federal Government, then the matter shall be referred to that agency or instrumentality for appropriate action. The ASC, pursuant to its responsibilities under section 1103(a)(2) of title XI (12 U.S.C. 3332(a)(2)) and section 1119(c) of title XI (12 U.S.C. 3348), shall monitor the matter. If, upon inquiry, it appears that one or more allegations relate to possible violations of regulations administered by another agency or instrumentality of the Federal Government, then the matter shall be referred to that agency or instrumentality for appropriate action. The ASC, pursuant to its responsibilities under section 1103(a)(2) of title XI (12 U.S.C. 3332(a)(2)) and section 1119(c) of title XI (12 U.S.C. 3348), shall monitor the matter. If, upon inquiry, it appears that one or more allegations are within the ASC’s jurisdiction, then the ASC, in its discretion, may determine to commence a formal investigation respecting the matter and shall instruct the Secretary to create a public file for the formal investigation. The Secretary shall place in that file a memorandum naming the person or persons subject to the investigation and the statutory basis for the investigation.

(b) Unless otherwise instructed by the ASC or required by law, the Secretary shall ensure that all other papers, documents and materials gathered or submitted in connection with the investigation are non-public and for ASC use only.

(c) Persons who become involved in preliminary inquiries or formal investigations may, on their own initiative, submit a written statement to the Secretary setting forth their interests, positions or views regarding the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them and the amount of time that may be available for preparing and submitting such a statement prior to the presentation of a staff recommendation to the ASC. Upon the commencement of a formal investigation or a proceeding under this subpart, the Secretary shall place any such statement in the appropriate public file.

(d) In instances where the staff has concluded its inquiry of a particular matter and has determined that it will not recommend the commencement of a formal investigation or a proceeding under this subpart against a person, the staff shall advise the person that its inquiry has been terminated. Such advice, if given, must in no way be construed as indicating that the person has been exonerated or that no action may ultimately result from the staff’s inquiry into the particular matter.

§ 1102.39 Duty to cooperate.

In the course of the investigations and proceedings, the ASC (and its staff, with appropriate authorization) must provide parties or persons ample opportunity to work out problems by consent, by settlement, or in some other manner.
§ 1102.100 Authority, purpose and scope.

(a) This subpart is issued under the Privacy Act of 1974, Public Law 93–579, 88 Stat. 1896; 12 U.S.C. 552a, as amended.

(b) The Privacy Act of 1974 is based, in part, on the finding by Congress that "in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies." To achieve this objective, the Act generally provides that Federal agencies must advise an individual upon request whether records maintained by the agency in a system of records pertain to the individual and must grant the individual access to such records. The Act further provides that individuals may request amendments to records pertaining to them that are maintained by the agency, and that the agency shall either grant the requested amendments or set forth fully its reasons for refusing to do so.

(c) The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC), pursuant to subsection (f) of the Privacy Act, adopts the following rules and procedures to implement the provisions of the Act summarized above and other provisions of the Act. These rules and procedures are applicable to all requests for information and access or amendment to records pertaining to an individual that are contained in any system of records that is maintained by the ASC.

§ 1102.101 Definitions.

The following definitions shall apply for purposes of this subpart:

(a) The terms individual, maintain, record, system of records, and routine use are defined for purposes of these rules as they are defined in 5 U.S.C. 552a(a)(2), (a)(3), (a)(4), (a)(5) and (a)(7).

(b) ASC or Subcommittee means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(c) Privacy Act Officer means the ASC’s Associate Director for Administration or such other ASC staff officer, other than the Executive Director, duly designated by the ASC’s Executive Director.

§ 1102.102 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to records pertaining to them.

(a) Place to make request. Any request by an individual to be advised whether any system of records maintained by the ASC and named by the individual contains a record pertaining to him or her, or any request by an individual for access to a record pertaining to him or her that is contained in a system of records maintained by the ASC, shall be submitted in person at the ASC between 9 a.m. and 4:30 p.m., Monday through Friday, which is located at 1401 H Street, NW., Suite 760, Washington, DC 20005, or by mail addressed to: Privacy Act Officer, ASC, 1401 H Street, NW., Suite 760, Washington, DC 20005. All requests will be required to be put in writing and signed by the individual making the request. In the case of requests for access that are made by mail, the envelope should be clearly marked “Privacy Act Request.”

(1) Information to be included in requests. Each request by an individual concerning whether the ASC maintains in a system of records a record that pertains to the individual, or for access to any record pertaining to the individual that is maintained by the ASC in a system of records, shall include such information as will assist the ASC in identifying those records as to which the individual is seeking information or access. Where practicable, the individual should identify the system of records that is the subject of his or her request by reference to the ASC’s notices of systems of records, which are published in the Federal Register, as required by section (e)(4) of the Privacy Act, 5 U.S.C. 552a(e)(4). Where a system of records is compiled on the basis of a specific identification scheme, the individual should include in his or her request the identification number or
other identifier assigned to the individual. In the event the individual does not know that number or identifier, the individual shall provide other information, including his or her full name, address, date of birth and subject matter of the record, to aid in processing his or her request. If additional information is required before a request can be processed, the individual shall be so advised.

(2) Verification of identity. When the fact of the existence of a record is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, or when a record as to which access has been requested is not required to be disclosed under that Act, the individual seeking the information or requesting access to the record shall be required to verify his or her identity before access will be granted or information given. For this purpose, individuals shall appear at the ASC located at 1401 H Street, NW., Suite 760, Washington, DC 20005, between 9 a.m. to 4:30 p.m., Monday through Friday. The ASC's Office is not open on Saturdays, Sundays or Federal holidays.

(3) Methods for verifying identity—appearance in person. For the purpose of verifying identity, an individual seeking information regarding pertinent records or access to those records shall furnish documentation that may reasonably be relied on to establish the individual’s identity. Such documentation might include a valid birth certificate, driver’s license, employee or military identification card, and medicare card.

(4) Method for verifying identity—by mail. Where an individual cannot appear at the ASC’s Office for the purpose of verifying identity, the individual shall submit, along with the request for information or access, a signed and notarized statement attesting to his or her identity. Where access is being sought, the sworn statement shall include a representation that the records being sought pertain to the individual and a stipulation that the individual is aware that knowingly and willfully requesting or obtaining records pertaining to an individual from the ASC under false pretenses is a criminal offense.

(5) Additional procedures for verifying identity. When it appears appropriate to the Privacy Act Officer, other arrangements may be made for the verification of identity as are reasonable under the circumstances and appear to be effective to prevent unauthorized disclosure of, or access to, individual records.

(b) Acknowledgement of requests for information pertaining to individual records in a record system or for access to individual records. (1) Except where an immediate acknowledgement is given for requests made in person, the receipt of a request for information pertaining to individual records in a record system will be acknowledged within 10 days, excluding Saturdays, Sundays and Federal holidays. Requests will be processed as promptly as possible and a response to such requests will be given within 30 days (excluding Saturdays, Sundays, and Federal holidays) unless, within the 30 day period and for cause shown, the individual making the request is notified in writing that a longer period is necessary.

§1102.103 Disclosure of requested records.

(a) Initial review. Requests by individuals for access to records pertaining to them will be referred to the ASC’s Privacy Act Officer, who initially will determine whether access will be granted.

(b) Grant of request for access. (1) If it is determined that a request for access to records pertaining to an individual will be granted, the individual will be advised by mail that access will be given at the ASC or a copy of the requested record will be provided by mail if the individual shall so indicate. Where the individual requests that copies of the record be mailed to or her or requests copies of a record upon reviewing it at the ASC, the individual shall pay the cost of making requested copies, as set forth in §1102.109 of this subpart.

(2) In granting access to an individual to a record pertaining to him or her, the ASC staff shall take steps to prevent the unauthorized disclosure of
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information pertaining to other individuals.

(c) Denial of request for access. If it is determined that access will not be granted, the individual making the request will be notified of that fact and given the reasons why access is being denied. The individual also will be advised of his or her right to seek review by the Executive Director of the initial decision to deny access, in accordance with the procedures set forth in §1102.107 of this subpart.

(d) Time for acting on requests for access. Access to a record pertaining to an individual normally will be granted or denied within 30 days (excluding Saturdays, Sundays, and Federal holidays) after the receipt of the request for access, unless the individual making the request is notified in writing within the 30 day period that, for good cause shown, a longer time is required. In such cases, the individual making the request shall be informed in writing of the difficulties encountered and an indication shall be given as to when it is anticipated that access may be granted or denied.

(e) Authorization to allow designated person to review and discuss records pertaining to another individual. An individual, who is granted access to records pertaining to him or her and who appears at the ASC Office to review the records, may be accompanied by another person of his or her choosing. Where the records as to which access has been granted are not required to be disclosed under provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, the individual requesting the records, before being granted access, shall execute a written statement, signed by him or her, specifically authorizing the latter individual to review and discuss the records. If such authorization has not been given as described, the person who has accompanied the individual making the request will be excluded from any review or discussion of the records.

(f) Exclusion for certain records. Nothing contained in these rules shall allow an individual access to any information compiled in reasonable anticipation of an administrative judicial or civil action or proceeding.

§1102.104 Special procedure: Medical records.

(a) Statement of physician or mental health professional. When an individual requests access to records pertaining to the individual that include medical and/or psychological information, the ASC, if it deems it necessary under the particular circumstances, may require the individual to submit with the request a signed statement by the individual’s physician or a mental health professional indicating that, in his or her opinion, disclosure of the requested records or information directly to the individual will not have an adverse effect on the individual.

(b) Designation of physician or mental health professional to receive records. If the ASC believes, in good faith, that disclosure of medical and/or psychological information, directly to an individual could have an adverse effect on that individual, the individual may be asked to designate in writing a physician or mental health professional to whom the individual would like the records to be disclosed, and disclosure that otherwise would be made to the individual will instead be made to the designated physician or mental health professional.

§1102.105 Requests for amendment of records.

(a) Place to make requests. A request by an individual to amend records pertaining to him or her may be made in person during normal business hours at the ASC located at 2000 K Street, NW., Suite 310, Washington, DC, or by mail addressed to the Privacy Act Officer, ASC, 1401 H Street, NW., Suite 760, Washington, DC 20005.

(1) Information to be included in requests. Each request to amend an ASC record shall reasonably describe the record sought to be amended. Such description should include, for example, relevant names, dates and subject matter to permit the record to be located among the records maintained by the ASC. An individual who has requested that a record pertaining to the individual be amended will be advised promptly if the record cannot be located on the basis of the description.
given and that further identifying information is necessary before the request can be processed. An initial evaluation of a request presented in person will be made immediately to ensure that the request is complete and to indicate what, if any, additional information will be required. Verification of the individual’s identity as set forth in §1102.102(a) (2), (3), (4) and (5) may also be required.

(2) Basis for amendment. An individual requesting an amendment to a record pertaining to the individual shall specify the substance of the amendment and set forth facts and provide such materials that would support his or her contention that the record as maintained by the ASC is not accurate, timely or complete, or that the record is not necessary and relevant to accomplish a statutory purpose of the ASC as authorized by law or by Executive Order of the President.

(b) Acknowledgement of requests for amendment. Receipt of a request to amend a record pertaining to an individual normally will be acknowledged in writing within 10 days after such request has been received, excluding Saturdays, Sundays, and Federal holidays. When a request to amend is made in person, the individual making the request will be given a written acknowledgement when the request is presented. The acknowledgement will describe the request received and indicate when it is anticipated that action will be taken on the request. No acknowledgement will be sent when the request for amendment will be reviewed, and an initial decision made, within the 10 day period after such request has been received.


§ 1102.106 Review of requests for amendment

(a) Initial review. As in the case of requests for access, requests by individuals for amendment to records pertaining to them will be referred to the ASC’s Privacy Act Officer for an initial determination.

(b) Standards to be applied in reviewing requests. In reviewing requests to amend records, the Privacy Act Officer will be guided by the criteria set forth in 5 U.S.C. 552(e) (1) and (5), i.e., that records maintained by the ASC shall contain only such information as is necessary and relevant to accomplish a statutory purpose of the ASC as required by statute or Executive Order of the President and that such information also be accurate, timely, relevant and complete. These criteria will be applied whether the request is to add material to a record or to delete information from a record.

(c) Time for acting on requests. Initial review of a request by an individual to amend a record shall be completed as promptly as is reasonably possible and normally within 30 days (excluding Saturdays, Sundays, and Federal holidays) from the date the request was received, unless unusual circumstances preclude completion of review within that time. If the anticipated completion date indicated in the acknowledgement cannot be met, the individual requesting the amendment will be advised in writing of the delay and the reasons therefor, and also advised when action is expected to be completed.

(d) Grant of requests to amend records. If a request to amend a record is granted in whole or in part, the Privacy Act Officer will:

(1) Advise the individual making the request in writing of the extent to which it has been granted;
(2) Amend the record accordingly; and
(3) Where an accounting of disclosures of the record has been kept pursuant to 5 U.S.C. 552a(c), advise all previous recipients of the record of the fact that the record has been amended and the substance of the amendment.

(e) Denial of requests to amend records. If an individual’s request to amend a record pertaining to him is denied in whole or in part, the Privacy Act Officer will:

(1) Promptly advise the individual making the request in writing of the extent to which the request has been denied;
(2) State the reasons for the denial of the request;
(3) Describe the procedures established by the ASC to obtain further review within the ASC of the request to
§ 1102.107 Appeal of initial adverse agency determination regarding access or amendment.

(a) Administrative review. Any person who has been notified pursuant to §1102.103(c) that a request for access to records pertaining to him or her has been denied in whole or in part, or pursuant to §1102.106(e) of this subpart that a request for amendment has been denied in whole or in part, or who has received no response to a request for access or to amend within 30 days (excluding Saturdays, Sundays and Federal holidays) after the request was received by the ASC’s staff (or within such extended period as may be permitted in accordance with §§1102.103(d) and 1102.106(c) of this subpart), may appeal the adverse determination or failure to respond by applying for an order of the Executive Director determining and directing that access to the record be granted or that the record be amended in accordance with his or her request.

(1) The application shall be in writing and shall describe the record in issue and set forth the proposed amendment and the reasons therefor.

(2) The application shall be delivered to the ASC, 2000 K Street, NW., Suite 310, Washington, DC, or by mail addressed to the Privacy Act Officer, ASC, 1401 H Street, NW., Suite 760, Washington, DC 20005.

(3) The applicant may state such facts and cite such legal or other authorities in support of the application.

(4) The Executive Director will make a determination with respect to any appeal within 30 days after the receipt of such appeal (excluding Saturdays, Sundays, and Federal holidays), unless for good cause shown, the Executive Director shall extend that period. If such an extension is made, the individual, who is appealing shall be advised in writing of the extension, the reasons therefor, and the anticipated date when the appeal will be decided.

(5) In considering an appeal from a denial of a request to amend a record, the Executive Director shall apply the same standards as set forth in §1102.106(b).

(6) If the Executive Director concludes that access should be granted, the Executive Director shall issue an order granting access and instructing the Privacy Act Officer to comply with §1102.103(b).

(7) If the Executive Director concludes that the request to amend the record should be granted in whole or in part, the Executive Director shall issue an order granting the requested amendment in whole or in part and instructing the Privacy Act Officer to comply with the requirements of §1102.106(d) of this subpart, to the extent applicable.

(8) If the Executive Director affirms the initial decision denying access, the Executive Director shall issue an order denying access and advising the individual seeking access of:

(i) The order;
(ii) The reasons for denying access; and
(iii) The individual’s right to obtain judicial review of the decision pursuant to 5 U.S.C. 552a(g)(1)(B).

(9) If the Executive Director determines that the decision of the Privacy Act Officer denying a request to amend a record should be upheld, the Executive Director shall issue an order denying the request and the individual shall be advised of:

(i) The order refusing to amend the record and the reasons therefor;
(ii) The individual’s right to file a concise statement setting forth his or her disagreement with the Executive Director’s decision not to amend the record;
(iii) The procedures for filing such a statement of disagreement with the Executive Director;
(iv) The fact that any such statement of disagreement will be made available to anyone to whom the record is disclosed, together with, if the Executive Director deems it appropriate, a brief statement setting forth the Executive Director’s reasons for refusing to amend;
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(v) The fact that prior recipients of the record in issue will be provided with the statement of disagreement and the Executive Director’s statement, if any, to the extent that an accounting of such disclosures has been maintained pursuant to 5 U.S.C. 552a(c); and

(vi) The individual’s right to seek judicial review of the Executive Director’s refusal to amend, pursuant to 5 U.S.C. 552a(g)(1)(A).

§ 1102.108 General provisions.

(a) Extensions of time. Pursuant to §§ 1102.103(b), 1102.104(d), 1102.109(c) and 1102.109(a)(4) of this subpart, the time within which a request for information, access or amendment by an individual with respect to records maintained by the ASC that pertain to him or her normally would be processed may be extended for good cause shown or because of unusual circumstances. As used in these rules, good cause and unusual circumstances shall include, but only to the extent reasonably necessary to the proper processing of a particular request:

(1) The need to search for and collect the requested records from establishments that are separate from the ASC. Some records of the ASC may be stored in Federal Records Centers in accordance with law—including many of the documents that have been on file with the ASC for more than 2 years—and cannot be made available promptly. Any person who has requested for personal examination a record stored at the Federal Records Center will be notified when the record will be made available.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which may be demanded in a single request. While every reasonable effort will be made to comply fully with each request as promptly as possible on a first-come, first-served basis, work done to search for, collect and appropriately examine records in response to a request for a large number of records will be contingent upon the availability of processing personnel in accordance with an equitable allocation of time to all members of the public who have requested or wish to request records.

(b) Effective date of action. Whenever it is provided in this subpart that an acknowledgement or response to a request will be given by specific times, deposit in the mails of such acknowledgement or response by that time, addressed to the person making the request, will be deemed full compliance.

(c) Records in use by a member of the ASC or its staff. Although every effort
§ 1102.300 Purpose and scope.

This part sets forth the basic policies of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") regarding information it maintains and the procedures for obtaining access to such information. This part does not apply to...
the Federal Financial Institutions Examination Council. Section 1102.301 sets forth definitions applicable to this part 1102, subpart D. Section 1102.302 describes the ASC’s statutory authority and functions. Section 1102.303 describes the ASC’s organization and methods of operation. Section 1102.304 describes the types of information and documents typically published in the Federal Register. Section 1102.305 explains how to access public records maintained on the ASC’s World Wide Web site and at the ASC’s office and describes the categories of records generally found there. Section 1102.306 implements the Freedom of Information Act (“FOIA”) (5 U.S.C. 552). Section 1102.307 authorizes the discretionary disclosure of exempt records under certain limited circumstances. Section 1102.308 provides anyone with the right to petition the ASC to issue, amend, and repeal rules of general application. Section 1102.309 sets out the ASC’s confidential treatment procedures. Section 1102.310 outlines procedures for serving a subpoena or other legal process to obtain information maintained by the ASC.

§ 1102.301 Definitions.

For purposes of this subpart:
(a) ASC means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.
(b) Commercial use request means a request from, or on behalf of, a requester who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request falls within this category, the ASC will determine the use to which a requester will put the records requested and seek additional information as it deems necessary.
(c) Direct costs means those expenditures the ASC actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing records in response to a request for records.
(d) Disclose or disclosure mean to give access to a record, whether by producing the written record or by oral discussion of its contents. Where the ASC member or employee authorized to release ASC documents makes a determination that furnishing copies of the documents is necessary, these words include the furnishing of copies of documents or records.
(e) Duplication means the process of making a copy of a record necessary to respond to a request for records or for inspection of original records that contain exempt material or that cannot otherwise be directly inspected. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (e.g., magnetic tape or computer disk).
(f) Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.
(g) Field review includes, but is not limited to, formal and informal investigations of potential irregularities occurring at State appraiser regulatory agencies involving suspected violations of Federal or State civil or criminal laws, as well as such other investigations as may conducted pursuant to law.
(h) Non-commercial scientific institution means an institution that is not operated on a commercial basis as that term is defined in paragraph (b) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.
(i) Record includes records, files, documents, reports correspondence, books, and accounts, or any portion thereof, in any form the ASC regularly maintains them.
(j) Representative of the news media means any person primarily engaged in gathering news for, or a free-lance journalist who can demonstrate a reasonable expectation of having his or her work product published or broadcast by, an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events.
or that would be of current interest to the general public.

(k) **Review** means the process of examining documents located in a response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) **Search** includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually and/or by computer using existing programming.

(m) **State appraiser regulatory agency** includes, but is not limited to, any board, commission, individual or other entity that is authorized by State law to license, certify, and supervise the activities or persons authorized to perform appraisals in connection with federally related transactions and real estate related financial transactions that require the services of a State licensed or certified appraiser.

[64 FR 72496, Dec. 28, 1999]

**§ 1102.302 ASC authority and functions.**

(a) **Authority.** The ASC was established on August 9, 1989, pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“FIRREA”), 12 U.S.C. 3331 and 3310 through 3351. Title XI is intended “to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.” 12 U.S.C. 3331. 

(b) **Functions.** The ASC’s statutory functions are generally set out in 12 U.S.C. 3332. In summary, the ASC must:

(1) Monitor the requirements established by the States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility;

(2) Monitor the requirements of the Federal financial institutions regulatory agency and Resolution Trust Corporation with respect to appraisal standards for federally related transactions and determinations as to which federally related transactions require the services of a State certified appraiser and which require the services of a State licensed appraiser;

(3) Monitor and review the practices, procedures, activities and organizational structure of the Appraisal Foundation; and

(4) Maintain a national registry of State certified and licensed appraisers eligible to perform appraisals in federally related transactions.

**§ 1102.303 Organization and methods of operation.**

(a) **Statutory and other guidelines.** Statutory requirements relating to the ASC’s organization are stated in 12 U.S.C. 3310, 3333 and 3334. The ASC has adopted and published Rules of Operation guiding its administration, meetings and procedures. These Rules of Operation were published at 56 FR 28561 (June 21, 1991) and 56 FR 33451 (July 22, 1991).

(b) **ASC members and staff.** The ASC is composed of six members, each being designated by the head of their respective agencies: the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Office of Thrift Supervision, and the Department of Housing and Urban Development. Administrative support and substantive program, policy, and legal guidance for ASC activities are provided by a small, full-time, professional staff supervised by an Executive Director.

(c) **FFIEC.** Title XI placed the ASC within FFIEC as a separate, appropriated agency of the United States Government with specific statutory responsibilities under Federal law.
§ 1102.304 Federal Register publication.

The ASC publishes the following information in the Federal Register for the guidance of the public:

(a) Description of its organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the ASC;

(e) Every amendment, revision or repeal of the foregoing; and

(f) General notices of proposed rulemaking.

[64 FR 72497, Dec. 28, 1999]

§ 1102.305 Publicly available records.

(a) Records available on the ASC’s World Wide Web site—(1) Discretionary release of documents. The ASC encourages the public to explore the wealth of resources available on the ASC’s Internet World Wide Web site, located at: http://www.asc.gov. The ASC has elected to publish a broad range to materials on its Web site.

(2) Documents required to be made available via computer telecommunications. (i) The following types of documents created on or after November 1, 1996, and required to be made available through computer telecommunications, may be found on the ASC’s Internet World Wide Web site located at: http://www.asc.gov:

(A) Final opinions, including concurring and dissenting opinions, as well as final orders, made in the adjudication of cases;

(B) Statements of policy and interpretations adopted by the ASC that are not published in the Federal Register;

(C) Administrative staff manuals and instructions to staff that affect a member of the public;

(D) Copies of all records (regardless of form or format), such as correspondence relating to field reviews or other regulatory subjects, released to any person under §1102.306 that, because of the nature of their subject matter, the ASC has determined are likely to be the subject of subsequent requests;

(E) A general index of the records referred to in paragraph (a)(2)(i)(D) of this section.

(ii) To the extent permitted by law, the ASC may delete identifying details when it makes available or publishes any records. If reduction is necessary, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction.

(b) Types of written communications. The following types of written communications shall be subject to paragraph (a) of this section:

(1) The ASC’s annual report to Congress;

(2) All final opinions and orders made in the adjudication of cases;

(3) All statements of general policy not published in the Federal Register.

(4) Requests for the ASC or its staff to provide interpretive advice with respect to the meaning or application of any statute administered by the ASC or any rule or regulation adopted thereunder and any ASC responses thereto;

(5) Requests for a statement that, on the basis of the facts presented in such a request, the ASC would not take any enforcement action pertaining to the facts as represented and any ASC responses thereto; and
(6) Correspondence between the ASC and a State appraiser regulatory agency arising out of the ASC’s field review of the State agency’s appraiser regulatory program.

(c) Applicable fees. (1) If applicable, fees for furnishing records under this section are as set forth in §1102.306(e).

(2) Information on the ASC’s World Wide Web site is available to the public without charge. If, however, information available on the ASC’s World Wide Web site is provided pursuant to a Freedom of Information Act request processed under g 1102.306 then fees apply and will be assessed pursuant to §1102.306(e).


§1102.306 Procedures for requesting records.

(a) Making a request for records. (1) The request shall be submitted in writing to the Executive Director:

(i) By facsimile clearly marked “Freedom of Information Act Request” to (202) 293-6251;

(ii) By letter to the Executive Director marked “Freedom of Information Act Request”; 2000 K Street, NW., Suite 301; Washington, DC 20006; or

(iii) By sending Internet e-mail to the Executive Director marked “Freedom of Information Act Request” at his or her e-mail address listed on the ASC’s World Wide Web site.

(2) The request shall contain the following information:

(i) The name and address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(ii) Whether the requester is an educational institution, non-commercial scientific institution, or news media representative;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying a maximum fee that is acceptable to the requester, or a request for a waiver or reduction of fees that satisfies paragraph (e)(1)(x) of this section; and

(iv) The preferred form and format of any responsive information requested, if other than paper copies.

(3) A request for identifiable records shall reasonably describe the records in a way that enables the ASC’s staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any ASC operations.

(b) Defective requests. The ASC need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this subpart. The ASC may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(c) Processing requests—(1) Receipt of requests. Upon receipt of any request that satisfies paragraph (a) of this section, the Executive Director shall assign the request to the appropriate processing track pursuant to this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred by another agency, is the date the Executive Director actually receives the request.

(2) Expedited processing. (i) Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the ASC has determined to expedite the response, the ASC shall process the request as soon as practicable. To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(A) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) The requester can establish that it is primarily engaged in information dissemination as its main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the request; and

(C) The requester’s statement must be certified to be true and correct to the best of the person’s knowledge and belief and explain in detail the basis for requesting expedited processing.

(ii) The formality of the certification required to obtain expedited treatment
may be waived by the Executive Director as a matter of administrative discretion.

(3) A requester seeking expedited processing will be notified whether expedited processing has been granted within ten (10) working days of the receipt of the request. If the request for expedited processing is denied, the requester may file an appeal pursuant to the procedures set forth in paragraph (g) of this section, and the ASC shall respond to the appeal within ten (10) working days after receipt of the appeal.

(4) Priority of responses. Consistent with sound administrative process, the ASC processes requests in the order they are received. However, in the ASC’s discretion, or upon a court order in a matter to which the ASC is a party, a particular request may be processed out of turn.

(5) Notification. (i) The time for response to requests will be twenty (20) working days except:

(A) In the case of expedited treatment under paragraph (c)(2) of this section;

(B) Where the running of such time is suspended for the calculation of a cost estimate for the requester if the ASC determines that the processing of the request may exceed the requester’s maximum fee provision or if the charges are likely to exceed $250 as provided for in paragraph (e)(1)(iv) of this section;

(C) Where the running of such time is suspended for the payment of fees pursuant to the paragraph (c)(5)(i)(B) and (e)(1) of this section; or

(D) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and further described in paragraph (c)(5)(iii) of this section.

(ii) In unusual circumstances as referred to in paragraph (c)(5)(i)(D) of this section, the time limit may be extended for a period of:

(A) Ten (10) working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or

(B) Such alternative time period as agreed to by the requester or as reasonably determined by the ASC when the ASC notifies the requester that the request cannot be processed in the specified time limit.

(iii) Unusual circumstances may arise when:

(A) The records are in facilities that are not located at the ASC’s Washington office;

(B) The records requested are voluminous or are not in close proximity to one another; or

(C) There is a need to consult with another agency or among two or more components of the ASC having a substantial interest in the determination.

(6) Response to request. In response to a request that satisfies the requirements of paragraph (a) of this section, a search shall be conducted of records maintained by the ASC in existence on the date of receipt of the request, and a review made of any responsive information located. To the extent permitted by law, the ASC may redact identifying details when it makes available or publishes any records. If redaction is appropriate, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The ASC shall notify the requester of:

(i) The ASC’s determination of the request;

(ii) The reasons for the determination;

(iii) If the response is a denial of an initial request or if any information is withheld, the ASC will advise the requester in writing:

(A) If the denial is in part or in whole;

(B) The name and title of each person responsible for the denial (when other than the person signing the notification);

(C) The exemptions relied on for the denial; and

(D) The right of the requester to appeal the denial to the Chairman of the ASC within 30 business days following receipt of the notification, as specified in paragraph (h) of this section.

(d) Providing responsive records. (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to
take delivery of the documents at the
ASC or makes other acceptable ar-
rangements, or the ASC deems it ap-
propriate to send the documents by an-
other means.

(2) The ASC shall provide a copy of
the record in any form or format re-
quested if the record is readily repro-
ducible by the ASC in that form or for-
mat, but the ASC need not provide
more than one copy of any record to a
requester.

(3) By arrangement with the re-
quester, the ASC may elect to send the
responsive records electronically if a
substantial portion of the request is in
electronic format. If the information
requested is made pursuant to the Pri-
vacy Act of 1974, 5 U.S.C. 552a, it will
not be sent by electronic means unless
reasonable security measures can be
provided.

(e) Fees—(1) General rules. (i) Persons
requesting records of the ASC shall be
charged for the direct costs of search,
duplication, and review as set forth in
paragraphs (e)(2) and (e)(3) of this sec-
tion, unless such costs are less than the
ASC’s cost of processing the request-
er’s remittance.

(ii) Requesters will be charged for
search and review costs even if respon-
sive records are not located or, if lo-
cated, are determined to be exempt
from disclosure.

(iii) Multiple requests seeking simi-
lar or related records from the same re-
quester or group of requesters will be
aggregated for the purposes of this sec-
tion.

(iv) If the ASC determines that the
estimated costs of search, duplication,
or review of requested records will ex-
ceed the dollar amount specified in the
request, or if no dollar amount is speci-
fied, the ASC will advise the requester
of the estimated costs. The requester
must agree in writing to pay the costs
of search, duplication, and review prior
to the ASC initiating any records
search.

(v) If the ASC estimates that its
search, duplication, and review costs
will exceed $250, the requester must
pay an amount equal to 20 percent of
the estimated costs prior to the ASC
initiating any records search.

(vi) The ASC ordinarily will collect
all applicable fees under the final in-
voice before releasing copies of re-
quested records to the requester.

(vii) The ASC may require any re-
quester who has previously failed to
pay charges under this section within
30 calendar days of mailing of the in-
voice to pay in advance the total esti-
imated costs of search, duplication, and
review. The ASC also may require a re-
quester who has any charges out-
standing in excess of 30 calendar days
following mailing of the invoice to pay
the full amount due, or demonstrate
that the fee has been paid in full, prior
to the ASC initiating any additional
records search.

(viii) The ASC may begin assessing
interest charges on unpaid bills on the
31st day following the day on which the
invoice was sent. Interest will be at the
rate prescribed in §3717 of title 31 of
the United States Code and will accrue
from the date of the invoice.

(ix) The time limit for the ASC to re-

direct to a request will not begin to run
until the ASC has received the request-
er’s written agreement under para-
graph (e)(1)(iv) of this section, and ad-
dvance payment under paragraph
(e)(1)(v) or (vii) of this section, or pay-
ment of outstanding charges under
paragraph (e)(1)(vii) or (viii) of this sec-
tion.

(x) As part of the initial request, a
requester may ask that the ASC waive
or reduce fees if disclosure of the
records is in the public interest be-
cause it is likely to contribute signifi-
cantly to public understanding of the
operations or activities of the govern-
ment and is not primarily in the com-
mercial interest of the requester. De-
terminations as to a waiver or reduc-
tion of fees will be made by the Execu-
tive Director (or designee), and the re-
quester will be notified in writing of
his or her determination. A determina-
tion not to grant a request for a waiver
or reduction of fees under this para-
graph may be appealed to the ASC’s
Chairman pursuant to the procedure
set forth in paragraph (g) of this sec-
tion.

(2) Chargeable fees by category of re-
quester. (i) Commercial use requesters
shall be charged search, duplication,
and review costs.

(ii) Educational institutions, non-
commercial scientific institutions, and
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news media representatives shall be charged duplication costs, except for the first 100 pages.

(iii) Requesters not described in paragraph (e)(2)(i) or (ii) of this section shall be charged the full reasonable direct cost of search and duplication, except for the first two hours of search time and first 100 pages of duplication.

(3) Fee schedule. The dollar amount of fees which the ASC may charge to records requesters will be established by the Executive Director. The ASC may charge fees that recoup the full allowable direct costs it incurs. Fees are subject to change as costs change. The fee schedule will be published periodically on the ASC’s Internet World Wide Web site (http://www.asc.gov) and will be effective on the date of publication. Copies of the fee schedule may be obtained by request at no charge by contacting the Executive Director by letter, Internet email or facsimile.

(i) Manual searches for records. The ASC will charge for manual searches for records at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs.

(ii) Computer searches for records. The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs, and the operator’s time apportioned to the search multiplied by the operator’s basic rate of pay plus 16 percent to cover employee benefit costs.

(iii) Duplication of records. (A) The per-page fee for paper copy reproduction of documents is $0.25.

(B) For other methods of reproduction or duplication, the ASC will charge the actual direct costs of reproducing or duplicating the documents, including each involved employee’s basic rate of pay plus 16 percent to cover employee benefit costs.

(iv) Review of records. The ASC will charge commercial use requesters for the review of records at the time of processing the initial request to determine whether they are exempt from mandatory disclosure at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. The ASC will not charge at the administrative appeal level for review of an exemption already applied. When records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, the ASC may charge for a subsequent review to determine the applicability of other exemptions not previously considered.

(v) Other services. Complying with requests for special services, other than a readily produced electronic form or format, is at the ASC’s discretion. The ASC may recover the full costs of providing such services to the requester.

(4) Use of contractors. The ASC may contract with independent contractors to locate, reproduce, and/or disseminate records; provided, however, that the ASC has determined that the ultimate cost to the requester will be no greater than it would be if the ASC performed these tasks itself. In no case will the ASC contract our responsibilities which FOIA provides that the ASC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees.

(f) Exempt information. A request for records may be denied if the requested record contains information that falls into one or more of the following categories. If the requested record contains both exempt and nonexempt information, the nonexempt portions, which may reasonable be segregated from the exempt portions, will be released to the requester. If redaction is necessary, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The categories of exempt records are as follows:

(1) Records that are specifically authorized under criteria established by

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1Classification of a record as exempt from disclosure under the provisions of this paragraph (f) shall not be construed as authority to withhold the record if it is otherwise subject to disclosure under the Privacy Act of 1974 (5 U.S.C. 552a) or other Federal statute, any applicable regulation of ASC or any other Federal agency having jurisdiction thereof, or any directive or order of any court of competent jurisdiction.
an Executive Order to be kept secret in
the interest of national defense or for-

(1) Records related solely to the in-
ternal personnel rules and practices of the ASC;

(3) Records specifically exempted
from disclosure by statute, provided that such statute:
(i) Requires that the matters be with-
held from the public in such a manner as to leave no discretion on the issue;

(2) Records of another agency. If a re-

(5) Interagency or intra-agency
memoranda or letters that would not
be available by law to a private party in litigation with the ASC;

(6) Personnel, medical, and similar files (including financial files) the dis-
losure of which would constitute a clearly unwarranted invasion of per-
sonal privacy;

(7) Records compiled for law enforce-
ment purposes, but only to the extent that the production of such law en-
forcement records:
(i) Could reasonably be expected to

(iii) The exemptions relied upon for
the denial in the case of initial re-
quests for records; and

(iv) The right to judicial review of
the denial under the FOIA.

(4) If a requester is appealing for de-
nial of expedited treatment, the ASC
will notify the appellant within ten
business days after receipt of the ap-

(5) Complete payment of any out-
standing fee invoice will be required
before an appeal is processed.

(h) Records of another agency. If a re-
quested record is the property of an-
other Federal agency or department, and that agency or department, either
in writing or by regulation, expressly

(g) Appeals. (1) Appeals should be ad-
dressed to the Executive Director;
ASC; 2000 K Street, NW., Suite 310;
Washington, DC 20006.

(2) A person whose initial request for
records under this section, or whose re-
quest for a waiver of fees under para-
graph (e)(1)(x) of this section, has been
denied, either in part or in whole, has
the right to appeal the denial to the
ASC’s Chairman (or designee) within 30
business days after receipt of notifica-
tion of the denial. Appeals of denials of
initial requests or for a waiver of fees
must be in writing and include any ad-
ditional information relevant to con-
sideration of the appeal.

(3) Except in the case of an appeal for
expedited treatment under paragraph
(c)(3) of this section, the ASC will no-
tify the appellant in writing within 20
business days after receipt of the ap-

(i) Whether it is granted or denied in
whole or in part;

(ii) The name and title of each person
responsible for the denial (if other than
the person signing the notification);

(iii) The exemptions relied upon for
the denial in the case of initial re-
quests for records; and

(iv) The right to judicial review of
the denial under the FOIA.

(v) Would disclose techniques and
procedures for law enforcement inves-
tigations or prosecutions, or would dis-
close guidelines for law enforcement
investigations or prosecutions if such
disclosure could reasonably be ex-
pected to risk circumvention of the
law; or

(vi) Could reasonably be expected to
endanger the life or physical safety of
any individual;

(8) Records that are contained in or
related to examination, operating, or
condition reports prepared by, on be-
half of, or for the use of the ASC or any
agency responsible for the regulation
or supervision of financial institutions;
or
§ 1102.307 Disclosure of exempt records.

(a) Disclosure prohibited. Except as provided in paragraph (b) of this section or by 12 CFR part 1102, subpart C, no person shall disclose or permit the disclosure of any exempt records, or information contained therein, to any persons other than those officers, directors, employees, or agents of the ASC or a State appraiser regulatory agency who has a need for such records in the performance of their official duties. In any instance in which any person has possession, custody or control of ASC exempt records or information contained therein, all copies of such records shall remain the property of the ASC and under no circumstances shall any person, entity or agency disclose or make public in any manner the exempt records or information without written authorization from the Executive Director, after consultation with the ASC General Counsel.

(b) Disclosure authorized. Exempt records or information of the ASC may be disclosed only in accordance with the conditions and requirements set forth in this paragraph (b). Requests for discretionary disclosure of exempt records of information pursuant to this paragraph (b) may be submitted directly to the Executive Director. Such administrative request must clearly state that it seeks discretionary disclosure of exempt records, clearly identify the records sought, provide sufficient information for the ASC to evaluate whether there is good cause for disclosure, and meet all other conditions set forth in paragraph (b)(1) through (3) of this section. Authority to disclose or authorize disclosure of exempt records of the ASC is delegated to the Executive Director, after consultation with the ASC General Counsel.

(1) Disclosure by Executive Director. (i) The Executive Director, or designee, may disclose or authorize the disclosure of any exempt record in response to a valid judicial subpoena, court order, or other legal process, and authorize any current or former member, officer, employee, agent of the ASC, or third party, to appear and testify regarding an exempt record or any information obtained in the performance of such person’s official duties, at any administrative or judicial hearing or proceeding where such person has been served with a valid subpoena, court order, or other legal process requiring him or her to testify. The Executive Director shall consider the relevancy of such exempt records or testimony to the litigation, and the interests of justice, in determining whether to disclose such records or testimony. Third parties seeking disclosure of exempt records or testimony in litigation to which the ASC is not a party shall submit a request for discretionary disclosure directly to the Executive Director. Such requests shall specify the information sought with reasonable particularity and shall be accompanied by a statement with supporting documentation showing in detail the relevance of such exempt information to the litigation, justifying good cause for disclosure, and a commitment to be bound by a protective order. Failure to exhaust such administration request prior to service of a subpoena or other legal process may, in the Executive Director’s discretion, serve as a basis for objection to such subpoena or legal process.

(ii) The Executive Director, or designee, may in his or her discretion and for good cause, disclose or authorize disclosure of any exempt record or testimony by a current or former member, officer, employee, agent of the ASC, or third party, sought in connection with any civil or criminal hearing, proceeding or investigation without the service of a subpoena or other legal process requiring such disclosure or testimony. If he or she determines that the records or testimony are relevant to the hearing, proceeding or investigation and that disclosure is in
the best interests of justice and not otherwise prohibited by Federal statute. Where the Executive Director or designee authorizes a current or former member, officer, director, employee or agent of the ASC to testify or disclose exempt records pursuant to this paragraph (b)(1), he or she may, in his or her discretion, limit the authorization to so much of the record or testimony as is relevant to the issues at such hearing, proceeding or investigation, and he or she shall give authorization only upon fulfillment of such conditions as he or she deems necessary and practicable to protect the confidential nature of such records or testimony.

(2) Authorization for disclosure by the Chairman of the ASC. Except where expressly prohibited by law, the Chairman of the ASC may, in his or her discretion, authorize the disclosure of any ASC records. Except where disclosure is required by law, the Chairman may direct any current or former member, officer, director, employee or agent of the ASC to refuse to disclose any record or to give testimony if the Chairman determines, in his or her discretion, that refusal to permit such disclosure is in the public interest.

(3) Limitations on disclosure. All steps practicable shall be taken to protect the confidentiality of exempt records and information. Any disclosure permitted by paragraph (b) of this section is discretionary and nothing in paragraph (b) of this section shall be construed as requiring the disclosure of information. Further, nothing in paragraph (b) of this section shall be construed as restricting, in any manner, the authority of the ASC, the Chairman of the ASC, the Executive Director, the ASC General Counsel, or their designees, in their discretion and in light of the facts and circumstances attendant in any given case, to require conditions upon, and to limit, the form, manner, and extent of any disclosure permitted by this section. Whenever practicable, disclosure of exempt records shall be made pursuant to a protective order and redacted to exclude all irrelevant or non-responsive exempt information.

[64 FR 72500, Dec. 28, 1999]

§ 1102.308 Right to petition for issuance, amendment and repeal of rules of general application.

Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition for those purposes with the Executive Director of the ASC. The petition shall include a statement setting forth the text or substance of any proposed rule or amendment desired or shall specify the rule for which repeal is desired. The petitioner also shall state the nature of his or her interest and the reasons for seeking ASC action. The Executive Director shall acknowledge receipt of the petition within ten business days of receipt. As soon as reasonably practicable, the ASC shall consider the petition and related staff recommendations and shall take such action as it deems appropriate. The Executive Director shall notify the petitioner in writing of the ASC action within ten business days of the action.


§ 1102.309 Confidential treatment procedures.

(a) In general. Any submitter of written information to the ASC who desires that some or all of his or her submission be afforded confidential treatment under 5 U.S.C. 552(b)(4) (i.e., trade secrets and commercial or financial information obtained from a person and privileged or confidential) shall file a request for confidential treatment with the Executive Director of the ASC at the time the written information is submitted to the ASC or within ten business days thereafter. Nothing in this section limits the authority of the ASC and its staff to make determinations regarding access to documents under this subpart.

(b) Form of request. A request for confidential treatment shall be submitted in a separate letter or memorandum conspicuously entitled, “Request for Confidential Treatment.” Each request shall state in reasonable detail the facts and arguments supporting the request and its legal justification. If the submitter had been required by the ASC to provide the particular information, conclusory statements that the
§ 1102.310   Service of process.

(a) Service. Any subpoena or other legal process to obtain information maintained by the ASC shall be duly issued by a court having jurisdiction over the ASC, and served upon the Chairman ASC; 2000 K Street, NW., Suite 310; Washington, DC 20006. Where the ASC is named as a party, service of process shall be made pursuant to the Federal Rules of Civil Procedure upon the Chairman at the above address. The Chairman shall immediately forward any subpoena, court order or legal process to the General Counsel. If consistent with the terms of the subpoena, court order or legal process, the information has been published or has been officially made available to the public; disclosure of the information is required by law (other than FOIA); or the submitter’s request for confidential treatment appears obviously frivolous, in such instance the submitter shall be given written notice of the determination to disclose the information at least five business days prior to release. The ASC Officer shall carefully consider the issues involved, and if disclosure of the requested information is warranted, a written notice, containing a brief description of why the submitter’s objections were not sustained, must be forwarded to the submitter within ten business days. The time for response may be extended up to ten additional business days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requester and the ASC Officer. This notice shall be provided to the submitter at least five business days prior to release of the requested information.

(c) Notice of lawsuit. The ASC Officer shall notify a submitter of any filing of any suit against the ASC pursuant to 5 U.S.C. 552 to compel disclosure of documents or information covered by the submitter’s request for confidential treatment within ten business days of service of the suit. The ASC Officer also shall notify the requester of the documents or information of any suit filed by the submitter against the ASC to enjoin their disclosure within ten business days of service of the suit.

ASC may require the payment of fees, in accordance with the fee schedule referred to in §1102.306(e) prior to the release of any records requested pursuant to any subpoena or other legal process.

(b) Notification by person served. If any current or former member, officer, employee or agent of the ASC, or any other person who has custody of records belonging to the ASC, is served with a subpoena, court order, or other process requiring that person's attendance as a witness concerning any matter related to official duties, or the production of any exempt record of the ASC, such person shall promptly advise the Executive Director of such service, the testimony and records described in the subpoena, and all relevant facts that may assist the Executive Director, in consultation with the ASC General Counsel, in determining whether the individual in question should be authorized to testify or the records should be produced. Such person also should inform the court or tribunal that issued the process and the attorney for the party upon whose application the process was issued, if known, of the substance of this section.

(c) Appearance by person served. Absent the written authorization of the Executive Director or designee to disclose the requested information, any current or former member, officer, employee, or agent of the ASC, and any other person having custody of records of the ASC, who is required to respond to a subpoena or other legal process, shall attend at the time and place therein specified and respectfully decline to produce any such record or give any testimony with respect thereto, basing such refusal on this section.

[64 FR 72501, Dec. 28, 1999]

PARTS 1103–1199 [RESERVED]