

Office of the Comptroller of the Currency
Supporting Statement
Release of Non-Public Information – 12 CFR 4, Subpart C and 12 CFR 110.5
OMB Control Number 1557-0200

A. Justification

1. Circumstances that make the collection necessary:

The information requirements require individuals who request non-public OCC information to provide the OCC with information regarding the requester's legal grounds for the request. The release of non-public OCC information to a requester who did not have sufficient legal grounds to obtain the information would inhibit open consultation between a bank and the OCC, thereby impairing the OCC's supervisory and regulatory mission. The OCC is entitled, under statute and case law, to require requesters to demonstrate that they have sufficient legal grounds for the OCC to release non-public OCC information. The OCC must be able to identify the requester's legal grounds in order to determine if it should release the requested non-public OCC information.

The OCC maintains the non-public nature of certain OCC information pursuant to the bank examination exemption of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)), judicial interpretation of the bank examination privilege (see Schreiber v. Society for Savings Bancorp, Inc., 11 F.3d 217 (D.C. Cir. 1993); In Re: Subpoena Served Upon the Comptroller of the Currency, and the Secretary of the Board of Governors of the Federal Reserve System, 967 F.2d 630, 634 (D.C. Cir. 1992) (discussing the bank examination privilege, which is analogous to the examination exemption under FOIA)), and other agency privileges, such as deliberative process and attorney-client privilege.

2. Use of the information

The OCC uses the information to process requests for non-public OCC information and to determine if sufficient grounds exist for the OCC to release the requested information or provide testimony that would include a discussion of non-public information. This information collection facilitates the processing of requests and expedites the OCC's release of non-public information and testimony to the requester, as appropriate.

3. Consideration of the use of improved information technology

The use of information technology would not reduce the burden of this submission. The OCC collects only the minimum information necessary to make a decision and an information collection is conducted only when a requestor asks the OCC to release non-public information.

4. Efforts to identify duplication

The required information is unique and is not duplicative of any other information already collected.

5. Methods used to minimize burden if the collection has a significant impact on a substantial number of small entities:

Not applicable. The collection does not have a significant impact on a substantial number of small entities.

6. Consequences to the Federal program if the collection were conducted less frequently:

The information collection is conducted only when a requester asks OCC to release non-public information or provide testimony that includes a discussion of non-public information.

7. Special circumstances that would cause an information collection to be conducted in a manner inconsistent with 5 CFR Part 1320

None. The information collection is conducted in accordance with the requirements of 5 CFR Part 1320.

8. Efforts to consult with persons outside the agency

On November 25, 2011, the OCC published a Notice in the Federal Register soliciting comments on the proposed extension of OMB approval of this information collection (76 FR 72763). The OCC received no public comments.

9. Payment or gift to respondents

None.

10. Any assurance of confidentiality

None.

11. Justification for questions of a sensitive nature

There are no questions of a sensitive nature.

12. Burden estimate

The OCC expects the burden associated with a request for non-public information or testimony to range from 1 to 5 hours. The OCC estimates the burden as follows:

Cite and Burden Type	Information Collection Requirements in 12 CFR Part 4	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
<p>12 CFR 4.33(a) Reporting</p> <p>12 CFR 4.33(a)(3)(ii) and (iii) Reporting</p>	<p>Requirements for a request of records or testimony</p> <p><i>Generally – Form of request:</i> A person seeking non-public OCC information must submit a request in writing to the OCC. The requester must explain the bases for the request and how the requested non-public information relates to the issues in the lawsuit or matter.</p> <p><i>Request arising from adversarial matters –</i> Request must include:</p> <ul style="list-style-type: none"> • A copy of the complaint or other pleading setting forth the assertions in the case • The caption and docket number of the case • The name, address, and phone number of counsel to each party in the case • A description of any prior judicial decisions or pending motions in the case that may bear on the asserted relevance of the requested information <p>The request must also:</p> <ul style="list-style-type: none"> • Show the relevance of the information to the purpose for which is sought • Show that other evidence reasonably suited to the requester’s needs is not available from any other source • show that the need for the information outweighs the public interest considerations in maintaining the confidentiality of the OCC information and outweighs the burden on the OCC to produce the information • Explain how the issues in the case and the status of the case warrant that the OCC allow disclosure • Identify any other issue that may bear on the question of waiver of privilege by the OCC <p><i>Request for records –</i> The requester must</p>	70	3	210

Cite and Burden Type	Information Collection Requirements in 12 CFR Part 4	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
12 CFR 4.33(b) Reporting 12 CFR 4.33(c) Reporting	adequately describe the record or records sought by type and date. <i>Request for testimony</i> – A requester seeking testimony <ul style="list-style-type: none"> • Must show a compelling need for the requested information • Should request testimony with sufficient time to obtain in deposition form • Must show, if testimony at a trial or hearing is sought, that a deposition would not suffice 	25	5	125
12 CFR 4.35(b)(3) Reporting	<i>Consideration of requests – Testimony – Third parties requesting testimony</i> -- Once a request for testimony has been submitted, and before the requested testimony occurs, a party to the relevant case, who did not join in the request and who wishes to question the witness beyond the scope of testimony sought by the request, shall timely submit the party’s own request for OCC information.	5	3	15
12 CFR 4.37(a)(2) Reporting	<i>Persons and entities with access to OCC information; prohibition on dissemination – Current and former OCC employees or agents -- Duty of person served</i> – Any current or former OCC employee or agent subpoenaed or otherwise requested to provide information covered by this subpart must immediately notify the OCC.	5	2	10
12 CFR 4.37(b)(1)(i) Reporting	<i>Persons and entities with access to OCC information; prohibition on dissemination – Non-OCC employees or entities – Generally</i> – Without OCC approval, no person, national bank, or other entity, including one in lawful possession of non-public OCC information may disclose information except under certain circumstances, which are provided in the regulation.	10	3	30
12 CFR 4.37(b)(3)(i) Reporting	<i>Persons and entities with access to OCC information; prohibition on dissemination – Non-OCC employees or entities -- Duty of person or entity served</i> – Any person, national bank, or other entity served with a request, subpoena, order, motion to compel, or other judicial or administrative process to provide non-public OCC information shall immediately notify the Director of OCC’s Litigation Division and inform the Director of all relevant facts, including the	20	2	40

Cite and Burden Type	Information Collection Requirements in 12 CFR Part 4	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
	documents and information requested.			
12 CFR 4.38(a) and (b) Reporting	<u>Restrictions on dissemination of released information – Records</u> – The OCC may condition a decision to release non-public OCC information on a written agreement of confidentiality. <u>Restrictions on dissemination of released information – Testimony</u> – The OCC may condition its authorization of deposition testimony on an agreement of the parties to appropriate limitations.	40	4	160
12 CFR 4.39(d) Reporting	<u>Notification of parties and procedures for sharing and using OCC records in litigation – Authentication for use as evidence</u> – Requesters who require authenticated records or certificates should request certificates from the OCC.	20	1	2
Totals		195		592 hours

Cost of Hour Burden to Respondents

The OCC estimates the cost of the hour burden to respondents (by wage rate categories) as follows:

Clerical (\$20/hour):	20% x 592 hours = 118 hours @ \$20 =	\$ 2,360
Managerial/technical (\$40/hour):	Not applicable	
Senior Management (\$80/hour):	80% x 592 hours = 474 hours @ \$80 =	\$37,920
Legal Counsel (\$100/hour):	Not applicable	
Total cost of hour burden:		\$40,280

13. Estimate of total annual costs to respondents (excluding cost of hour burden in Item #12)

No capital outlay is required. This is a renewal, without change, of an existing requirement.

14. Estimate of annualized costs to the Federal government

None.

15. Change in burden

There is no change in the OCC burden inventory.

16. Information regarding collections whose results are to be published for statistical use

The OCC has no plans to publish the information for statistical purposes.

17. Reasons for not displaying OMB approval expiration date

Not applicable. This submission involves a regulation.

18. Exceptions to the certification statement in Item 19 of OMB Form 83-I

None.

B. Collections of Information Employing Statistical Methods

Not applicable.