

Office of the Comptroller of the Currency
Supporting Statement
Release of Non-Public Information
OMB Control No. 1557-0200

A. Justification.

1. Circumstances that make the collection necessary:

This information collection requires individuals who are requesting non-public OCC information to provide the OCC with information regarding the legal grounds for the request. Release of non-public OCC information to a requester without 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, by statute and under case law, to require requesters to demonstrate that they have sufficient legal grounds for the OCC to release non-public OCC information. The OCC needs to know the requester's legal grounds 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. This information collection makes more efficient the mechanism for processing requests and facilitates and expedites the OCC's release of non-public information and testimony to the requester.

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 for the release of OCC non-public information.

4. Efforts to identify duplication:

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

5. *If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

There are no alternatives that would result in lowering the burden on small institutions, while still accomplishing the purpose of the rule.

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

The information collection is conducted infrequently and only when a requester asks the OCC to release non-public information or testimony.

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:*

The OCC issued a 60-day *Federal Register* notice on August 21, 2024, 89 FR 67711. No comments were received.

9. *Payment or gift to respondents:*

None.

10. *Any assurance of confidentiality:*

None.

11. *Justification for questions of a sensitive nature:*

Not applicable. No personally identifiable information is collected.

12. *Burden estimate:*

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(a)	Requirements for a request of records or testimony <u>Generally – Form of request:</u> A person	2	3	6

Cite and Burden Type	Information Collection Requirements in 12 CFR Part 4	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
Reporting	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.			
12 CFR 4.33(a)(3)(ii) and (iii) Reporting	<u>Request arising from adversarial matters</u> – Request must include: • 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 The request also must: • Show the relevance of the information to the purpose for which it 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			
12 CFR 4.33(b) Reporting	<u>Request for records</u> – The requester must adequately describe the record or records sought by type and date.			
12 CFR 4.33(c) Reporting	<u>Request for testimony</u> – A requester seeking testimony • Must show a compelling need for			

Cite and Burden Type	Information Collection Requirements in 12 CFR Part 4	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
	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			
12 CFR 4.35(b)(3) Reporting	<u>Consideration of requests – Testimony – Third parties requesting testimony</u> -- 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.	0	3	0
12 CFR 4.37(a)(2) Reporting	<u>Persons and entities with access to OCC information; prohibition on dissemination – Current and former OCC employees or agents -- Duty of person served</u> – Any current or former OCC employee or agent subpoenaed or otherwise requested to provide information covered by this subpart must immediately notify the OCC.	0	2	0
12 CFR 4.37(b)(1)(i) Reporting	<u>Persons and entities with access to OCC information; prohibition on dissemination – Non-OCC employees or entities – Generally</u> – 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.	0	3	0
12 CFR 4.37(b)(3)(i) Reporting	<u>Persons and entities with access to OCC information; prohibition on dissemination – Non-OCC employees or entities -- Duty of person or entity served</u> – 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 documents and information requested.	0	2	0
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	0	4	0

Cite and Burden Type	Information Collection Requirements in 12 CFR Part 4	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
	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.			
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.	0	1	0
Totals		2		6 hours

Cost of Hour Burden to Respondents:

6 hours x \$129.40 = \$776.40

To estimate wages the OCC reviewed May 2023 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities (NAICS 5220A1). To estimate compensation costs associated with the rule, the OCC uses \$129.40 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (4.3 percent as of Q1 2024), plus an additional 34.6 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2023 for NAICS 522: credit intermediation and related activities).

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

Not applicable.

14. Estimate of annualized costs to the Federal government:

None.

15. Change in burden:

There is no change in burden.

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

Not applicable.

17. Reasons for not displaying OMB approval expiration date:

Not applicable.

18. *Exceptions to the certification statement:*

None.

B. Collections of Information Employing Statistical Methods.

Not applicable.