



April 22, 2024

RE: Docket ID OCC-2022-0008

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC) appreciates the opportunity to comment regarding availability of information under the Freedom of Information Act (FOIA).

NCRC is a network of more than 700 community-based organizations dedicated to creating a nation that not only promises but delivers opportunities for all Americans to build wealth and attain a high quality of life. We work with community leaders and policymakers to advance solutions and build the will to solve America's persistent racial and socio-economic wealth, income and opportunity divides, and to make a Just Economy a national priority and a local reality.

As a coalition with hundreds of community-based organizations, NCRC is often in the public education position similar to that of a media outlet, informing members of the public how government agencies make major policy decisions on banking law or during bank merger application proceedings. Thus, NCRC often asks for expedited processing of our FOIA requests. We therefore appreciate that the OCC has proposed regulations committing the agency to respond to expedited processing requests within 10 calendar days. We approve of the proposed "urgency to inform" standard because our members and the public they serve need to know in a timely manner how agencies make decisions and the criteria they use for making decisions.¹ During public comment periods and similar time constraints, NCRC needs to provide information expeditiously so under-resourced community organizations know how best to offer their input effectively.

In response to a question posed by the OCC regarding when other situations merit expedited processing, NCRC would suggest that judicial proceedings be one such situation. These proceedings involve tight and inflexible deadlines required by judges. The OCC's proposed regulation implies judicial proceedings since it refers to the "loss of substantial due process rights."² Since due process rights can also involve non-judicial proceedings, we believe that the OCC regulations are enhanced if they also refer to judicial proceedings.

When the OCC denies a request for expedited processing, we request that the OCC commit to processing appeals of the denials within 10 calendar days, the same time frame used for processing the initial request. The urgency from the requester has not gone away just because the

¹ Office of the Comptroller of the Currency (OCC), Availability of Information Under the Freedom of Information Act, Notice of Proposed Rulemaking (NPR), Federal Register, Vol. 89, No. 36, Thursday, February 22, 2024, p. 13290.

² OCC, NPR, p. 13290.



agency denied the initial request. Therefore, the agency should commit to also expeditiously responding to appeals.

NCRC supports the OCC's proposal to allow appeals of denials for fee waiver requests. NCRC requests fee waivers because we meet the standard of increasing the public understanding of the operations or activities of government. We add that fees should be routinely waived because costs of producing materials have decreased considerably over the decades with the advent of scanning, emails, and other methods of electronic communication.

Prompt attention to requests for information during the merger process is imperative for ensuring fairness and the ability of all parties to comment on proposed mergers. Banks often request confidential treatment for significant amounts of information such as which branches will be closed, or which compliance programs would survive that is submitted as part of their merger applications. The OCC should pledge to rule on any FOIA requests related to these matters between 10 to 15 days before the end of public comment periods or should extend the public comment period in order to accommodate members of the public who wish to access any information that the OCC deems to be non-confidential.

Lastly, though Exemption 8 from FOIA is not part of this proposed rulemaking, NCRC asks the OCC to clarify its procedures regarding Exemption 8 that exempts information concerning the supervision of financial institutions from FOIA.³ An overly broad interpretation of this exemption can exempt most information about the regulation of financial institutions from public disclosure. The OCC's current regulation does not contemplate that outcome. It states that information exempt from disclosure includes, "a record contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the OCC or any other agency responsible for regulating or supervising financial institutions."⁴

We believe that a proper interpretation of the statutory exemption is protecting from disclosure confidential aspects of supervisory examinations such as those that relate to safety and soundness exams. It does not shield information such as internally generated research or policy analysis that informed a proposed or final rule. It also does not shield information submitted on bank merger applications from disclosure. The OCC needs to offer an explicit and reasonable interpretation of Exemption 8 and to clarify this, so all stakeholders know what to expect when contemplating future FOIA requests.

NCRC appreciates the opportunity to comment on the OCC's proposed rule on FOIA. Expedient decisions on FOIA requests that are fair and reasonable help improve the functioning of government and provide citizens with more confidence regarding equity in

³ Department of Justice, *What are the Nine FOIA Exemptions*, https://www.justice.gov/d9/what_are_the_9_foia_exemptions.pdf

⁴ § 4.12 (b)(8) Information available under the FOIA <https://www.law.cornell.edu/cfr/text/12/4.12>



government decisions. If you have any questions about this comment, please contact me at jvantol@ncrc.org or Josh Silver, Senior Fellow, at jsilver97@gmail.com.

Sincerely,

A handwritten signature in black ink that reads "Jesse Van Tol". The signature is written in a cursive, flowing style.

Jesse Van Tol
President and CEO
NCRC