Section 3415 of the Act requires Government authorities to reimburse financial institutions for the costs incurred in furnishing certain financial records of individuals and partnerships of five or less individuals in connection with law enforcement inquiries.

The costs incurred by a financial institution in supplying information pursuant to requests by the Department under 12 U.S.C. §§ 3404-3408, 3413(i)-(o), 3414 are reimbursable by the Department. No payment shall be made unless the financial institution submits an itemized bill or invoice showing specific details concerning the search, reproduction, and transportation costs. (Witness and mileage fees will be treated in the same manner as other witness expenses.)

The following rates of reimbursement have been established by the Federal Reserve Board in accordance with the Right To Financial Privacy Act (12 U.S.C. § 3415) and are published at 12 CFR 219 (Regulation S):

1. Actual search and retrieval costs - $2.50 per quarter hour for time spent by employees in locating, retrieving, reproducing, packaging and/or preparing documents for shipment;

2. Actual computer costs - time and necessary supplies;

3. Reproduction costs - 15 cents per page; and

4. Transportation costs - to locate and retrieve records and/or to transport summoned records to the Department of Justice attorney's office.

Investigative agencies are responsible for costs incurred pursuant to their activities, up to the time that judicial process (a grand jury subpoena, a trial subpoena or a search warrant) is used to obtain financial information. At that point, the proper litigating component becomes responsible for costs incurred pursuant to its activities.

The costs other than witness expenses will be treated as administrative costs, classified under the following object classification codes (O/C):

1. O/C 2540 is used when a customer authorizes disclosure of financial data, 12 U.S.C. § 3404.

2. O/C 2541 is used when financial records are obtained pursuant to an administrative subpoena or summons, 12 U.S.C. § 3405.

3. O/C 2542 is used when financial records are obtained pursuant to a search


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4. O/C 2543 is used when financial records are obtained pursuant to a judicial subpoena, 12 U.S.C. § 3407.

5. O/C 2544 is used when financial records are obtained pursuant to a formal written request, 12 U.S.C. § 3408.

6. O/C 2545 is used when financial records are obtained pursuant to a Grand Jury, subpoena, 12 U.S.C. § 3413(i).

7. O/C 2546 is used when financial records are obtained pursuant to special procedures, 12 U.S.C. § 3414.

Financial institutions shall complete Section B of the Request for Financial Information, Form OBD 211, and return the form, together with the requested information, to the Requesting officer or designee which shall be an officer of the initiating U.S. Attorney's office or litigating division. The appropriate official shall review the invoice to determine that it is itemized, that costs are reasonable, and that the services and/or records were received. If these criteria are met, the official shall approve the invoice by signing it, indicating the appropriate P.L. Section, and forwarding it to the administrative office to assign the appropriate accounting classification code.

Administrative Officials shall forward all approved originals to:

U.S. Department of Justice

Fiscal Data Service Group /sos

601 D Street NW, Room 5414

Patrick Henry Building

Washington, D.C. 20530

Invoices received by the Accounting Operations Group which are not properly itemized or approved will be returned to the requesting officer. U.S. Marshals WILL NOT pay for these invoices unless a specific authorization is made by this office.

Form R (found at the end of this chapter) is a sample notice which should be submitted to financial institutions with Form OBD-211 to summarize reimbursement procedures and restrictions.

Before approving Forms OBD-211, Request for Financial Information, or payment, Administrative Officers must:

1. Ensure that the financial records requested pertain to legitimate "customers" as defined in the Act (i.e., individuals and partnerships of five or less individuals).
Reimbursement cannot be made when the financial records relate to any other legal entities. *Pittsburgh Nat'l Bank v. United States*, 771 F.2d 73 (3rd Cir. 1985) (bank was not entitled to reimbursement for producing records of corporation).

2. Ensure that reimbursements are authorized only for legitimate "financial institutions" as defined in the Act.

3. Ensure that Forms OBD-211 are properly prepared, that the appropriate "Section" in Item Number 18 is identified, and that the rates of reimbursement are in accordance with the entitlement and limitations authorized.

4. Work with attorneys or investigative agents handling cases and financial institutions, if necessary, to ensure that amounts charged are reasonable for the services actually received.

Note: The government is not required to reimburse financial institutions for records when the subject of the investigation is the financial institution in possession of the records sought.

§ 219.3 Cost reimbursement.

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

(i) A court order;

(ii) A subpoena issued pursuant to the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure; or

(iii) Other agency administrative procedures, including administrative subpoenas, voluntary requests, or other process shall reimburse the financial institution for reasonably necessary costs directly incurred in searching for, reproducing or transporting books, papers, records, or other data as set forth in this section.

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

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

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

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

(i) Base labor rate recalculation —Using the most recently available wage data from the Occupational Employment Statistics program (http://www.bls.gov/oes/home.htm) for the BLS industry category "Credit Intermediation and Related Activities" (NAICS Code Number 522000) (or successor category):
(A) [Clerical/Technical category] the average of the median hourly rates for the "Information and Records Clerk" and "Computer Operator" job categories (SOC Code Number 43-4199 and 43-9011) (or any successor job categories);

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

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

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

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

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

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

(c) Reproduction costs. The reimbursement rates for reproduction costs for requested information are set forth in appendix A to this section, subject to the Conditions for Payment set forth in § 219.5 of this part. Copies of photographs, films and other materials not listed in appendix A to this section are reimbursed at actual cost.

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

APPENDIX A TO § 219.3—REIMBURSEMENT SCHEDULE

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<thead>
<tr>
<th>Reproduction:</th>
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<tbody>
<tr>
<td>Photocopy, per page</td>
</tr>
<tr>
<td>Paper copies of microfiche, per frame</td>
</tr>
<tr>
<td>Duplicate Microfiche, per microfiche</td>
</tr>
<tr>
<td>Storage media</td>
</tr>
</tbody>
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<thead>
<tr>
<th>Search and Processing:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerical/Technical, hourly rate</td>
</tr>
<tr>
<td>Computer Support Specialist, hourly rate</td>
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<tr>
<td>Manager/Supervisory, hourly rate</td>
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