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report of examination or any portion of the contents thereof to any person or organization not officially connected with the Enterprise as director, officer, employee, attorney, auditor, or independent auditor. Any other disclosure or use of this report except as expressly permitted by the Director may be subject to the penalties of 18 U.S.C. 641.

(c) *Government agencies.* The Director may make available reports of examination for the confidential use of Federal agencies responsible for investigating or enforcing applicable Federal laws.

§ 1703.9 Orders and agreements available to the public.

(a) *General.* OFHEO shall make the following documents available to the public:

(1) Any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest.

(2) Any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under 12 U.S.C. 4631 through 4641 that has become final in accordance with 12 U.S.C. 4633 and 12 U.S.C. 4634.

(3) Any modification to or termination of any final order made public pursuant to this section.

(b) *Delay of public disclosure under exceptional circumstances.* If the Director makes a determination in writing that the public disclosure of any final order pursuant to paragraph (a) of this section would seriously threaten the financial health or security of the Enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(c) *Documents filed under seal in public enforcement hearings.* The Director may file any document or part thereof under seal in any hearing commenced by the Director if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(d) *Retention of documents.* The Director shall keep and maintain a record, for not less than 6 years, of all docu-

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ments described in paragraph (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceedings initiated by the Director under 12 U.S.C. 4631 through 4641.

(e) *Disclosure to Congress.* This section may not be construed to authorize the withholding of any information from, or to prohibit the disclosure of any information to, the Congress or any committee or subcommittee thereof.

Subpart C—Availability of Records of OFHEO

§ 1703.11 Official records of OFHEO.

(a) OFHEO shall, upon a written request for records that reasonably describes the information or records and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person for inspection and/or copying, except as provided in paragraph (b) of this section. OFHEO may charge a fee determined in accordance with subpart D of this part. OFHEO will make the record available in the form or format requested if the record is readily reproducible in that form or format with reasonable effort. "Readily reproducible" means, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk, tape, or other electronic medium using equipment currently in use by OFHEO.

(b) *Records not available.* Except as otherwise provided in this part, or as may be specifically authorized by the Director, the following information and records, or portions thereof, are not available to requesters:

(1) Any record, or portion thereof, that is—

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and

(ii) Is in fact properly classified pursuant to such Executive order.

(2) Any record, or portion thereof, related solely to the internal personnel rules and practices of OFHEO.

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(3) Any record, or portion thereof that is specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) Any matter contained in inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with OFHEO.

(6) Any information contained in personnel and medical files and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Any records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution or an Enterprise regulated and examined by OFHEO that furnished information on a confidential basis, and, in the case of a record of information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would dis-

close guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

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

(8) Any matter that is contained in or related to examination, operating, or condition reports that are prepared by, on behalf of, or for the use of OFHEO.

(9) Any geological and geophysical information and data, including maps, concerning wells.

(c) Even if an exemption described in paragraph (b) of this section may be reasonably applicable to a requested record, or portion thereof, OFHEO may elect under the circumstances of any particular request not to apply the exemption to such requested record, or portion thereof. The fact that the exemption is not applied by OFHEO to any requested record, or portion thereof, has no precedential significance as to the application or nonapplication of the exemption to any other requested record, or portion thereof, no matter when the request is received.

(d) Any reasonably segregable portion of a record shall be provided to any person properly requesting such record after deletion of the portions which are exempt under this subpart. The amount of the information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in paragraph (b) of this section pursuant to which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where the deletion is made.

(e) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

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