



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

February 8, 1977

CONFIDENTIAL (FR)
CLASS II FOMC

TO: Federal Open Market Committee

FROM: Arthur L. Broida *ALB*

Attached is a memorandum from the Committee's General Counsel dated February 3, 1977, and entitled "Amendment to the Committee's Rules Regarding Availability of Information."

It is contemplated that this memorandum will be discussed at the forthcoming meeting of the Committee.

Attachment



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

February 3, 1977

CONFIDENTIAL (FR)
CLASS II FOMC

To: Federal Open Market
Committee

Subject: Amendment to the Com-
mittee's Rules Regarding Availability
of Information.

From: Thomas J. O'Connell

ACTION REQUESTED: Approval of the attached Federal Register notice
advising the public of an amendment to the Committee's Rules Re-
garding Availability of Information.

DISCUSSION: Section 5(b) of the Government in the Sunshine Act
("Sunshine Act") amended section 552(b)(3) of the Freedom of
Information Act ("FOIA"), effective March 12, 1977, by establishing
specific criteria for the use of exemption (b)(3) of the latter
Act. Accordingly, a similar amendment to the Committee's Rules
Regarding Availability of Information is required. The attached
amendment to section 271.6(a) of the Committee's Rules has been
drafted to accomplish such purpose.

For background information, the Committee's Rules and
the FOIA in their present form provide for the withholding of
information that involves "matters that are specifically exempted

-2-

from disclosure by statute."^{1/} As interpreted by the Supreme Court in Administrator, F.A.A. v. Robertson, 422 U.S. 255 (1975), the statutes relied upon to withhold information under this exemption include those conferring broad discretionary authority on an agency.

The amendment to exemption (b)(3) of the FOIA was enacted for the purpose of overruling the Robertson decision by further defining, and in effect limiting, the type of statute that may serve as the basis for withholding information. The statute relied upon henceforth must be one that (a) requires that the matters be withheld from the public in such manner as to leave no discretion on the issue, or (b) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

In practice the Committee has not had cause to rely upon the subject exemption and, in fact, has no statute to turn to that authorizes the withholding of Committee information (other than the FOIA exemptions). However, at some future point in time, the exemption might be a possible ground for withholding information received by the Committee from another agency. Additionally, if legislation were ever passed specifically requiring the Committee to withhold information from the public, the exemption would prove of importance.

^{1/} See section 271.6(a) of the Committee's rules and exemption 552(b)(3) of the FOIA.

-3-

Because this amendment to the Committee's Rules is required by law and parallels identically the language of the amended FOIA exemption, it is not believed that the public need be given an opportunity to comment. It is presently contemplated that the attached Federal Register notice will be published shortly before the March 12, 1977, effective date.

Attachment

Title 12--Banks & Banking

Chapter II--FEDERAL RESERVE SYSTEM

SUBCHAPTER B--FEDERAL OPEN MARKET COMMITTEE

PART 271--RULES REGARDING AVAILABILITY OF INFORMATION

Amendment to Rules Regarding Availability of Information required by the Government in the Sunshine Act to implement an amendment to the Freedom of Information Act.

Consistent with section 5(b) of the Government in the Sunshine Act (Pub. L. No. 94-409, 5 U.S.C. §552b), the Federal Open Market Committee has amended section 271.6(a) of Title 12 of the Code of Federal Regulations. The amended regulation revises the Committee's Rules Regarding the Availability of Information as it relates to exemption 552(b)(3) of the Freedom of Information Act, and will become effective on March 12, 1977, the effective date of section 5(b) of the Government in the Sunshine Act. The amended regulation will read as follows:

271.6 Information not Disclosed

Except as may be authorized by the Committee, information of the Committee that is not available to the public through other sources will not be published or made available for inspection, examination, or copying by any person if such information

-2-

(a) is specifically exempted from disclosure by statute (other than section 552b of Title 5 United States Code), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld; or is specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such executive order.

* * * *

The requirements of section 553 of Title 5 United States Code with respect to notice, public participation, and deferred effective date were not followed in connection with this amendment because the amendment merely conforms the Committee's rules to the language of exemption (b)(3) of the Freedom of Information Act, as amended by section 5(b) of the Government in the Sunshine Act which will become effective on March 12, 1977, and thus such procedures were found to be unnecessary.

-3-

By order of the Federal Open Market Committee, effective
March 12, 1977.

Arthur L. Broida
Secretary of the Committee