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her personal attendance as a witness or requiring the production of documents or information in any proceeding, shall:

(1) Promptly inform the Board's General Counsel of the service and all relevant facts, including the documents and information requested, and any facts of assistance to the Board in determining whether the material requested should be made available; and

(2) At the appropriate time inform the court or tribunal that issued the process and the attorney for the party at whose instance the process was issued of the substance of these rules.

(b) *Appearance by person served.* Unless the Board has authorized disclosure of the information requested, any person who has Board information that may not be disclosed, and who is required to respond to a subpoena or other legal process, shall attend at the time and place required and decline to disclose or to give any testimony with respect to the information, basing such refusal upon the provisions of this regulation. If the court or other body orders the disclosure of the information or the giving of testimony, the person having the information shall continue to decline to disclose the information and shall promptly report the facts to the Board for such action as the Board may deem appropriate.

[53 FR 20815, June 7, 1988. Redesignated at 62 FR 54359, Oct. 20, 1997]

# PART 261a—RULES REGARDING ACCESS TO PERSONAL INFORMATION UNDER THE PRIVACY ACT OF 1974

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AUTHORITY: 5 U.S.C. 552a.

SOURCE: 60 FR 3341, Jan. 17, 1995, unless otherwise noted.

## Subpart A—General Provisions

### § 261a.1 Authority, purpose and scope.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Privacy Act of 1974 (5 U.S.C. 552a).

(b) *Purpose.* The purpose of this part is to implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) with regard to the maintenance, protection, disclosure, and amendment of records contained within systems of records maintained by the Board.

(c) *Scope.* This part covers requests for access to, or amendment of, records concerning individuals that are contained in systems of records maintained by the Board.

### § 261a.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Business day* means any day except Saturday, Sunday or a legal Federal holiday.

(b) *Designated system of records* means a system of records maintained by the Board that has been listed in the FEDERAL REGISTER pursuant to the requirements of 5 U.S.C. 552a(e).

(c) *Guardian* means the parent of a minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(d) *Individual* means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain* includes maintain, collect, use, disseminate, or control.

(f) *Record* means any item, collection, or grouping of information about an individual maintained by the Board that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice print, or photograph.

(g) *Routine use* means, with respect to disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected or created.

(h) *System of records* means a group of any records under the control of the Board from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

### § 261a.3 Custodian of records; delegations of authority.

(a) *Custodian of records.* The Secretary of the Board is the official custodian of all records of the Board in the possession or control of the Board.

(b) *Delegated authority of Secretary.* With regard to this regulation, the Secretary of the Board is delegated the authority to:

(1) Respond to requests for access or amendment to records contained in a system of records, except for such requests regarding systems of records maintained by the Board's Office of the Inspector General (OIG);

(2) Approve the publication of new systems of records and amend existing systems of records, except systems of records exempted pursuant to §§ 261a.13(b), (c) and (d);

(3) File the biennial reports required by the Privacy Act.

(c) *Delegated authority of designee.* Any action or determination required or permitted by this part to be done by the Secretary of the Board may be done by an Associate Secretary or other responsible employee of the Board who has been duly designated for this purpose by the Secretary.

(d) *Delegated authority of Inspector General.* With regard to systems of records maintained by the OIG, the Inspector General is delegated the authority to respond to requests for access or amendment.

### § 261a.4 Fees.

(a) *Copies of records.* Copies of records requested pursuant to § 261a.5 of this part shall be provided at the same cost charged for duplication of records and/or production of computer output under the Board's Rules Regarding Availability of Information, § 261.10 of this part.

(b) *No fee.* Documents may be furnished without charge where total charges are less than $5.

(c) *Waiver of fees.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Freedom of Information Act) are $50 or less; but the Secretary may waive fees in excess of that amount.

## Subpart B—Procedures for Requests by Individual to Whom Record Pertains

### § 261a.5 Request for access to record.

(a) *Procedures for making request.* (1) Any individual (or guardian of an individual) other than a current Board employee desiring to learn of the existence of, or to gain access to, his or her record in a designated system of records shall submit a request in writing to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551.

(2) A request by a current Board employee for that employee's own personnel records may be made in person during regular business hours at the Division of Human Resources, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551.

(3) A request by a current Board employee for information other than personnel information may be made in person during regular business hours at the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551.

(4) Requests for information contained in a system of records maintained by the Board's OIG shall be submitted in writing to the Inspector General, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551.

(b) *Contents of request.* A request made pursuant to paragraph (a) of this section shall include the following:

(1) A statement that it is made pursuant to the Privacy Act of 1974;

(2) The name of the system of records expected to contain the record requested or a concise description of such system of records.

(3) Necessary information to verify the identity of the requester pursuant to paragraph (c) of this section; and

(4) Any other information that may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.).

(c) *Verification of identity.* The Board shall require proof of identity from a requester and reserves the right to determine the adequacy of such proof. In general, the following shall be considered adequate proof of identity:

(1) For a current Board employee, his or her Board identification card; or

(2) For an individual other than a current Board employee, either:

(i) Two forms of identification, one of which has a picture of the individual requesting access; or

(ii) A notarized statement attesting to the identity of the requester.

(d) *Verification of identity not required.* No verification of identity shall be required of individuals seeking access to records that are otherwise available to any person under 5 U.S.C. 552, Freedom of Information Act.

(e) *Request for accounting of previous disclosures.* An individual making a request pursuant to paragraph (a) of this section may also include a request for an accounting (pursuant to 5 U.S.C. 552a(c)) of previous disclosures of records pertaining to such individual in a designated system of records.

### §261a.6 Board procedures for responding to request for access.

(a) *Compliance with Freedom of Information Act.* Every request made pursuant to §261a.5 of this part shall also be handled by the Board as a request for information pursuant to the Freedom of Information Act (5 U.S.C. 552), except that the time limits set forth in paragraph (b) of this section and the fees specified in §261a.4 of this part shall apply to such requests.

(b) *Time limits.* Every request made pursuant to §261a.5 of this part shall be acknowledged or, where practicable, substantially responded to within 10 business days from receipt of the request.

(c) *Disclosure.* (1) Information to be disclosed pursuant to this part and the Privacy Act, except for information maintained by the Board's OIG, shall be made available for inspection and copying during regular business hours at the Board's Freedom of Information Office.

(2) Information to be disclosed that is maintained by the Board's OIG shall be made available for inspection and copying at the OIG.

(3) When the requested record cannot reasonably be put into a form for individual inspection (e.g., computer tapes), or when the requester asks that the information be forwarded, copies of such information shall be mailed to the requester.

(4) Access to or copies of requested information shall be promptly provided after the acknowledgement as provided in paragraph (b) of this section, unless good cause for delay is communicated to the requester.

(d) *Other authorized presence.* The requester of information may be accompanied in the inspection of that information by a person of the requester's own choosing upon the requester's submission of a written and signed statement authorizing the presence of such person.

(e) *Denial of request.* A denial of a request made pursuant to §261a.5 of this part shall include a statement of the reason(s) for denial and the procedures for appealing the denial.

### §261a.7 Special procedures for medical records.

Medical or psychological records requested pursuant to §261a.5 of this part shall be disclosed directly to the requester unless such disclosure could, in the judgment of the Privacy Officer, in

consultation with the Board's physician, have an adverse effect upon the requester. Upon such determination, the information shall be transmitted to a licensed physician named by the requester, who will disclose those records to the requester in a manner the physician deems appropriate.

### § 261a.8 Request for amendment of record.

(a) *Procedures for making request.* (1) An individual desiring to amend a record in a designated system of records that pertains to him or her shall submit a request in writing to the Secretary of the Board (or to the Inspector General for records in a system of records maintained by the OIG) in an envelope clearly marked ''Privacy Act Amendment Request.''

(2) Each request for amendment of a record shall:

(i) Identify the system of records containing the record for which amendment is requested;

(ii) Specify the portion of that record requested to be amended; and

(iii) Describe the nature of and reasons for each requested amendment.

(3) Each request for amendment of a record shall be subject to verification of identity under the procedures set forth in §261a.5(c) of this part, unless such verification has already been made in a related request for access or amendment.

(b) *Burden of proof.* The request for amendment of a record shall set forth the reasons the individual believes the record is not accurate, relevant, timely, or complete. The burden of proof for demonstrating the appropriateness of the requested amendment rests with the requester, and the requester shall provide relevant and convincing evidence in support of the request.

### § 261a.9 Board review of request for amendment of record.

(a) *Time limits.* The Board shall acknowledge a request for amendment of a record within 10 business days of receipt of the request. Such acknowledgement may request additional information necessary for a determination on the request for amendment. To the extent possible, a determination upon a request to amend a record shall be made within 10 business days after receipt of the request.

(b) *Contents of response to request for amendment.* The response to a request for amendment shall include the following:

(1) The decision to grant or deny, in whole or in part, the request for amendment; and

(2) If the request is denied:

(i) The reasons for denial of any portion of the request for amendment;

(ii) The requester's right to appeal any denial; and

(iii) The procedures for appealing the denial to the appropriate official.

### § 261a.10 Appeal of adverse determination of request for access or amendment.

(a) *Appeal.* A requester may appeal a denial of a request made pursuant to §261a.5 or §261a.8 of this part to the Board, or any official designated by the chairman of the Board, within 10 business days of issuance of notification of denial. The appeal shall:

(1) Be made in writing to the Secretary of the Board, with the words ''PRIVACY ACT APPEAL'' written prominently on the first page;

(2) Specify the previous background of the request; and

(3) Provide reasons why the initial denial is believed to be in error.

(b) *Determination.* The Board or an official designated by the Chairman of the Board shall make a determination with respect to such appeal not later than 30 business days from its receipt, unless the time is extended for good cause shown.

(1) If the Board or designated official grants an appeal regarding a request for amendment, the Board shall take the necessary steps to amend the record, and, when appropriate and possible, notify prior recipients of the record of the Board's action.

(2) If the Board or designated official denies an appeal, the Board shall inform the requester of such determination, give a statement of the reasons therefor, and inform the requester of the right of judicial review of the determination.

(c) *Statement of disagreement.* (1) Upon receipt of a denial of an appeal regarding a request for amendment, the requester may file a concise statement of disagreement with the denial. Such statement shall be maintained with the record the requester sought to amend, and any disclosure of the record shall include a copy of the statement of disagreement.

(2) When practicable and appropriate, the Board shall provide a copy of the statement of disagreement to any person or other agency to whom the record was previously disclosed.

## Subpart C—Disclosure to Person Other Than Individual to Whom Record Pertains

### §261a.11 Restrictions on disclosure.

No record contained in a designated system of records shall be disclosed to any person or agency without the prior written consent of the individual to whom the record pertains unless the disclosure is authorized by §261a.12 of this part.

### §261a.12 Exceptions.

The restrictions on disclosure in §261a.11 of this part do not apply to any disclosure:

(a) To those officers and employees of the Board who have a need for the record in the performance of their duties;

(b) That is required under the Freedom of Information Act (5 U.S.C. 552);

(c) For a routine use listed with respect to a designated system of records;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(e) To a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

## Subpart D—Exempt Records

### §261a.13 Exemptions.

(a) *Information compiled for civil action.* Nothing in this regulation shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) *Law enforcement information.* Pursuant to section (k)(2) of the Privacy Act of 1974 (5 U.S.C. 552a(k)(2)), the Board has deemed it necessary to exempt certain designated systems of records maintained by the Board from the requirements of the Privacy Act concerning access to accountings of disclosures and to records, maintenance of only relevant and necessary information in files, and certain publication provisions, respectively, 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f), and §§261a.5, 261a.7 and

261a.8 of this part. Accordingly, the following designated systems of records are exempt from these provisions, but only to the extent that they contain investigatory materials compiled for law enforcement purposes:

(1) BGFRS–1 Recruiting and Placement Records.

(2) BGFRS–2 Personnel Background Investigation Reports.

(3) BGFRS–4 General Personnel Records.

(4) BGFRS–5 EEO Discrimination Complaint File.

(5) BGFRS–9 Consultant and Staff Associate File.

(6) BGFRS–18 Consumer Complaint Information System.

(7) BGFRS–21 Supervisory Tracking and Reference System.

(8) BGFRS/OIG–1 OIG Investigatory Records.

(9) BGFRS–31 Protective Information System.

(10) BGFRS—32 Visitor Log.

(c) *Confidential references.* Pursuant to section (k)(5) of the Privacy Act of 1974 (5 U.S.C. 552a(k)(5)), the Board has deemed it necessary to exempt certain designated systems of records maintained by the Board from the requirements of the Privacy Act concerning access to accountings of disclosures and to records, maintenance of only relevant and necessary information in files, and certain publication provisions, respectively 5 U.S.C. 552a(c)b(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f), and §§ 261a.5, 261a.7 and 261a.8 of this part. Accordingly, the following systems of records are exempt from these provisions, but only to the extent that they contain investigatory material compiled to determine an individual's suitability, eligibility, and qualifications for Board employment or access to classified information, and the disclosure of such material would reveal the identity of a source who furnished information to the Board under a promise of confidentiality.

(1) BGFRS–1 Recruiting and Placement Records.

(2) BGFRS–2 Personnel Background Investigation Reports.

(3) BGFRS–4 General Personnel Records.

(4) BGFRS–9 Consultant and Staff Associate File.

(5) BGFRS–10 General File on Board Members.

(6) BGFRS–11 Official General Files.

(7) BGFRS–13 General File of Examiners and Assistant Examiners at Federal Reserve Banks.

(8) BGFRS–14 General File of Federal Reserve Bank and Branch Directors.

(9) BGFRS–15 General Files of Federal Reserve Agents, Alternates and Representatives at Federal Reserve Banks.

(10) BGFRS/OIG–2 OIG Personnel Records.

(11) BGFRS–25 Multi-rater Feedback Records.

(d) *Criminal law enforcement information.* Pursuant to 5 U.S.C. 552a(j)(2), the Board has determined that portions of the OIG Investigatory Records (BGFRS/OIG–1) shall be exempt from any part of the Privacy Act (5 U.S.C. 552a), except the provisions regarding disclosure, the requirement to keep an accounting, certain publication requirements, certain requirements regarding the proper maintenance of systems of records, and the criminal penalties for violation of the Privacy Act, respectively, 5 U.S.C. 552a (b), (c)(1), and (2), (e)(4) (A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), (e)(11) and (i). This designated system of records is maintained by the OIG, a Board component that performs as its principal function an activity pertaining to the enforcement of criminal laws. The exempt portions of the records consist of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

[60 FR 3341, Jan. 17, 1995, as amended at 65 FR 34392, May 30, 2000; 66 FR 19718, Apr. 17, 2001; 66 FR 20863, Apr. 25, 2001; 67 FR 44526, July 3, 2002]