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(3) The appeal shall be filed within 10 working days of the date on which the denial was issued, or the date on which documents in partial response to the request were transmitted to the requester, whichever is later. The Board may consider an untimely appeal if:

(i) It is accompanied by a written request for leave to file an untimely appeal; and

(ii) The Board determines, in its discretion and for good and substantial cause shown, that the appeal should be considered.

(4) The Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Freedom of Information Office, and the determination letter shall notify the appealing party of the right to seek judicial review.

(5) The Secretary may reconsider a denial being appealed if intervening circumstances or additional facts not known at the time of the denial come to the attention of the Secretary while an appeal is pending.

§ 261.14 Exemptions from disclosure.

(a) *Types of records exempt from disclosure.* Pursuant to 5 U.S.C. 552(b), the following records of the Board are exempt from disclosure under this part:

(1) *National defense.* Any information that 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 the Executive Order.

(2) *Internal personnel rules and practices.* Any information related solely to the internal personnel rules and practices of the Board.

(3) *Statutory exemption.* Any information specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), if the 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) *Trade secrets; commercial or financial information.* 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) *Inter- or intra-agency memorandums.* Information contained in inter- or intra-agency memorandums or letters that would not be available by law to a party (other than an agency) in litigation with an agency, including, but not limited to:

(i) Memorandums;

(ii) Reports;

(iii) Other documents prepared by the staffs of the Board or Federal Reserve Banks; and

(iv) Records of deliberations of the Board and of discussions at meetings of the Board, any Board committee, or Board staff, that are not subject to 5 U.S.C. 552b (the Government in the Sunshine Act).

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

(7) *Information compiled for law enforcement purposes.* Any records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7); including information relating to administrative enforcement proceedings of the Board.

(8) *Examination, inspection, operating, or condition reports, and confidential supervisory information.* Any matter that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, including a state financial institution supervisory agency.

(b) *Segregation of nonexempt information.* The Board shall provide any reasonably segregable portion of a record that is requested after deleting those portions that are exempt under this section.

(c) *Discretionary release.* (1) Except where disclosure is expressly prohibited by statute, regulation, or order, the Board may release records that are exempt from mandatory disclosure whenever the Board or designated Board members, the Secretary of the Board, the General Counsel of the Board, the Director of the Division of Banking Supervision and Regulation,

or the appropriate Federal Reserve Bank, acting pursuant to this part or 12 CFR part 265, determines that such disclosure would be in the public interest.

(2) The Board may make any exempt information furnished in connection with an application for Board approval of a transaction available to the public in accordance with § 261.12, and without prior notice and to the extent it deems necessary, may comment on such information in any opinion or statement issued to the public in connection with a Board action to which such information pertains.

(d) *Delayed release.* Publication in the FEDERAL REGISTER or availability to the public of certain information may be delayed if immediate disclosure would likely:

(1) Interfere with accomplishing the objectives of the Board in the discharge of its statutory functions;

(2) Interfere with the orderly conduct of the foreign affairs of the United States;

(3) Permit speculators or others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;

(4) Result in unnecessary or unwarranted disturbances in the securities markets;

(5) Interfere with the orderly execution of the objectives or policies of other government agencies; or

(6) Impair the ability to negotiate any contract or otherwise harm the commercial or financial interest of the United States, the Board, any Federal Reserve Bank, or any department or agency of the United States.

(e) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Board or any Federal Reserve Bank shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board or Reserve Bank officers, employees, or agents properly entitled to such information for the performance of official duties).

§ 261.15 Request for confidential treatment.

(a) *Submission of request.* Any submitter of information to the Board who desires confidential treatment pursuant to 5 U.S.C. 552(b)(4) and § 261.14 (a)(4) shall file a request for confidential treatment with the Board (or in the case of documents filed with a Federal Reserve Bank, with that Federal Reserve Bank) at the time the information is submitted or a reasonable time after submission.

(b) *Form of request.* Each request for confidential treatment shall state in reasonable detail the facts supporting the request and its legal justification. Conclusory statements that release of the information would cause competitive harm generally will not be considered sufficient to justify confidential treatment.

(c) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated *CONFIDENTIAL* in the submission and separated from information for which confidential treatment is not requested. Failure to segregate confidential information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(d) *Exceptions.* This section does not apply to:

(1) Data collected on forms that are approved pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and are deemed confidential by the Board. Any such form deemed confidential by the Board shall so indicate on the face of the form or in its instructions. The data may, however, be disclosed in aggregate form in such a manner that individual company data is not disclosed or derivable.

(2) Any comments submitted by a member of the public on applications and regulatory proposals being considered by the Board, unless the Board or the Secretary determines that confidential treatment is warranted.

(3) A determination by the Board to comment upon information submitted to the Board in any opinion or statement issued to the public as described in § 261.14(c).

(e) *Special procedures.* The Board may establish special procedures for particular documents, filings, or types of information by express provisions in this part or by instructions on particular forms that are approved by the