

Federal Reserve System

§ 261.14

(c) In responding to a request, the Board will withhold information under this section only if—

(1) The Board reasonably foresees that disclosure would harm an interest protected by an exemption described in § 261.15(a); or

(2) Disclosure is prohibited by law.

(d) The Board will take reasonable steps necessary to segregate and release nonexempt information.

(e) The Board will notify the requester of:

(1) The Board's determination of the request;

(2) The reasons for the determination;

(3) An estimate of the amount of information withheld, if any. An estimate is not required if the amount of information is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(4) The right of the requester to seek assistance from the Board's FOIA Public Liaison; and

(5) When an adverse determination is made, the Board will advise the requester in writing of that determination and will further advise the requester of:

(i) The right of the requester to appeal any adverse determination within 90 calendar days after the date of the determination as specified in § 261.14;

(ii) The right of the requester to seek dispute resolution services from the Board's FOIA Public Liaison or the Office of Government Information Services; and

(iii) The name and title or position of the person responsible for the adverse determination.

(f) Adverse determinations, or denials of requests, include decisions that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or

fee waiver matters or denials of requests for expedited treatment.

(g) The Board will normally send responsive, nonexempt documents to the requester by email but may use other means as arranged between the Board and the requester or as determined by the Board. The Board will attempt to provide records in the format requested by the requester.

§ 261.14 Appeals.

(a) *Appeal of adverse determination.* If the Board makes an adverse determination as defined in § 261.13(f), the requester may file a written appeal with the Board, as follows:

(1) The appeal should prominently display the phrase FREEDOM OF INFORMATION ACT APPEAL on the first page, and should be sent directly to FOIA-Appeals@frb.gov or, if sent by mail, addressed to the Office of the Secretary, Board of Governors of the Federal Reserve System, Attn: FOIA Appeals, 20th Street & Constitution Avenue NW, Washington, DC 20551; or sent by facsimile to the Office of the Secretary, (202) 872-7565. If the requester is appealing the denial of expedited treatment, the appeal should clearly be labeled "Appeal for Expedited Processing."

(2) A request for records under § 261.11 may not be combined in the same letter with an appeal.

(3) To be considered timely, an appeal must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the adverse determination.

(b) Except as provided in § 261.12(c)(3), the Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Office of the Secretary. If an adverse determination is upheld on appeal, in whole or in part, the determination letter shall notify the appealing party of the right to seek judicial review and of the availability of dispute resolution services from the Office of Government Information Services as a nonexclusive alternative to litigation.

(c) The Board may reconsider an adverse determination, including one on appeal, if intervening circumstances or additional facts not known at the time

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of the adverse determination come to the attention of the Board.

§ 261.15 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) 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) Any information related solely to the internal personnel rules and practices of the Board.

(3) Any information specifically exempted from disclosure by statute to the extent required by 5 U.S.C. 552(b)(3).

(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) Inter- or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the Board, provided that the deliberative process privilege shall not apply to records that were created 25 years or more before the date on which the records were requested.

(6) 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) Any records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7).

(8) 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) *Release of nonpublic information.*

(1) The Board may make any nonpublic information furnished in connection with an application for Board approval of a transaction available to the public in response to a request in accordance

with § 261.11, and may, without prior notice and to the extent it deems necessary, comment on such information in any opinion or statement issued to the public in connection with a Board action to which such information pertains.

(2) The fact that the Board has determined to release particular nonpublic information does not waive the Board's ability to withhold similar nonpublic information in response to the same or a different request.

(3) 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, or the General Counsel determines that such disclosure would be in the public interest. The Board will provide predisclosure notice to submitters of confidential information in accordance with § 261.18(b)(1). Confidential supervisory information may only be released as set forth in subpart C.

(c) *Delayed release.* Except as required by law, 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 Reserve Bank, or any department or agency of the United States.

§ 261.16 Fee schedules; waiver of fees.

(a) *Fee schedules.* Consistent with the limitations set forth in 5 U.S.C. 552(a)(4)(A)(viii), the fees applicable to