

§ 261.18 Process for addressing a submitter's request for confidential treatment.

(a) *Resolving requests for confidential treatment.* In general, a request by a submitter for confidential treatment of any information shall be considered in connection with a request for access to that information. At its discretion, the Board may act on a request for confidentiality prior to any request for access to the documents.

(b) *Notice to the submitter.* (1) When the Board receives a FOIA request for information for which a submitter has requested confidential treatment, the Board shall promptly provide written notice of the request to the submitter if the Board determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under 5 U.S.C. 552(b)(4) or (b)(6); and

(ii) The Board has reason to believe that the requested information may be protected from disclosure, but has not yet determined whether the information may be protected from disclosure.

(2) Where a submitter has not requested confidential treatment but the Board reasonably believes the requested information may be protected from disclosure under 5 U.S.C. 552(b)(4) or (b)(6), the Board may notify a submitter of the receipt of a request for access to that information and provide the submitter an opportunity to respond.

(3) The notice given to the submitter shall:

(i) Describe the information that has been requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, the Board may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications; and

(ii) Give the submitter a reasonable opportunity, not to exceed 10 working days from the date of notice, to submit written objections to disclosure of the information.

(c) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(1) The Board determines that the information is exempt under the FOIA and, therefore, will not be disclosed;

(2) The requested information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute (other than 5 U.S.C. 552) or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The submitter's claim of confidentiality appears obviously frivolous or has already been denied by the Board. In such case, the Board shall give the submitter written notice of the determination to disclose the information at least five working days prior to disclosure.

(d) *Notice to requester.* The requester shall be notified whenever:

(1) The submitter is provided with notice and an opportunity to object to disclosure under paragraph (b) of this section;

(2) The submitter is notified of the Board's intention to disclose the requested information; or

(3) The submitter files a lawsuit to prevent the disclosure of information.

(e) *Written objections by submitter.* (1) Upon receipt of the notice referenced in paragraph (b) of this section, a submitter that has any objections to disclosure should provide a detailed written statement that specifies all grounds for withholding the particular information under any exemption identified in § 261.15(a). A submitter relying on § 261.15(a)(4) as the basis for non-disclosure must explain why the information constitutes a trade secret or commercial or financial information that is confidential and must explain the consequences of disclosure of the information.

(2) A submitter who fails to respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. The Board is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart, including a

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written request for confidential treatment, may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* The Board's determination to disclose any information for which confidential treatment has been requested shall be communicated to the submitter immediately. If the Board determines to disclose the information and the submitter has objected to such disclosure pursuant to paragraph (e) of this section, the Board shall provide the submitter with the reasons for disclosure and shall delay disclosure for 10 working days from the date of the determination.

(g) *Notice of lawsuit.* The Board shall promptly notify any submitter of information covered by this section of the filing of any legal action against the Board to compel disclosure of such information.

Subpart C—Nonpublic Information Made Available to Supervised Financial Institutions, Governmental Agencies, and Others in Certain Circumstances

§ 261.20 General.

(a) All confidential supervisory information and other nonpublic information, including but not limited to information made available under this subpart, remains the property of the Board, and except as otherwise provided in this regulation, no person, entity, agency, or authority to whom the information is made available or who otherwise possesses the information, including any officer, director, employee, or agent thereof, may use any such information for an unauthorized purpose or disclose any such information without the prior written permission of the General Counsel.

(b) The disclosure of confidential supervisory information or other nonpublic information in accordance with this subpart shall not constitute a waiver by the Board of any applicable privileges.

(c) Nothing in this subpart shall be construed to limit or restrict the authority of the Board to impose any additional conditions or limitations on the use and disclosure of confidential supervisory information or other non-

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public information. Further, nothing in this subpart shall be construed to limit or restrict the authority of the Board to make discretionary disclosures of confidential supervisory information or other nonpublic information in addition to the disclosures expressly provided for in this subpart.

§ 261.21 Confidential supervisory information made available to supervised financial institutions.

(a) *Disclosure of confidential supervisory information to supervised financial institutions.* The Board or the appropriate Reserve Bank may disclose confidential supervisory information concerning a supervised financial institution to that supervised financial institution.

(b) *Disclosure of confidential supervisory information by supervised financial institutions—*(1) *General.* Any supervised financial institution lawfully in possession of confidential supervisory information pursuant to this section may when necessary or appropriate for business purposes disclose such information to its directors, officers, or employees, and to the directors, officers, or employees of its affiliates.

(2) *Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Bureau of Consumer Financial Protection, and State financial supervisory agencies.* Any supervised financial institution may, with the concurrence of the institution's central point of contact at the Reserve Bank, equivalent supervisory team leader, or other designated Reserve Bank employee (hereinafter, "Reserve Bank Point of Contact" or "Reserve Bank POC"), disclose confidential supervisory information about the institution that is contained in documents prepared by or for the institution for its own business purposes to the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Bureau of Consumer Financial Protection, and the State financial supervisory agency that supervises that institution when the Reserve Bank POC determines that the receiving agency has a legitimate supervisory or regulatory interest in the information. A Reserve Bank POC's action under this paragraph may require concurrence of