

## § 261.1

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

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

261.20 General.

261.21 Confidential supervisory information made available to supervised financial institutions.

261.22 Nonpublic information made available by the Board to governmental agencies and entities exercising governmental authority.

261.23 Other disclosure of confidential supervisory information.

261.24 Subpoenas, orders compelling production, and other process.

AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 248(i) and (k), 321 *et seq.*, 611 *et seq.*, 1442, 1467a, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o), 1821(t), 1830, 1844, 1951 *et seq.*, 2601, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uuu(b), 78q(c)(3); 29 U.S.C. 1204; 31 U.S.C. 5301 *et seq.*; 42 U.S.C. 3601; 44 U.S.C. 3510.

SOURCE: 85 FR 57627, Sept. 15, 2020, unless otherwise noted.

### **Subpart A—General**

#### **§ 261.1 Authority, purpose, and scope.**

(a) *Authority and purpose.* This part establishes mechanisms for carrying out the Board's statutory responsibilities relating to the disclosure, production, or withholding of information to facilitate the Board's interaction with financial institutions and the public. In this regard, the Board has determined that the Board or its delegees may disclose nonpublic information of the Board, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the Board's authorities, including but not limited to authority granted to the Board in the Freedom of Information Act, 5 U.S.C. 552, Federal Reserve Act, 12 U.S.C. 221 *et seq.*, the Bank Holding Company Act, 12 U.S.C. 1841 *et seq.*, the Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.*, and the International Banking Act, 12 U.S.C. 3101 *et seq.* The Board has determined that all such disclosures made in accordance with the rules and procedures specified in this part are authorized by law, and are, as applicable, disclosures

## 12 CFR Ch. II (1–1–23 Edition)

to proper persons pursuant to 12 U.S.C. 326. This part also sets forth the categories of information made available to the public, the procedures for obtaining information and records, the procedures for limited release of nonpublic information, and the procedures for protecting confidential business information.

(b) *Scope.* (1) This subpart A contains general provisions and definitions of terms used in this part.

(2) Subpart B implements the Freedom of Information Act (FOIA) (5 U.S.C. 552).

(3) Subpart C sets forth:

(i) The kinds of nonpublic information made available to supervised financial institutions, governmental agencies, and others in certain circumstances;

(ii) The procedures for disclosure; and

(iii) The procedures with respect to subpoenas, orders compelling production, and other process.

#### **§ 261.2 Definitions.**

For purposes of this part:

(a) *Affiliate* has the meaning given it in 12 CFR 225.2(a).

(b)(1) *Confidential supervisory information* means nonpublic information that is exempt from disclosure pursuant to 5 U.S.C. 552(b)(8) and includes information that is or was created or obtained in furtherance of the Board's supervisory, investigatory, or enforcement activities, including activities conducted by a Federal Reserve Bank (Reserve Bank) under delegated authority, relating to any supervised financial institution, and any information derived from or related to such information. Examples of confidential supervisory information include, without limitation, reports of examination, inspection, and visitation; confidential operating and condition reports; supervisory assessments; investigative requests for documents or other information; and supervisory correspondence or other supervisory communications. Additionally, any portion of a document in the possession of any person, entity, agency or authority, including a supervised financial institution, that contains or would reveal confidential supervisory information is confidential supervisory information.

## Federal Reserve System

## § 261.3

(2) *Confidential supervisory information* does not include:

(i) Documents prepared by or for a supervised financial institution for its own business purposes that are in its own possession and that do not include confidential supervisory information as defined in paragraph (b)(1) of this section, even though copies of such documents in the Board's or Reserve Bank's possession constitute confidential supervisory information; or

(ii) Final orders, amendments, or modifications of final orders, or other actions or documents that are specifically required to be published or made available to the public pursuant to 12 U.S.C. 1818(u), the Community Reinvestment Act, or other applicable law.

(c) *Nonpublic information* means information that has not been publicly disclosed by the Board and that is:

(1) Confidential supervisory information, or

(2) Exempt from disclosure under § 261.15(a).

(d)(1) *Records of the Board* or *Board records* means all recorded information, regardless of form or characteristics, that is created or obtained by the Board and is under the Board's control. A record is created or obtained by the Board if it is created or obtained by:

(i) Any Board member or any officer, employee, or contractor of the Board in the conduct of the Board's official duties, or

(ii) Any officer, director, employee, or contractor of any Reserve Bank and either constitutes confidential supervisory information as defined in paragraph (b)(1) of this section or is created or obtained in the performance of Board functions delegated to the Reserve Bank pursuant to 12 U.S.C. 248(k).

(2) *Records of the Board* do not include:

(i) Personal files or notes of Board members, employees, or contractors; extra copies of documents and library and museum materials kept solely for reference or exhibition purposes; or unaltered publications otherwise available to the public in Board publications, libraries, or established distribution systems;

(ii) Records located at Reserve Banks other than those records identified in paragraph (d)(1) of this section; or

(iii) Records that belong to or are otherwise under the control of another entity or agency despite the Board's possession.

(e)(1) *Search* means a reasonable search of such records of the Board as seem likely in the particular circumstances to contain information of the kind requested.

(2) As part of the Board's search for responsive records, the Board is not obligated to conduct any research, create any document, or modify an electronic program or automated information system.

(f) *Supervised financial institution* includes any institution that is supervised by the Board, including a bank; a bank holding company, intermediate holding company, or savings and loan holding company (including their non-depository subsidiaries); an Edge Act or agreement corporation; a U.S. branch or agency of a foreign bank; any company designated for Board supervision by the Financial Stability Oversight Council; or any other entity or service subject to examination by the Board.

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

### § 261.3 Custodian of records; certification; service; alternative authority.

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

(b) *Certification of record*. The Secretary may certify the authenticity of any Board record, or any copy of such record, for any purpose, and for or before any duly constituted Federal or State court, tribunal, or agency.

(c) *Service of subpoenas or other process*. Subpoenas or other judicial or administrative process demanding access to any Board records or making any claim against the Board or against Board members or staff in their official capacity shall be addressed to and served upon the Secretary of the Board at the Board's office at 20th Street and Constitution Avenue NW, Washington, DC 20551. The Board does not accept