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confidential supervisory information and other nonpublic information under this section, including information in the form of testimony and interviews from current or former Federal Reserve System staff. Properly accredited foreign law enforcement agencies and other foreign government agencies may also file written requests with the Board in accordance with this paragraph, except that provision of confidential supervisory information to foreign bank regulatory or supervisory authorities is governed by 12 CFR 211.27.

(1) *Contents of request.* To obtain access to confidential supervisory information or other nonpublic information under this section, including information in the possession of a person other than the Board, the requester shall address a letter request to the Board's General Counsel, specifying:

(i) The particular information, kinds of information, and where possible, the particular documents to which access is sought;

(ii) The reasons why such information cannot be obtained from the supervised financial institution in question or another source rather than from the Board;

(iii) A statement of the law enforcement purpose or other statutory purpose for which the information shall be used;

(iv) A commitment that the information requested shall not be disclosed to any person outside the requesting agency or entity without the written permission of the General Counsel; and

(v) If the document or information requested includes customer account information subject to the Right to Financial Privacy Act, as amended (12 U.S.C. 3401 *et seq.*), any Federal agency request must include a statement that such customer account information need not be provided, or a statement as to why the Act does not apply to the request, or a certification that the requesting Federal agency has complied with the requirements of the Act.

(2) *Action on request.* The General Counsel may approve the request upon determining that:

(i) The request complies with this section;

(ii) The information is needed in connection with a formal investigation or other official duties of the requesting agency or entity;

(iii) Satisfactory assurances of confidentiality have been given; and

(iv) Disclosure is consistent with the supervisory and regulatory responsibilities and policies of the Board.

(d) *Federal and State grand jury, criminal trial, and government administrative subpoenas.* The General Counsel shall review and may approve the disclosure of nonpublic information pursuant to Federal and State grand jury, criminal trial, and government administrative subpoenas.

(e) *Conditions or limitations; written agreements.* The General Counsel may impose any conditions or limitations on disclosure that the General Counsel determines to be necessary to effect the purposes of this regulation, including the protection of the confidentiality of the Board's information, or to ensure compliance with applicable laws or regulations. In addition, Board or Reserve Bank staff may make disclosures pursuant to any written agreement entered into by the Board when authorized by the express terms of such agreement or by the General Counsel.

§ 261.23 Other disclosure of confidential supervisory information.

(a) *Board policy.* (1) It is the Board's policy regarding confidential supervisory information that such information is confidential and privileged. Accordingly, the Board does not normally disclose confidential supervisory information to the public or authorize third parties in possession of confidential supervisory information to further use or disclose the information. When considering a request to access, use, or to disclose confidential supervisory information under this section, the Board will not authorize access, use, or disclosure unless the requesting person is able to show a substantial need to access, use, or disclose such information that outweighs the need to maintain confidentiality.

(2) Notwithstanding any other provision of this part, the Board will not authorize access to or disclosure of any suspicious activity report (SAR), or any information that would reveal the

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existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this part, “official duties” shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of nonpublic information or a request for use in a private legal proceeding, including a request pursuant to this section.

(b) *Requests in connection with litigation.* Except as provided in §§ 261.21 and 261.22:

(1) In connection with any proposed use of confidential supervisory information in litigation before a court, board, commission, agency, or arbitration, any person who—

(i) Seeks access to confidential supervisory information from the Board or a Reserve Bank (including the testimony of present or former Board or Reserve Bank employees on matters involving confidential supervisory information, whether by deposition or otherwise),

(ii) Seeks to use confidential supervisory information in its possession or to disclose such information to another party, or

(iii) Seeks to require a person to disclose confidential supervisory information to a party, shall file a written request with the General Counsel.

(2) The request shall include:

(i) The judicial or administrative action, including the case number and court or adjudicative body and a copy of the complaint or other pleading setting forth the assertions in the case;

(ii) A description of any prior judicial or other decisions or pending motions in the case that may bear on the asserted relevance of the requested information;

(iii) A narrow and specific description of the confidential supervisory information the requester seeks to access or to disclose for use in the litigation including, whenever possible, the specific documents the requester seeks to access or disclose;

(iv) The relevance of the confidential supervisory information to the issues or matters raised by the litigation;

(v) The reason why the information sought, or equivalent information ade-

quate to the needs of the case, cannot be obtained from any other source; and

(vi) A commitment to obtain a protective order acceptable to the Board from the judicial or administrative tribunal hearing the action preserving the confidentiality of any information that is provided.

(3) In the case of requests covered by paragraph (b)(1)(ii) of this section, the Board may require the party to whom disclosure would ultimately be made to substantiate its need for the information prior to acting on any request.

(c) *All other requests.* Any other person seeking to access, use, or disclose confidential supervisory information for any other purpose shall file a written request with the General Counsel. A request under this paragraph (c) shall describe the purpose for which access, use, or disclosure is sought and the requester shall provide other information as requested by the General Counsel.

(d) *Action on request—(1) Determination of approval.* The General Counsel may approve a request made under this section provided that he or she determines that:

(i) The person seeking access, or the person to whom access would be provided, has shown a substantial need to access confidential supervisory information that outweighs the need to maintain confidentiality; and

(ii) Approval is consistent with the supervisory and regulatory responsibilities and policies of the Board.

(2) *Conditions or limitations.* The General Counsel may, in approving a request, impose such conditions or limitations on use of any information disclosed as is deemed necessary to protect the confidentiality of the Board’s information.

(e) *Exhaustion of administrative remedies for discovery purposes in civil, criminal, or administrative action.* Action on a request under this section by the General Counsel is necessary in order to exhaust administrative remedies for discovery purposes in any civil, criminal, or administrative proceeding. A request made pursuant to § 261.11 of this regulation does not exhaust administrative remedies for discovery purposes. Therefore, it is not necessary to

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file a request pursuant to § 261.11 to exhaust administrative remedies under this section.

§ 261.24 Subpoenas, orders compelling production, and other process.

(a) *Advice by person served.* Any person (including any officer, employee, or agent of the Board or any Reserve Bank) who is served with a subpoena, order, or other judicial or administrative process requiring the production of confidential supervisory information or other nonpublic information of the Board or requiring the person's testimony regarding such Board information in any proceeding, shall:

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

(2) Inform the entity issuing the process of the substance of these rules and, in particular, of the obligation to follow the request procedures in § 261.23(b); and

(3) At the appropriate time inform the court or tribunal that issued the process of the substance of these rules.

(b) *Appearance by person served.* Unless authorized by the Board or as ordered by a Federal court in a judicial proceeding in which the Board has had the opportunity to appear and oppose discovery, any person who is required to respond to a subpoena or other legal process concerning Board confidential supervisory information or other nonpublic Board information shall attend at the time and place required and respectfully 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.

(c) *Civil requests for production.* A litigant or non-party who is served with a civil request for production of documents calling for production of con-

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fidential supervisory information should proceed under § 261.23 rather than this section.

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

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

SOURCE: 75 FR 63704, Oct. 18, 2010, 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 and scope.* This part implements the provisions of the Privacy Act of 1974 with regard to the maintenance, protection, disclosure, and amendment of records contained within systems of records maintained by the Board. It sets forth the procedures for requests for access to, or amendment of, records concerning individuals that are contained in systems of records maintained by the Board.