

provide meaningful and clear feedback to model developers and users.

(b) In addition, the Model Validation Council, a council of external academic experts, provides independent advice on the Federal Reserve's process to assess models used in the supervisory stress test. In biannual meetings with Federal Reserve officials, members of the council discuss selective supervisory models, after being provided with detailed model documentation for and non-public information about those models. The documentation and discussions enable the council to assess the effectiveness of the models used in the supervisory stress tests and of the overarching model validation program.

3.2. Technical Competence of Validation Staff

(a) The model validation program is designed to provide thorough, high-quality reviews that are consistent across supervisory models.

(b) First, the model validation program employs technically expert staff with knowledge across model types. Second, reviews for every supervisory model follow the same set of review guidelines, and take place on an ongoing basis. The model validation program is comprehensive, in the sense that validators assess all models currently in use, expand the scope of validation beyond basic model use, and cover both model soundness and performance.

(c) The model validation program covers three main areas of validation: (1) Conceptual soundness; (2) ongoing monitoring; and (3) outcomes analysis. Validation staff evaluates all aspects of model development, implementation, and use, including but not limited to theory, design, methodology, input data, testing, performance, documentation standards, implementation controls (including access and change controls), and code verification.

3.3. Stature of Validation Function

(a) The validation program informs the Board of Governors about the state of model risk in the overall stress testing program, along with ongoing practices to control and mitigate model risk.

(b) The model validation program communicates its findings and recommendations regarding model risk to relevant parties within the Federal Reserve System. Validators provide detailed feedback to model developers and provide thematic feedback or observations on the overall system of models to the management of the modeling teams. Model validation feedback is also communicated to the users of supervisory model output for use in their deliberations and decisions about supervisory stress testing. In addition, the Director of the Division of Supervision and Regulation approves all models used in the

supervisory stress test in advance of each exercise, based on validators' recommendations, development responses, and suggestions for risk mitigants. In several cases, models have been modified or implemented differently based on validators' feedback. The Model Validation Council also contributes to the stature of the Federal Reserve's validation program, by providing an external point of view on modifications to supervisory models and on validation program governance.

3.4. Simple approach for projecting risk-weighted assets

(a) In projecting risk-weighted assets, the Federal Reserve will generally assume that a covered company's risk-weighted assets remain unchanged over the planning horizon. This assumption allows the Federal Reserve to independently project the risk-weighted assets of covered companies in line with the goal of simplicity (Principle 1.4). In addition, this approach is forward-looking (Principle 1.2), as this assumption removes reliance on historical data and past outcomes from the projection of risk-weighted assets.

(b) In projecting a firm's risk-weighted assets, the Federal Reserve will account for the effect of changes associated with the calculation of regulatory capital or changes to the Board's regulations in the calculation of risk-weighted assets.

[84 FR 6668, Feb. 28, 2019, as amended at 85 FR 15605, Mar. 18, 2020; 86 FR 7949, Feb. 3, 2021]

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

Subpart A—General

Sec.

261.1 Authority, purpose, and scope.

261.2 Definitions.

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

261.4 Prohibition against disclosure.

Subpart B—Published Information and Records Available to Public; Procedures for Requests

261.10 Published information.

261.11 Records available to the public upon request.

261.12 Processing requests.

261.13 Responses to requests.

261.14 Appeals.

261.15 Exemptions from disclosure.

261.16 Fee schedules; waiver of fees.

261.17 Request for confidential treatment.

§ 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

§ 261.4

12 CFR Ch. II (1–1–23 Edition)

service of process on behalf of any employee in respect of purely private legal disputes.

(d) *Alternative authority.* Any action or determination required or permitted by this part to be done by the Board, the Secretary, the General Counsel, the Director of any Division, or any Reserve Bank, may be done by any employee who has been duly authorized or designated for this purpose by the Board, the Secretary, the General Counsel, the appropriate Director, or the appropriate Reserve Bank, respectively.

§ 261.4 Prohibition against disclosure.

Except as provided in this part or as otherwise authorized, no officer, employee, or agent of the Board or any Reserve Bank shall disclose or permit the disclosure of any nonpublic 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.

Subpart B—Published Information and Records Available to Public; Procedures for Requests

§ 261.10 Published information.

(a) **FEDERAL REGISTER.** The Board publishes in the FEDERAL REGISTER for the guidance of the public:

(1) Descriptions of the Board's central and field organization;

(2) Statements of the general course and method by which the Board's functions are channeled and determined, including the nature and requirements of procedures;

(3) Rules of procedure, descriptions of forms available and the place where they may be obtained, and instructions on the scope and contents of all papers, reports, and examinations;

(4) Substantive rules, interpretations of general applicability, and statements of general policy;

(5) Every amendment, revision, or repeal of the foregoing in paragraphs (a)(1) through (4) of this section; and

(6) Other notices as required by law.

(b) *Publications.* The Board maintains a list of publications on its website (at

www.federalreserve.gov/publications).

Most publications issued by the Board, including available back issues, may be downloaded from the website; some may be obtained through an order form located on the website (at www.federalreserve.gov/files/orderform.pdf) or by contacting Board Printing & Fulfillment, Federal Reserve Board, Washington, DC 20551. Subscription or other charges may apply for some publications.

(c) *Publicly available information*—(1) *Electronic reading room.* The Board makes the following records available in its electronic reading room, <http://www.federalreserve.gov/foia/readingrooms.htm#rr1>.

(i) Final opinions, including concurring and dissenting opinions, as well as final orders and written agreements, made in the adjudication of cases;

(ii) Statements of policy and interpretations adopted by the Board that are not published in the FEDERAL REGISTER;

(iii) Administrative staff manuals and instructions to staff that affect the public;

(iv) Copies of all records, regardless of form or format—

(A) That have been released to any person under § 261.11; and

(B)(1) That because of the nature of their subject matter, the Board has determined have become or are likely to become the subject of subsequent requests for substantially the same records; or

(2) That have been requested three or more times;

(v) A general index of the records referred to in paragraph (c)(1)(iv) of this section; and

(vi) The public section of Community Reinvestment Act examination reports.

(2) *Inspection in electronic format at Reserve Banks.* The Board may determine that certain classes of publicly available filings shall be made available for inspection in electronic format only at the Reserve Bank where those records are filed.

(3) *Privacy protection.* The Board may delete identifying details from any public record to prevent a clearly unwarranted invasion of personal privacy.

Federal Reserve System

§ 261.12

§ 261.11 Records available to the public upon request.

(a) *Procedures for requesting records.*

(1) Requesters are encouraged to submit requests electronically by filling out the required information at <https://www.federalreserve.gov/secure/forms/efoiaform.aspx>. Alternatively, requests may be submitted in writing to the Office of the Secretary, Board of Governors of the Federal Reserve System, Attn: FOIA Requests, 20th Street and Constitution Avenue NW, Washington, DC 20551; or sent by facsimile to the Office of the Secretary, (202) 872-7565. Clearly mark the request FREEDOM OF INFORMATION ACT REQUEST.

(2) A request may not be combined with any other request or with any matter presented to the Board such as a protest on a pending application or a comment on a public rulemaking. It may, however, be combined with a request for records under the Privacy Act pursuant to 12 CFR 261a.5(a) or a request for discretionary release of confidential supervisory information pursuant to § 261.23.

(b) *Contents of request.* A request must include:

(1) The requester's name, address, daytime telephone number, and an email address if available.

(2) A description of the records that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations. Whenever possible, the request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record.

(3) A statement agreeing to pay the applicable fees. If the information requested is not intended for a commercial use (as defined in § 261.16(d)(1)) and the requester seeks a reduction or waiver of fees because he or she is either a representative of the news media, an educational institution, or a noncommercial scientific institution, the requester should include the information called for in § 261.16(g)(2).

(c) *Perfected and defective requests.* (1) The Board will consider the request to be perfected on the date the Office of the Secretary receives a request that

contains all of the information required by paragraphs (b)(1) through (3) of this section.

(2) The Board need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this section.

(3) The Board may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

§ 261.12 Processing requests.

(a) *Receipt of requests.* Upon receipt of any request that satisfies the requirements set forth in § 261.11, the Office of the Secretary shall assign the request to the appropriate processing schedule, pursuant to paragraph (b) of this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency or by a Reserve Bank, is the date the Office of the Secretary actually receives the request.

(b) *Multitrack processing.* (1) The Board provides different levels of processing for categories of requests under this section.

(i) Requests for records that are readily identifiable by the Office of the Secretary and that have already been cleared for public release or can easily be cleared for public release may qualify for simple processing.

(ii) All other requests shall be handled under normal processing procedures, unless expedited processing has been granted pursuant to paragraph (c) of this section.

(2) The Office of the Secretary will make the determination whether a request qualifies for simple processing. A requester may contact the Office of the Secretary to learn whether a particular request has been assigned to simple processing. If the request has not qualified for simple processing, the requester may limit the scope of the request in order to qualify for simple processing by contacting the Office of the Secretary in writing, by letter or email, or by telephone.

(c) *Expedited processing.* (1) A request for expedited processing may be made at any time. A request for expedited

§ 261.13

12 CFR Ch. II (1–1–23 Edition)

processing must be clearly labeled “Expedited Processing Requested.” The Board will process requests and appeals on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (c)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester’s sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public’s right to know about Federal Government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an “urgency to inform” the public on the topic. As a matter of administrative discretion, the Board may waive the formal certification requirement.

(3) Within 10 calendar days of receipt of a request for expedited processing, the Board will notify the requester of its decision on the request. A denial of expedited processing may be appealed to the Board in accordance with § 261.14. The Board will respond to the appeal within 10 working days of receipt of the appeal.

(d) *Priority of responses.* The Office of the Secretary will normally process requests in the order they are received in the separate processing tracks, except when expedited processing is granted in which case the request will be processed as soon as practicable.

(e) *Time limits.* The time for response to requests shall be 20 working days from when a request is perfected. Exceptions to the 20-day time limit are only as follows:

(1) In the case of expedited treatment under paragraph (c) of this section, the Board shall give the expedited request priority over non-expedited requests and shall process the expedited request as soon as practicable.

(2) Where the running of such time is suspended for a requester to address fee requirements pursuant to § 261.16(c)(1) or (2).

(3) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B), the Board may—

(i) Extend the 20-day time limit for a period of time not to exceed 10 working days, where the Board has provided written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; and

(ii) Extend the 20-day time limit for a period of more than 10 working days where the Board has provided the requester with an opportunity to modify the scope of the FOIA request so that it can be processed within that time frame or with an opportunity to arrange an alternative time frame for processing the original request or a modified request, and has notified the requester that the Board’s FOIA Public Liaison is available to assist the requester for this purpose and in the resolution of any disputes between the requester and the Board and of the requester’s right to seek dispute resolution services from the Office of Government Information Services.

§ 261.13 Responses to requests.

(a) When the Board receives a perfected request, it will conduct a reasonable search of Board records in its possession on the date the Board’s search begins and will review any responsive information it locates.

(b) If a request covers documents that were created by, obtained from, or classified by another agency, the Board may refer the request for such documents to that agency for a response and inform the requester promptly of the referral.

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

§ 261.15

12 CFR Ch. II (1–1–23 Edition)

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

Federal Reserve System

§ 261.16

a request for records pursuant to § 261.11 are set forth in table 1 to this section. These fees cover only the full allowable direct costs of search, duplication, and review. No fees will be charged where the average cost of collecting the fee (calculated at \$5.00) exceeds the amount of the fee.

(b) *For purposes of computing fees.* (1) Search time includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity is distinct from “review” of material to determine whether the material is exempt from disclosure.

(2) Direct costs mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating records in response to a request made under § 261.11, as shown in table 1 to this section.

(3) Duplication refers to the process of making a copy, in any format, of a document.

(4) Review refers to the process of examining documents that have been located as being potentially responsive to a request for records to determine whether any portion of a document is exempt from disclosure. It includes doing all that is necessary to prepare the documents for release, including the redaction of exempt information. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Payment procedures.* The Board may assume that a person requesting records pursuant to § 261.11 will pay the applicable fees, unless the request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (g) of this section.

(1) *Advance notification of fees.* If the estimated charges are likely to exceed the amount authorized by the requester, the Office of the Secretary shall notify the requester of the estimated amount. Upon receipt of such notice, the requester may confer with the Office of the Secretary to reformulate the request to lower the costs or may authorize a higher amount. The time period for responding to requests under § 261.12(e) and the processing of the request will be suspended until the

requester agrees in writing to pay the applicable fees.

(2) *Advance payment.* The Board may require advance payment of any fee estimated to exceed \$250. The Board may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. The time period for responding to a request under § 261.12(e) and the processing of the request will be suspended until the Office of the Secretary receives the required payment.

(3) *Late charges.* The Board may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717 and accrues from the date of the billing.

(d) *Categories of uses.* The fees assessed depend upon the intended use for the records requested. In determining which category is appropriate, the Board will look to the intended use set forth in the request for records. Where a requester’s description of the use is insufficient to make a determination, the Board may seek additional clarification before categorizing the request.

(1) A *commercial use requester* is one who requests records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation.

(2) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience, including organizations that disseminate solely on the internet. The term “news” means information that is about current events or that would be of current interest to the public. A non-affiliated journalist who demonstrates a solid basis for expecting publication through a news media entity, such as a publishing contract or past publication record, will be considered as a representative of the news media.

(3) *Educational institution* is any school that operates a program of

scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. The Board may seek verification from the requester that the request is in furtherance of scholarly research.

(4) *Noncommercial scientific institution* is an institution that is not operated on a “commercial” basis, as defined in paragraph (d)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

(5) *Fees table*. Please refer to table 1 to this section to determine what fees apply for different categories of users.

(e) *Nonproductive search*. Fees for search and review may be charged even if no responsive documents are located or if the request is denied.

(f) *Aggregated requests*. A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Board reasonably believes that a requester is separating a single request into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly. It is considered reasonable for the Board to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(g) *Waiver or reduction of fees*. A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in § 261.12(e), shall not begin until either a waiver has been granted or, if the waiver is denied, until the requester has agreed to pay the applicable fees.

(1) The Board will grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the Board will consider the following factors:

(i) Whether the subject of the records would shed light on identifiable operations or activities of the government with a connection that is direct and clear, not remote or attenuated; and

(ii) Whether disclosure of the information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public’s understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area as well as the requester’s ability and intention to effectively convey information to the public must be considered. The Board will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. A commercial interest includes any commercial, trade, profit, or litigation interest.

(2) A request for a waiver or reduction of fees must include:

(i) A clear statement of the requester’s interest in the documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit for such use;

Federal Reserve System

§ 261.16

(iii) A statement of how the public will benefit from such use and from the Board's release of the documents;

(iv) A description of the method by which the information will be disseminated to the public; and

(v) If specialized use of the information is contemplated, a statement of the requester's qualifications that are relevant to that use.

(3) The requester has the burden to present evidence or information in support of a request for a waiver or reduction of fees.

(4) The Board will notify the requester of its determination on the request for a waiver or reduction of fees. The requester may appeal a denial in accordance with § 261.14(a).

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver must be granted for those records.

(6) A request for a waiver or reduction of fees should be made when the request for records is first submitted to the Board and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

(h) *Restrictions on charging fees.* (1) If the Board fails to comply with the FOIA's time limits in which to respond to a request, the Board may not charge search fees, or, in the instances of requests from requesters described in paragraphs (d)(2) through (4) of this section, may not charge duplication fees, except as permitted under paragraphs (h)(2) through (4) of this section.

(2) If the Board determines that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and has provided timely written notice to the re-

quester and subsequently responds within the additional 10 working days as provided in § 261.12(e)(3), the Board may charge search fees, or, in the case of requesters described in paragraphs (d)(2) through (4) of this section, may charge duplication fees.

(3) If the Board determines that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and more than 5,000 pages are necessary to respond to the request, then the Board may charge search fees, or, in the case of requesters described in paragraphs (d)(2) through (4) of this section, may charge duplication fees, if the Board has:

(i) Provided timely written notice of unusual circumstances to the requester in accordance with the FOIA; and

(ii) Discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(4) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(i) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Privacy Act of 1974 (5 U.S.C. 552a)) are \$50 or less; but the Board may waive fees in excess of that amount.

(j) *Special services.* The Board may agree to provide, and set fees to recover the costs of, special services not covered by the FOIA, such as certifying records or information and sending records by special methods such as express mail or overnight delivery.

TABLE 1 TO § 261.16—FEES

Type of requester	Search costs per hour	Review costs per hour	Duplication costs
Commercial	Clerical/Technical staff—\$20	Clerical/Technical staff—\$20	Photocopy per standard page—.10.
	Professional/Supervisory staff—\$40.	Professional/Supervisory staff—\$40.	Other types of duplication—Direct Costs.

TABLE 1 TO § 261.16—FEES—Continued

Type of requester	Search costs per hour	Review costs per hour	Duplication costs
Educational; or Non-commercial scientific; or News media.	Manager/Senior professional staff—\$65. Computer search, including computer search time, output, operator's salary—Direct Costs. Costs waived	Manager/Senior professional staff—\$65. Costs waived	First 100 pages <i>free</i> , then: Photocopy per standard page—.10. Other types of duplication—Direct Costs.
All other requesters	First 2 hours <i>free</i> , then: Clerical/Technical staff—\$20. Professional/Supervisory staff—\$40. Manager/Senior professional staff—\$65. Computer search, including computer search time, output, operator's salary—Direct Costs.	Costs waived	First 100 pages <i>free</i> , then: Photocopy per standard page—.10. Other types of duplication—Direct Costs.

§ 261.17 Request for confidential treatment.

(a) *Submission of request.* Any submitter of information to the Board who desires that such information be withheld pursuant to § 261.15(a)(4) or (6) shall file a request for confidential treatment with the Board (or in the case of documents filed with a Reserve Bank, with that Reserve Bank) at the time the information is submitted or within 10 working days thereafter.

(b) *Form of request.* Each request for confidential treatment shall state in reasonable detail the facts supporting the request, provide the legal justification, use good faith efforts to designate by appropriate markings any portion of the submission for which confidential treatment is requested, and include an affirmative statement that such information is not available publicly. A submitter's request for confidentiality in reliance upon § 261.15(a)(4) generally expires 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(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 unsegregated material to the public without notice to the submitter.

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

(1) Data items collected on forms that are approved pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and deemed confidential by the Board. Any such data items 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 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 § 261.15(b)(1).

(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 Board. These special procedures shall take precedence over this section.

§ 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

§ 261.20

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-

12 CFR Ch. II (1–1–23 Edition)

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

Federal Reserve System

§ 261.22

other Federal Reserve staff in accordance with internal supervisory procedures. Requests to disclose any other confidential supervisory information to these or other agencies should be directed to the General Counsel under § 261.22(c) or § 261.23(c).

(3) *Legal counsel and auditors.* When necessary or appropriate in connection with the provision of legal or auditing services to the supervised financial institution, the supervised financial institution may disclose confidential supervisory information to its legal counsel or auditors. The supervised financial institution may also disclose confidential supervisory information to service providers (such as consultants, contractors, contingent workers, and technology providers) of its legal counsel or auditors if the service provider is under a written agreement with the legal counsel or auditor in which the service provider agrees that:

(i) It will treat the confidential supervisory information in accordance with § 261.20(a); and

(ii) It will not use the confidential supervisory information for any purpose other than as necessary to provide the services to the supervised financial institution.

(4) *Other service providers.* (i) A supervised financial institution may disclose confidential supervisory information to other service providers engaged by the supervised financial institution if the service provider is under a written contract to provide services to the institution, the disclosure of the confidential supervisory information is deemed necessary to the service provider's provision of services, and the service provider has a written agreement with the institution in which the service provider has agreed that:

(A) It will treat the confidential supervisory information in accordance with § 261.20(a); and

(B) It will not use the confidential supervisory information for any purpose other than as provided under its contract to provide services to the supervised financial institution.

(ii) A supervised financial institution shall maintain a written account of the disclosures of confidential supervisory information that the supervised financial institution makes to service pro-

viders under this section and provide the Board or Reserve Bank with a copy of such written account upon the Board's or Reserve Bank's request.

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

(a) *Disclosure to Federal and State financial institution supervisory agencies.* The Director of the Division of Supervision and Regulation, the Director of the Division of Consumer and Community Affairs, the General Counsel, or the appropriate Reserve Bank may, for legitimate supervisory or regulatory purposes and with or without a request, disclose confidential supervisory information and other nonpublic information to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Bureau of Consumer Financial Protection, and a State financial institution supervisory agency.

(b) *Disclosures pursuant to the Equal Credit Opportunity Act, the Fair Housing Act, and the Employee Retirement Income Security Act.* The Director of the Division of Supervision and Regulation, the Director of the Division of Consumer and Community Affairs, or the General Counsel may disclose confidential supervisory information and other nonpublic information concerning a supervised financial institution to:

(1) The Attorney General or to the Secretary of the Department of Housing and Urban Development related to the enforcement of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) or the Fair Housing Act (42 U.S.C. 3601 *et seq.*); and

(2) The Secretary of the Department of Labor and the Secretary of the Department of the Treasury in accordance with section 3004(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1204(b)).

(c) *Disclosure to other governmental agencies and entities exercising governmental authority.* Except as provided in paragraph (d) or (e) of this section, other Federal, State, and local agencies, including law enforcement agencies, and other entities exercising governmental authority, may file written requests with the Board for access to

§ 261.23

12 CFR Ch. II (1–1–23 Edition)

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

Federal Reserve System

§ 261.23

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

§ 261.24

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-

12 CFR Ch. II (1–1–23 Edition)

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

Subpart A—General Provisions

Sec.

261a.1 Authority, purpose and scope.

261a.2 Definitions.

261a.3 Custodian of records; delegations of authority.

261a.4 Fees.

Subpart B—Procedures for Requests by Individual to Whom Record Pertains

261a.5 Request for access to record.

261a.6 Board procedures for responding to request for access.

261a.7 Special procedures for medical records.

261a.8 Request for amendment of record.

261a.9 Board review of request for amendment of record.

261a.10 Appeal of adverse determination of request for access or amendment.

Subpart C—Disclosure of Records

261a.11 Restrictions on disclosure.

261a.12 Exempt records.

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.