

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 77-93

August 25, 1977

REPRINT OF
RULES REGARDING AVAILABILITY OF INFORMATION

**TO ALL MEMBER BANKS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:**

Enclosed is a March 1977 reprint of a pamphlet which includes the following previously issued Rules and a new Rule issued by the Board of Governors of the Federal Reserve System:

Rules Regarding Availability of Information
- effective February 19, 1975

**Rules Regarding Access to and Review of Personal
Information** - effective September 28, 1975

Rules Regarding Public Observation of Meetings
- effective March 12, 1977 (new)

Member banks and others should file the new pamphlet in their Regulations Binders, and the pamphlet currently on file should be removed and destroyed. The correction to the Rules Regarding Availability of Information dated March 1976 should be removed also inasmuch as section 261.6(d) has been deleted from the reprinted pamphlet. The amendment effective March 12, 1977 should be retained.

If you have any questions concerning the new pamphlet, please contact Robert Smith, III, Assistant Vice President and Secretary, at Ext. 6207. Additional copies of the Rules will be furnished upon request to the Secretary's Office of this Bank, Ext. 6267.

Sincerely yours,
Robert H. Boykin
First Vice President

Enclosure

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-492-4403 (intrastate) and 1-800-527-4970 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

**BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM**

RULES REGARDING AVAILABILITY OF INFORMATION

(12 CFR 261)

As amended effective February 19, 1975

**RULES REGARDING ACCESS TO AND
REVIEW OF PERSONAL INFORMATION IN SYSTEMS
OF RECORDS**

(12 CFR 261a)

Effective September 28, 1975

**RULES REGARDING PUBLIC OBSERVATION OF
MEETINGS**

(12 CFR 261b)

Effective March 12, 1977



MARCH 1977

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RULES REGARDING AVAILABILITY OF INFORMATION*

(12 CFR 261)

As amended effective February 19, 1975

SECTION 261.1—BASIS AND SCOPE

This Part is issued by the Board of Governors of the Federal Reserve System (the "Board") pursuant to the requirement of section 552 of Title 5 of the United States Code that every Federal agency shall publish in the Federal Register, for the guidance of the public, descriptions of the established places at which, the officers from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

SECTION 261.2—DEFINITIONS

(a) **"Information of the Board"**. For purposes of this Part, the term "information of the Board" means all information coming into the possession of the Board or of any member thereof, or of any Federal Reserve Bank, or of any officer, employee, or agent of the Board or of any Federal Reserve Bank, in the performance of functions for or on behalf of the Board, including functions delegated by the Board pursuant to Part 265 of this chapter.

(b) **"Records of the Board"**. For purposes of this Part, the term "records of the Board" means rules, statements, opinions, orders, memoranda, letters, reports, accounts, and other papers containing information of the Board that constitute part of the Board's official files.

SECTION 261.3—PUBLISHED INFORMATION

(a) **Federal Register**. To the extent required by sections 552 and 553 of Title 5 of the United States Code, and subject to the provisions of §§ 261.5 and 261.6, the Board publishes in the Federal Register for the guidance of the public, in addition to this Part,

(1) descriptions of its central and field organization;

(2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements or all formal and informal procedures available;

(3) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Board;

(5) every amendment, revision, or repeal of the foregoing; and

(6) general notices of proposed rule making.

The Board also publishes in the Federal Register notice of receipt of applications pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1842), orders and supporting statements issued by the Board with respect to such applications and applications under the Bank Merger Act (12 U.S.C. 1828(c)), and notices of formal hearings ordered by the Board.

(b) **Annual Reports**. The Board's Annual Report to Congress pursuant to section 10 of the Federal Reserve Act (12 U.S.C. 247), which is made public immediately after its submission to Congress, contains a full account of the Board's operations during the year, an economic review of the year, and legislative recommendations to Congress. As required by law, the Annual Report includes (1) a complete record of the policy actions taken by the Board and the Federal Open Market Committee, showing the votes taken thereon and the reasons underlying such actions (12 U.S.C. 247a); (2) material pertaining to the administration of the Board's functions under the Bank Holding Company Act of 1956 (12 U.S.C. 1844); and (3) material pertaining to bank mergers approved by the Board under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828 (c)).

* The text corresponds to the Code of Federal Regulations, Title 12, Chapter II, Part 261, cited as 12 CFR 261. The words "this Part", as used herein, mean these rules.

Pursuant to section 114 of the Truth in Lending Act (15 U.S.C. 1613) the Board reports annually to the Congress concerning the administration of its functions under the Act, and includes such recommendation as it deems necessary or appropriate, and its assessment of the extent to which compliance is being achieved. An annual report is also submitted pursuant to the Freedom of Information Act (5 U.S.C. 552) with regard to requests for information under that Act.

(c) **Federal Reserve Bulletin.** In the Federal Reserve *Bulletin*, which is issued monthly, the Board publishes economic and statistical information; special articles on subjects of economic interest; regulations, statements of general policy, and interpretations of laws and regulations of general interest to the public; notices of actions by the Board on certain types of applications, such as applications for membership in the Federal Reserve System; and orders and accompanying statements of the Board with respect to certain types of adjudications. Some material that is published in the *Bulletin* is released in advance of such publication, examples being certain regulations, interpretations, orders and opinions, a monthly summary of business conditions, the Board's index of industrial production, and certain other statistical series.

(d) **Other published information.** As required by section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)), the Board issues weekly (1) a statement of the condition of the Federal Reserve Banks; (2) a statement listing certain applications received by or on behalf of the Board and actions on such applications by the Board, or on behalf of the Board pursuant to authority delegated under Part 265 of this chapter, as well as other matters issued, adopted, or promulgated by the Board; and (3) a statement showing changes in the banking structure resulting from mergers and the establishment of branches. From time to time, the Board issues statements to the press regarding particular monetary and credit actions, regulatory actions, actions with respect to certain types of applications, and other matters. In addition, it issues various publications, the more important of which are listed in the monthly Federal Reserve *Bulletin*. Among such publications is a loose-leaf compilation of *Interpretations of the Board of Governors of the Federal Reserve System*.

(e) **Obtaining published information.** Anyone may subscribe to the Federal Reserve *Bulletin* at the rate therein indicated. A copy of each issue of the *Bulletin* is sent without charge to each member bank. Current or back issues of the *Bulletin*, Annual Reports, rules, regulations, and certain other published information may be examined at the offices of the Board or any Federal Reserve Bank, and copies, if in stock, are supplied by the Board at prescribed charges or at no cost.

(f) **Index of Board Action.** There is available to the public upon request to the Secretary of the Board, at a charge not to exceed the direct cost of duplication, copies of an index providing identifying information as to any matter issued, adopted or promulgated by the Board between July 4, 1967 and February 19, 1975. Furthermore, the Board publishes and distributes to the public, at a cost not to exceed the direct cost of duplication, a weekly index providing identifying information as to any matter issued, adopted or promulgated by the Board after February 19, 1975.

SECTION 261.4—RECORDS AVAILABLE TO THE PUBLIC UPON REQUEST

(a) **General rule.** All records of the Board, whether or not published under § 261.3, are made available to any person, upon request, for inspection and copying in accordance with the provisions of this section and subject to the limitations stated in §§ 261.5 and 261.6. Records falling within the exemptions from disclosure set forth in section 552(b) of Title 5 of the United States Code and in § 261.6 may nevertheless be made available in accordance with this action to the fullest extent consistent, in the Board's judgment, with the effective performance of the Board's statutory responsibilities and with the avoidance of injury to a public or private interest intended to be protected by such exemptions.

(b) **Opinions, orders, statements of policy, interpretations, and staff manuals and instructions.** Subject to the provisions of §§ 261.5 and 261.6, the Board makes available for inspection and copying (1) all final opinions (including concurring and dissenting opinions) and orders made in the adjudication of cases, including such opinions and orders made pursuant to authority delegated by the Board under Part 265 of this chapter; (2) statements of policy and interpretations adopted by the Board that are not published in the Federal

Register; and (3) administrative staff manuals and instructions to staff that affect any member of the public. However, to the extent required to prevent a clearly unwarranted invasion of personal privacy, the Board deletes identifying details in any material of the kinds above described; and in each such case the justification for such deletion is explained in writing. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public as to any material described in this paragraph which is issued, adopted, or promulgated after July 4, 1967.

(c) **Other records.** Subject to the provisions of §§ 261.5 and 261.6, records of the Board not covered by paragraph (b) of this section, including a record of the final votes of members of the Board in any Board proceeding, are made available for inspection and copying to any person upon request.

(d) **Obtaining access to records.** Records of the Board subject to this section are available for inspection and copying during regular business hours at the offices of the Board of Governors of the Federal Reserve System, Federal Reserve Building, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or, in the case of records containing information required to be disclosed under section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78), at the offices of the Federal Deposit Insurance Corporation or at any Federal Reserve Bank. Every request for access to records of the Board, other than those containing information required under section 12 of the Securities Exchange Act, shall be submitted in writing to the Secretary of the Board, shall state the name and address of the person requesting access to such records, shall clearly indicate whether such request is an initial request or an appeal from a denial of information requested pursuant to the Freedom of Information Act, and shall describe such records in a manner reasonably sufficient to permit their identification without undue difficulty. The Secretary of the Board (or, in his absence, an Assistant Secretary designated by the Secretary) shall determine within ten working days after receipt of a request for access to records of the Board whether to comply with such request; and he shall immediately notify the requesting party of his decision, of the reasons therefor, and of the right of the requesting party to

appeal to the Board any refusal to make available the requested records of the Board.

(e) **Appeal of denial of access to records of the Board.** Any person who is denied access to records of the Board, properly requested in accordance with paragraph (d) of this section, may file, with the Secretary of the Board, within ten days of notification of such denial, a written request for review of such denial. The Board or such member or members as the Board may designate, shall make a determination with respect to any such appeal within 20 working days of its receipt, shall immediately notify the appealing party of the decision on the appeal and of the right to seek court review of any decision which upholds, in whole or in part, the refusal of the Secretary of the Board to make available the requested records; and such determination shall not be subject to the procedure prescribed in § 265.3 of this chapter with respect to review of actions taken pursuant to authority delegated by the Board.

(f) **Extension of time requirements in unusual circumstances.** In unusual circumstances as provided in 5 U.S.C. § 552(a)(6)(b), the time limitations imposed upon the Secretary of the Board or the Board in paragraphs (d) and (e) of this section may be extended by written notice to the requesting party for a period of time not to exceed a total of ten working days.

(g) **Fee schedule.** A person requesting access to or copies of particular records shall pay the costs of searching for and copying such records at the rate of \$10 per hour for searching and 10 cents per standard page for copying. With respect to information obtainable only by processing through a computer or other information systems program, a person requesting such information shall pay a fee not to exceed the direct and reasonable cost of retrieval and production of the information requested. Detailed schedules of such charges are available upon request from the Secretary of the Board. Documents may be furnished without charge or at a reduced charge where the Secretary of the Board or such person as he may designate determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public or where total charges are less than \$2.

SECTION 261.5—DEFERMENT OF AVAILABILITY OF CERTAIN INFORMATION

(a) **Deferment of availability.** In some instances, certain types of information of the Board are not published in the Federal Register or made available for inspection and copying until after such period of time as the Board may determine to be reasonably necessary to avoid the effects described in paragraph (b) of this section. For example, such deferment of publication or availability of information to the public may occasionally be necessary with respect to information relating to the determination of monetary or credit policies, including but not limited to discount rates, reserve requirements of member banks, maximum interest rates payable by member banks on deposits, and margin requirements.

(b) **Reasons for deferment of availability.** Publication of, or public access to, certain information of the Board may be deferred because earlier disclosure of such information would

(1) interfere with the accomplishment of the objectives of the Board's actions in the discharge of its statutory functions;

(2) permit speculators and others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;

(3) interfere with the orderly execution of the objectives or policies of other Government agencies;

(4) result in unnecessary or unwarranted disturbances in the securities markets; or

(5) interfere with the orderly conduct of the foreign affairs of the United States.

SECTION 261.6—EXEMPTIONS FROM DISCLOSURE

(a) **General rule.** Except as otherwise provided in this Part or as may be specifically authorized by the Board, information in the records of the Board that is not available to the public through other sources will not be published in the Federal Register or made available for inspection and copying if such information

(1) is exempted from disclosure by statute or 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 classified pursuant to such executive order;

(2) is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the Board or a Federal Reserve Bank, relating to the affairs of any bank or affiliate thereof, bank holding company or subsidiary thereof, broker, finance company, or any other person engaged, or proposing to engage, in the business of banking, extending credit, or managing or controlling banks;

(3) is privileged or relates to the business, personal, or financial affairs of any person and is furnished in confidence; *Providing, however,* That, following notice to the person furnishing such information, the Board may make any information furnished in confidence in connection with an application for Board approval of any transaction available to the public in accordance with § 261.4 (c), and, to the extent it deems necessary and without prior notice to such person, the Board may comment on such information in any opinion or statement issued to the public in connection with a decision of the Board with respect to which such information is relevant;

(4) is contained in investigatory files compiled for law enforcement purposes (but only to the extent provided in the Freedom of Information Act (5 U.S.C. § 552(b)(7)), including information relating to proceedings for (i) the issuance of a cease-and-desist order, or order of suspension or removal, under the Financial Institutions Supervisory Act of 1966; (ii) the termination of membership of a State bank in the Federal Reserve System pursuant to section 9 of the Federal Reserve Act (12 U.S.C. 327); (iii) the suspension of a bank from use of the credit facilities of the Federal Reserve System pursuant to section 4 of the Federal Reserve Act (12 U.S.C. 301); and (iv) the granting or revocation of any approval, permission, or authority, except to the extent provided in this Part and except as provided in Part 262 of this chapter concerning bank holding company and bank merger applications;

(5) relates solely to the internal personnel rules and practices or other internal practices of the Board;

(6) is contained in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(7) is contained in inter-agency or intra-agency memoranda or letters that would not be routinely available by law to a private party in

litigation with the Board, including but not limited to memoranda, reports, and other documents prepared by the staffs of the Board or of the Federal Reserve Banks, and records of deliberations and discussions at meetings of the Board or of any committee of the Board or of the Board's staff.

(b) **Information available to supervised institutions and other Government agencies.** A copy of each report of examination of each State member bank and of each bank holding company is made available by the appropriate Federal Reserve Bank to the bank or company examined. Such reports and other appropriate information relating to such a bank or company are made available, upon request, by the Director of the Board's Division of Banking Supervision and Regulation to the Comptroller of the Currency and the Federal Deposit Insurance Corporation, and by the appropriate Federal Reserve Bank to the Regional Comptroller of the Currency, the regional representative of the Federal Deposit Insurance Corporation, and the State governmental authority having general supervision of such bank or company. Such reports and other information may be made available by the Board to other agencies of the United States for use where necessary in the performance of their official duties. All reports or other information made available pursuant to this paragraph shall remain the property of the Board and, except as otherwise provided in this Part, no person, agency, or authority to whom the information is made available, or any officer, director, or employee thereof, shall disclose any such information except in published statistical material that does not disclose the affairs of any individual or corporation.

(c) **Prohibition against disclosure.** Except as provided in this Part, no officer, employee, or agent of the Board or of any Federal Reserve Bank shall disclose or permit the disclosure of any unpublished information of the Board to anyone (other than an officer, employee, or agent of the Board or of a Federal Reserve Bank properly entitled to such information for the performance of his official duties), whether by giving out or furnishing such information or a copy thereof or by allowing any person to inspect or copy such information or copy thereof, or otherwise. Notwithstanding the foregoing, unpublished economic,

statistical, or similar information or unpublished information regarding interpretations by the Board of statutory or regulatory provisions may be disclosed, orally or in writing, by any officer, employee, or agent of the Board or of any Federal Reserve Bank who has knowledge of the subject matter to any person who, in the judgment of such officer, employee, or agent, has a proper interest therein, subject, however, to the restrictions stated in § 261.5 and this § 261.6.

SECTION 261.7—SUBPOENAS

(a) **Advice by person served.** If any person, whether or not an officer, employee, or agent of the Board or of a Federal Reserve Bank, has information of the Board that may not be disclosed under this Part and in connection therewith is served with a subpoena, order, or other process requiring his personal attendance as a witness or the production of documents or information in any proceeding, he should promptly inform the Secretary of the Board of such service and of all relevant facts, including the documents and information requested and any facts which may be of assistance to the Board in determining whether such documents or information should be made available; and he should take action at the appropriate time to inform the court or tribunal that issued the process and the attorney for the party at whose instance the process was issued, if known, of the substance of these rules.

(b) **Appearance by person served.** Unless the Board has authorized disclosure of the relevant information, or except as provided in 18 U.S.C. 1906, any person having information of the Board that may not be disclosed under this Part who is required to respond to a subpoena or other legal process shall attend at the time and place therein mentioned and decline to disclose such information or give any testimony with respect thereto, basing his refusal upon this Part. If the court or other body orders the disclosure of such information or the giving of such testimony, the person having such information of the Board shall continue to decline to disclose such information and shall promptly report the facts to the Board for such action as the Board may deem appropriate.

STATUTORY APPENDIX

Section 552, Title 5, United States Code, provides as follows:

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring

and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency upon any request for records which (A) reasonably describes such records and (B) is made in accordance with pub-

lished rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4) (A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter *de novo*, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions or judicial review of that

determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1) (A) specifically authorized under criteria established by an Executive order to be

kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) 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; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in

this section. This section is not authority to withhold information from Congress.

(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(e) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

[U. S. C., title 5, sec. 552. As amended by Acts of June 5, 1967 (81 Stat. 54), effective July 4, 1967 and November 21, 1974 (88 Stat. 1561). The Act of June 5, 1967 repealed a similar Act of July 4, 1966, which was in the form of an amendment to the Administrative Procedure Act, which was then in effect.]

RULES REGARDING ACCESS TO AND REVIEW OF PERSONAL INFORMATION IN SYSTEMS OF RECORDS

(12 CFR 261a)

Effective September 28, 1975

SECTION 261a.1—PURPOSE AND SCOPE

The purpose of this Part is to establish regulations implementing the provisions of the Privacy Act, 5 U.S.C. § 552a, with regard to access to and review of personal information in systems of records maintained by the Board of Governors of the Federal Reserve System ("Board").

SECTION 261a.2—DEFINITIONS

For the purposes of this Part, the following definitions shall apply:

(a) The term "individual" means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence. The term "individual" includes the parent of any minor or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(b) The term "maintain" also includes maintain, collect, use, disseminate, or control.

(c) The term "record" means any item, collection or grouping of information about an individual maintained by the Board that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(d) The term "system of records" means a group of any records under the control of the Board from which information is retrieved by the name of the individual or some identifying number, symbol or other identifying particular assigned to the individual.

(e) The term "designated system of records" means a system of records that has been listed in the Federal Register pursuant to the requirements of 5 U.S.C. 552a(e).

(f) The term "routine use" means, with respect to disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(g) The term "business days" means all days except Saturdays, Sundays, and legal public holidays.

SECTION 261a.3—PROCEDURES FOR REQUESTS PERTAINING TO INDIVIDUAL RECORDS IN A RECORDS SYSTEM¹

(a) Requests for notification of the existence of or for access to personal information in a designated system of records may be made by the person to whom such information pertains. Every such request shall be made in writing and shall specify that it is made pursuant to the Privacy Act. Each request should identify the designated system of records in which the requested record is to be found, should reasonably describe the information requested and, except as provided in section 261a.4, should include a notarized statement attesting to the identity of the requestor.

(b) Requests made pursuant to paragraph (a) of this section shall be addressed to the Director of the Division of Personnel, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, in the case of records relating to employment with the Board. Requests for other records should be addressed to the Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Requests for information pursuant to paragraph (a) of this section may also be made in person during regular business hours at the offices of the Board of Governors of the Federal Reserve System, Federal Reserve Building, 20th and Constitution Avenue, N.W., Washington, D.C. 20551.

(c) An individual making a request pursuant to paragraph (a) of this section may also include in such request a request for the accounting required

¹ The Board's System of Records has been published in the Federal Register (40 *Federal Register* 43862) and copies are available upon request to the Board of Governors of the Federal Reserve System, Washington, D. C. 20551.

by section (c) of the Privacy Act, 5 U.S.C. § 552a, of previous disclosures of records pertaining to such individual in a designated system of records.

(d) Every request made pursuant to this section will be acknowledged or, where practicable, substantially responded to within 10 business days from receipt.

SECTION 261a.4—REQUIREMENTS FOR IDENTIFICATION OF INDIVIDUALS MAKING REQUESTS

(a) Each request for information made pursuant to section 261a.3 shall include a notarized statement attesting to the identity of the requestor except in the following instances:

(1) Where the information requested is otherwise publicly available under the Freedom of Information Act, 5 U.S.C. § 552, and the Board's Rules Regarding Availability of Information (12 CFR 261).

(2) Where the requestor makes written request for information in person and presents a driver's license, birth certificate, employment identification card or other means of identification, sufficient to establish his identity.

(3) Where the request is only for notification of the existence of records in a designated system of records pertaining to the requestor.

SECTION 261a.5—DISCLOSURE OF REQUESTED INFORMATION TO INDIVIDUALS

(a) Information requested pursuant to section 261a.3, except for that compiled in reasonable anticipation of a civil action or proceeding or otherwise exempted from disclosure as provided in section 261a.13, will be made available for inspection and copying during regular business hours at the Board's offices. However, where the requested information can be disclosed only by providing a copy of the record, because such record cannot reasonably be put into a form for individual inspection (e.g., computer tapes), or where the requestor may request that copies of requested information be forwarded, such information will be mailed to the requestor. Access to or copies of requested information will be promptly provided after the acknowledgment as provided in subsection 261a.3(c), unless good cause for delay is communicated to the requestor.

(b) Fees for copying such records will be

assessed in accordance with subsection 261a.11.

(c) The requestor of information may be accompanied in the inspection and discussion of that information by a person of the requestor's own choosing upon the submission by the requestor of a written and signed statement authorizing the presence of such person.

SECTION 261a.6—SPECIAL PROCEDURES—MEDICAL RECORDS

Medical records requested pursuant to subsection 261a.3 will be disclosed to the requestor unless the disclosure of such records directly to the requestor could, in the judgment of the official deemed responsible for such records, have an adverse effect upon the requestor. In such instance, such information will be transmitted to a licensed physician named by the requestor.

SECTION 261a.7—REQUEST FOR CORRECTION OR AMENDMENT TO RECORD

(a) Where an individual believes that any portion of a record in a designated system of records used in making a determination about such individual is not accurate, relevant, timely or complete, that individual may request that such record be amended or corrected. Such request should be submitted in writing to the appropriate officer as designated in section 261a.3. Each request for amendment or correction of a record should identify the system of records containing the record for which amendment or correction is requested, specify the portion of that record requested to be amended or corrected, and describe the nature of and reasons for each requested amendment or correction. Additionally, each request must include a notarized statement attesting to the identity of the requestor except where the request is presented in person and the requestor's identity may thereupon be verified.

(b) Nothing in paragraph (a) of this section shall permit collateral attack upon that which has been decided in a previous judicial, quasi-judicial, or other proceeding.

SECTION 261a.8—AGENCY REVIEW OF REQUEST FOR AMENDMENT OF RECORD

(a) As appropriate, the Secretary of the Board or the Director of the Division of Personnel shall

acknowledge each request made pursuant to section 261a.7 within 10 business days of its receipt. Such acknowledgment may request additional information necessary for a determination of the request for amendment or correction.

(b) As appropriate, the Secretary of the Board or the Director of the Division of Personnel shall promptly review each request made pursuant to section 261a.7 in light of the criteria of accuracy, relevance, timeliness, completeness and necessity set forth in subsections (e)(1) and (e)(5) of the Privacy Act, 5 U.S.C. § 552a.

(c) Upon completion of review of each request made pursuant to section 261a.7, the Secretary of the Board or the Director of the Division of Personnel shall immediately inform the requestor of the determination to grant or deny the requested amendment or correction.

(d) Where any request pursuant to section 261a.7 has been denied in whole or part, the requestor shall be advised of the reasons therefor, the procedure for appeal of the determination and the name, title and address of the official to whom such appeal should be directed.

SECTION 261a.9—APPEAL OF INITIAL ADVERSE DETERMINATION ON CORRECTION OR AMENDMENT

(a) A denial of a request made pursuant to section 261a.7 may be appealed to the Board of Governors or any official designated by the Chairman of the Board of Governors within 30 business days of issuance of notification of denial. Every such appeal should be made in writing to the official designated in the letter of initial denial, should specify the previous background of the request and should provide reasons why the initial determination should be reversed.

(b) The Board of Governors or such official designated by the Chairman of the Board shall make a determination with respect to the review of such appeal not later than 30 business days from its receipt, unless the reviewing official extends such period for good cause shown.

(c) If the Board or designated official affirms the initial denial of a request to amend or correct made pursuant to section 261a.7, such determination shall be communicated to the requestor together with a statement of the reasons therefor and the requestor shall be informed of the right of judicial review of the determination. The re-

questor may then file a concise statement setting forth disagreement with the affirmation of denial within 30 days of notification of such determination and such statement shall be provided to persons or other agencies to whom the disputed record is disclosed.

SECTION 261a.10—DISCLOSURE OF RECORD TO PERSON OTHER THAN INDIVIDUAL TO WHOM IT PERTAINS

(a) No record contained in a designated system of records shall be disclosed to any person or agency without the prior written consent of the individual to whom the record pertains unless the disclosure is authorized by paragraph (b) of this section.

(b) The restrictions on disclosure in paragraph (a) do not apply to any disclosure—1) to those officers and employees of the Board who have a need for the record in the performance of their duties; 2) that is required under the Freedom of Information Act (5 U.S.C. § 552); 3) for a routine use listed with respect to a designated system of records; 4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code; 5) to a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable; 6) to the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value; 7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought; 8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last

known address of such individual; 9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee; 10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or 11) pursuant to the order of a court of competent jurisdiction.

SECTION 261a.11—FEES

(a) Copies of records requested pursuant to section 261a.3 will be provided at a cost of \$.10 per page for photocopying or at a cost not to exceed the direct cost of printing, typing or otherwise preparing such copies.

(b) Documents may be furnished without charge where total charges are less than \$2.

SECTION 261a.12—PENALTIES

(a) The Privacy Act, 5 U.S.C. § 552a(1)(3), provides: Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretense shall be guilty of a misdemeanor and fined not more than \$5,000.

SECTION 261a.13—EXEMPTIONS

(a) Pursuant to subsection (k) of the Privacy Act, 5 U.S.C. § 552a, the Board may exempt certain portions of records within designated systems of records from the requirements of the Privacy Act, (including access to and review of such records pursuant to this Part) if such portions are:

(1) subject to the provisions of section 552 (b)(1) of the Freedom of Information Act, 5 U.S.C. § 552;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, 5 U.S.C. § 552a: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who

furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Privacy Act, 5 U.S.C. § 552a, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 of the United States Code;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Privacy Act, 5 U.S.C. § 552a, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Privacy Act, 5 U.S.C. § 552a, under an implied promise that the identity of the source would be held in confidence.

(b) Those designated systems of records which are exempt from the requirements of this Part or any other requirements of the Privacy Act, 5 U.S.C. § 552a, will be indicated in the notice of designated systems of records published by the Board.

(c) Nothing in this Part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

STATUTORY APPENDIX

Records maintained on individuals

SEC. 552a. (a) Definitions.—For purposes of this section—

(1) the term “agency” means agency as defined in section 552(e) of this title;

(2) the term “individual” means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term “maintain” includes maintain, collect, use, or disseminate;

(4) the term “record” means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term “system of records” means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term “statistical record” means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

(7) the term “routine use” means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(b) Conditions of Disclosure.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of

their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)D of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) pursuant to the order of a court of

competent jurisdiction.

(c) Accounting of Certain Disclosures.—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute, made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not

accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent

practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the records is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

(f) Agency Rules.—In order to carry out the provisions of this section, each agency that main-

tains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil Remedies.—Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to

the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter *de novo*.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) in any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter *de novo*, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to the effective date of this section.

(h) Rights of Legal Guardians.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i) (1) Criminal Penalties.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) General Exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminal, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material

within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) **Archival Records.**—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m) **Government Contractors.**—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after

the effective date of this section, shall be considered to be an employee of an agency.

(n) Mailing Lists.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Report on New Systems.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to

such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(p) Annual Report.—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.

RULES REGARDING PUBLIC OBSERVATION OF MEETINGS

(12 CFR 261b)

As adopted effective March 12, 1977

SECTION 261b.1—BASIS AND SCOPE

This Part is issued by the Board of Governors of the Federal Reserve System ("the Board") under section 552b of Title 5 of the United States Code, the Government in the Sunshine Act ("the Act"), to carry out the policy of the Act that the public is entitled to the fullest practicable information regarding the decision making processes of the Board while at the same time preserving the rights of individuals and the ability of the Board to carry out its responsibilities. These regulations fulfill the requirement of subsection (g) of the Act that each agency subject to the provisions of the Act shall promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of the Act.

SECTION 261b.2—DEFINITIONS

For purposes of this Part, the following definitions shall apply:

(a) The term "agency" means the Board and subdivisions thereof.

(b) The term "subdivision" means any group composed of two or more Board members that is authorized to act on behalf of the Board.

(c) The term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official Board business, but does not include (1) deliberations required or permitted by subsection (d) or (e) of the Act, or (2) the conduct or disposition of official agency business by circulating written material to individual members.

(d) The term "number of individual agency members required to take action on behalf of the agency" means in the case of the Board, a majority of its members except that (1) Board determination of the ratio of reserves against deposits under section 19(b) of the Federal Reserve Act requires the vote of four members, (2) Board action with respect to advances, discounts and rediscounts under

sections 10(a), 11(b) and 13(3) of the Federal Reserve Act requires the vote of five members and (3) Board action with respect to the percentage of individual member bank capital and surplus which may be represented by loans secured by stock and bond collateral under section 11(m) of the Federal Reserve Act requires the vote of six members. In the case of subdivisions of the Board, the term means the number of members constituting a quorum of the designated subdivision.

(e) The term "member" means a member of the Board appointed under Section 10 of the Federal Reserve Act. In the case of certain Board proceedings pursuant to 12 U.S.C. 1818(e), the Comptroller of the Currency is entitled to sit as a member of the Board and for these proceedings he shall be deemed a "member" for the purposes of this Part. In the case of any subdivision of the Board, the term "member" means a member of the Board designated to serve on that subdivision.

(f) The term "public observation" means that the public shall have the right to listen and observe but not to record any of the meetings by means of cameras or electronic or other recording devices unless approval in advance is obtained from the Public Affairs Office of the Board and shall not have the right to participate in the meeting, unless participation is provided for in the Board's Rules of Procedure.

(g) The term "Federal agency" means an "agency" as defined in 5 U.S.C. 551(1).

SECTION 261b.3—CONDUCT OF AGENCY BUSINESS

Members shall not jointly conduct or dispose of official agency business other than in accordance with this Part.

SECTION 261b.4—MEETINGS OPEN TO PUBLIC OBSERVATION

Except as provided in section 261b.5 of this Part, every portion of every meeting of the agency shall be open to public observation.

SECTION 261b.5—EXEMPTIONS

(a) Except in a case where the agency finds that the public interest requires otherwise, the agency may close a meeting or a portion or portions of a meeting under the procedures specified in section 261b.7 or 261b.8 of this Part, and withhold information under the provisions of section 261b.6, 261b.7, 261b.8, or 261b.11 of this Part, where the agency properly determines that such meeting or portion or portions of its meeting or the disclosure of such information is likely to:

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (B) in fact properly classified pursuant to such Executive order;

(2) relate solely to internal personnel rules and practices;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of Title 5 of the United States Code), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confi-

dential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Board or other Federal agency responsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would—

(A) be likely to (i) lead to significant speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) be likely to significantly frustrate implementation of a proposed action, except that subparagraph (B) shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) specifically concern the issuance of a subpoena, participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition of a particular case of formal agency adjudication pursuant to the procedures in section 554 of Title 5 of the United States Code or otherwise involving a determination on the record after opportunity for a hearing.

SECTION 261b.6—PUBLIC ANNOUNCEMENTS OF MEETINGS

(a) Except as otherwise provided by the Act, public announcement of meetings open to public observation and meetings to be partially or completely closed to public observation pursuant to section 261b.8 of this Part will be made at least one week in advance of the meeting. Except to the extent such information is determined to be exempt from disclosure under section 261b.5 of this Part, each such public announcement will state the time, place and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated to respond to requests for information about the meeting.

(b) If a majority of the members of the agency determines by a recorded vote that agency business requires that a meeting covered by subsection (a) of this section be called at a date earlier than that specified in subsection (a), the agency will make a public announcement of the information specified in subparagraph (a) of the earliest practicable time.

(c) Changes in the subject matter of a publicly announced meeting, or in the determination to open or close a publicly announced meeting or any portion of a publicly announced meeting to public observation, or in the time or place of a publicly announced meeting made in accordance with the procedures specified in section 261b.9 of this Part will be publicly announced at the earliest practicable time.

(d) Public announcements required by this section will be posted at the Board's Public Affairs Office and Freedom of Information Office and may be made available by other means or at other locations as may be desirable.

(e) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding announcements, and the name and telephone number of the official designated by the Board to respond to requests about the meeting, shall also be submitted for publication in the Federal Register.

SECTION 261b.7—MEETINGS CLOSED TO PUBLIC OBSERVATION UNDER EXPEDITED PROCEDURES

(a) Since the Board qualifies for the use of expedited procedures under subsection (d)(4) of the Act, meetings or portions thereof exempt under paragraph (4), (8), (9)(A) or (10) of section 261b.5 of this Part, will be closed to public observation under the expedited procedures of this section. Following are examples of types of items that, absent compelling contrary circumstances, will qualify for these exemptions: matters relating to a specific bank or bank holding company, such as bank branches or mergers, bank holding company formations, or acquisition of an additional bank or acquisition or *de novo* undertaking of a permissible nonbanking activity; bank regulatory matters, such as applications for membership,

issuance of capital notes and investment in bank premises; foreign banking matters; bank supervisory and enforcement matters, such as cease-and-desist and officer removal proceedings; monetary policy matters, such as discount rates, use of the discount window, changes in the limitations on payment of interest on time and savings accounts, and changes in reserve requirements or margin regulations.

(b) At the beginning of each meeting, a portion or portions of which is closed to public observation under expedited procedures pursuant to this section, a recorded vote of the members present will be taken to determine whether a majority of the members of the agency votes to close such meeting or portions of such meeting to public observation.

(c) A copy of the vote, reflecting the vote of each member, and except to the extent such information is determined to be exempt from disclosure under section 261b.5 of this Part, a public announcement of the time, place and subject matter of the meeting or each closed portion thereof, will be made available at the earliest practicable time at the Board's Public Affairs Office and Freedom of Information Office.

SECTION 261b.8—MEETINGS CLOSED TO PUBLIC OBSERVATION UNDER REGULAR PROCEDURES

(a) A meeting or a portion of a meeting will be closed to public observation under regular procedures, or information as to such meeting or portion of a meeting will be withheld, only by recorded vote of a majority of the members of the agency when it is determined that the meeting or the portion of the meeting or the withholding of information qualifies for exemption under section 261b.5 of this Part. Votes by proxy are not allowed.

(b) Except as provided in subsection (c) of this section, a separate vote of the members of the agency will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof which is proposed to be closed to public observation or with respect to which information is proposed to be withheld pursuant to this section.

(c) A single vote may be taken with respect to a series of meetings, a portion or portions of

which are proposed to be closed to public observation or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting or portion thereof in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(d) Whenever any person's interests may be directly affected by a portion of a meeting for any of the reasons referred to in exemption (5), (6) or (7) of section 261b.5 of this Part, such person may request in writing to the Secretary of the Board that such portion of the meeting be closed to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, will transmit the request to the members and upon the request of any one of them a recorded vote will be taken whether to close such meeting to public observation.

(e) Within one day of any vote taken pursuant to subparagraphs (a) through (d) of this section, the agency will make publicly available at the Board's Public Affairs Office and Freedom of Information Office a written copy of such vote reflecting the vote of each member on the question. If a meeting or a portion of a meeting is to be closed to public observation, the agency, within one day of the vote taken pursuant to subparagraphs (a) through (d) of this section, will make publicly available at the Board's Public Affairs Office and Freedom of Information Office a full, written explanation of its action closing the meeting or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the agency to be exempt from disclosure under subsection (c) of the Act and section 261b.5 of this Part.

SECTION 261b.9—CHANGES WITH RESPECT TO PUBLICLY ANNOUNCED MEETING

The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to public observation may be changed following public announcement under section 261b.6 only if a majority of the members of the agency determines by a recorded vote that agency business so requires and that no earlier

announcement of the change was possible. Public announcement of such change and the vote of each member upon such change will be made pursuant to section 261b.6(c). Changes in time, including postponements and cancellations of a publicly announced meeting or portion of a meeting or changes in the place of a publicly announced meeting will be publicly announced pursuant to section 261b.6(c) by the Secretary of the Board or, in the Secretary's absence, the Acting Secretary of the Board.

SECTION 261b.10—CERTIFICATION OF GENERAL COUNSEL

Before every meeting or portion of a meeting closed to public observation under section 261b.7 or 261b.8 of this Part, the General Counsel, or in the General Counsel's absence, the Acting General Counsel, shall publicly certify whether or not in his or her opinion the meeting may be closed to public observation and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, will be retained for the time prescribed in section 261b.11(d).

SECTION 261b.11—TRANSCRIPTS, RECORDINGS, AND MINUTES

(a) The agency will maintain a complete transcript or electronic recording or transcription thereof adequate to record fully the proceedings of each meeting or portion of a meeting closed to public observation pursuant to exemption (1), (2), (3), (4), (5), (6), (7) or (9)(B) of section 261b.5 of this Part. Transcriptions of recordings will disclose the identity of each speaker.

(b) The agency will maintain either such a transcript, recording or transcription thereof, or a set of minutes that will fully and clearly describe all matters discussed and provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question), for meetings or portions of meetings closed to public observation pursuant to exemption (8), (9)(A) or (10) of section 261b.5 of this Part. The minutes will identify all docu-

ments considered in connection with any action taken.

(c) Transcripts, recordings or transcriptions thereof, or minutes will promptly be made available to the public in the Freedom of Information Office except for such item or items of such discussion or testimony as may be determined to contain information that may be withheld under subsection (c) of the Act and section 261b.5 of this Part.

(d) A complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording or verbatim copy of a transcription thereof of each meeting or portion of a meeting closed to public observation will be maintained for a period of at least two years or one year after the conclusion of any agency proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

SECTION 261b.12—PROCEDURES FOR INSPECTION AND OBTAINING COPIES OF TRANSCRIPTIONS AND MINUTES

(a) Any person may inspect or copy a transcript, a recording or transcription of a record-

ing, or minutes described in section 261b.11(c) of this Part.

(b) Requests for copies of transcripts, recordings or transcriptions of recordings, or minutes described in section 261b.11(c) of this Part shall specify the meeting or the portion of the meeting desired and shall be submitted in writing to the Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Copies of documents identified in minutes may be made available to the public upon request under the provisions of 12 C.F.R. 261 (Rules Regarding Availability of Information).

SECTION 261b.13—FEES

(a) Copies of transcripts, recordings or transcriptions of recordings, or minutes requested pursuant to section 261b.12(b) of this Part will be provided at a cost of 10¢ per standard page for photocopying or at a cost not to exceed the actual cost of printing, typing, or otherwise preparing such copies.

(b) Documents may be furnished without charge where total charges are less than \$2.

STATUTORY APPENDIX

§ 552b. Open meetings

(a) For purposes of this section—

(1) the term “agency” means any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term “meeting” means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term “member” means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A)

requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) disclose information 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;

(9) disclose information the premature disclosure of which would—

(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to

significantly frustrate implementation of a proposed agency action, except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the context or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(d)(1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1)) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the

question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2) and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meet-

ing, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or 10 of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic record-

ing, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h)(1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except

that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who sub-

stantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

[U. S. C., sec. 552b. As added by Act of September 13, 1976 (90 Stat. 1241).]