



FEDERAL RESERVE BANK
OF DALLAS

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FIRST VICE PRESIDENT
AND CHIEF OPERATING OFFICER

April 21, 1989

DALLAS, TEXAS 75222

Circular 89-28

TO: The Chief Executive Officer of
all financial institutions in the
Eleventh Federal Reserve District

SUBJECT

**Revised "Rules Regarding Availability of
Information" pamphlet**

DETAILS

The Federal Reserve Board of Governors has issued a revised "Rules Regarding Availability of Information" pamphlet. The pamphlet sets forth the kinds of information made available to the public, the rules of procedure for obtaining documents and records, and the rules of procedure with respect to confidential information from the Federal Reserve.

ATTACHMENTS

The revised pamphlet is attached.

Sincerely yours,

William H. Wallace

Rules Regarding Availability of Information

12 CFR 261; as amended effective July 11, 1988



Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the District in which the inquiry arises.

August 1988

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Rules Regarding Availability of Information

12 CFR 261; effective March 1978; as amended effective July 11, 1988

SUBPART A—GENERAL PROVISIONS

SECTION 261.1—Authority, Purpose, and Scope

(a) *Authority.* This regulation is issued by the Board of Governors of the Federal Reserve System (the "Board") pursuant to 12 USC 248(i) and (k) and 5 USC 552.

(b) *Purpose.* This regulation sets forth the kinds of information made available to the public, the rules of procedure for obtaining documents and records, and the rules of procedure with respect to confidential information.

(c) *Scope.* (1) Subpart A contains general provisions and definitions of terms used in this regulation.

(2) Subpart B implements the Freedom of Information Act (5 USC 552) and explains—

- (i) the kinds of information the Board regularly publishes;
- (ii) the types of records made available to the public upon request;
- (iii) the kinds of information exempt from disclosure or subject to deferred availability; and
- (iv) the procedures for obtaining information and for processing information requests.

(3) Subpart C sets forth—

- (i) the kinds of confidential information made available to supervised institutions, supervisory agencies, law enforcement agencies, and others in certain circumstances;
- (ii) the procedures for disclosure;
- (iii) the procedures for processing law enforcement requests; and
- (iv) the procedures with respect to subpoenas, orders compelling production, and other process.

(4) Subpart D contains the procedures re-

lating to requests for confidential treatment of documents and information.

SECTION 261.2—Definitions

For purposes of this regulation—

(a) "Board's official files" means the Board's central records.

(b) "Confidential supervisory information" means cease-and-desist orders, suspension or removal orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, as amended, the Bank Holding Company Act of 1956, as amended, or the Federal Reserve Act of 1913, as amended; reports of examination and inspection, confidential operating and condition reports, and any information derived from, related to, or contained in them. "Confidential supervisory information" may consist of documents prepared by, on behalf of, or for the use of the Board, a Reserve Bank, a federal or state financial institutions supervisory agency, or a bank or bank holding company.

(c) "Information of the Board" means all information coming into the possession of the Board, any Board member, any Federal Reserve Bank, or 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.

(d) (1) "Records of the Board" includes applications, rules, statements, opinions, orders, memoranda, letters, reports, accounts, and other written material, as well as magnetic tapes, computer printouts of information obtained through use of existing computer programs, maps, photographs, and other materials in nonwritten or machine-readable form that are under the control of the Board, that contain information of the Board, and that—

- (i) constitute part of the Board's official files; or
- (ii) are maintained for administrative reasons in the regular course of business in official files in any division or office of the Board or any Federal Reserve Bank in connection with the transaction of any official business.

(2) "Records of the Board" does not include—

- (i) handwritten notes; personal files of Board members and employees; tangible exhibits, formulas, designs, or other items of valuable intellectual property; extra copies of documents and library and museum materials kept solely for reference or exhibition purposes; unaltered publications otherwise available to the public in Board publications, libraries, or established distribution systems;
- (ii) documents, including lists, and other material not in existence or not in the Board's possession or control on the date a request for records is received;
- (iii) documents no longer in the possession of the Board which have been disposed of in accordance with law;
- (iv) copies of transcripts provided to the Board under any reporting service contract and that may be obtained directly from the contractor;
- (v) documents of other agencies made available to the Board on a confidential basis by such agencies;
- (vi) documents that are not the property of the Board and which have been made available to the Board on a temporary or otherwise limited basis with its consent.

(e)(1) "Report of examination" means the report prepared by the Board concerning its examination of a state member bank of the Federal Reserve System, and includes reports of inspection of bank holding companies, U.S. branches or agencies of foreign banks, and other institutions examined by the Federal Reserve System. Such reports may be prepared either solely by the Board or jointly by the Board and an appropriate state bank supervisory agency.

(2) "Reports of examination" may include reports of examination of other financial in-

stitutions prepared and provided to the Federal Reserve System by other federal and state financial institution supervisory agencies.

(f) "Report of inspection" means the report prepared by the Board concerning its inspection of a bank holding company and its bank and nonbank subsidiaries.

(g)(1) "Search" means a reasonable search of the Board's official files and any other files containing Board records as seem reasonably likely in the particular circumstances to contain documents of the kind requested. Searches may be done manually or by computer using existing programming. For purposes of computing fees under section 261.10 of this regulation, search time includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity is distinct from "review" of material to determine whether the material is exempt from disclosure.

(2) "Search" does not mean or include—

- (i) research;
- (ii) creation of any information or data-retrieval program or system;
- (iii) extensive modification of an existing program or system;
- (iv) creation of any document, or any other activity that involves creative processes rather than simply retrieval of existing documents.

SECTION 261.3—Custodian of Records; Certification; Service; Alternative Authority

(a) *Custodian of records.* The secretary of the Board is the official custodian of all records of the Board, including all records that are in the possession or control of the Board, any Federal Reserve Bank, or any Board or Reserve Bank employee.

(b) *Certification of record.* The Secretary may certify the authenticity of any record of the Board, or of any copy of such record, for any purpose, and for or before any duly con-

stituted federal or state court, tribunal, or agency.

(c) *Service of subpoenas or other process.* Subpoenas or other judicial or administrative process demanding access to records of the Board shall be addressed to and served upon the secretary of the Board at the Board's offices in Washington, D.C. 20551.

(d) *Alternative authority.* (1) *Secretary of the Board.* Any action or determination required or permitted by this regulation to be done by the secretary of the Board may be done by an associate secretary or other responsible employee of the Board who has been duly designated for this purpose by the secretary.

(2) *General counsel.* Any action or determination required or permitted by this regulation to be done by the general counsel may, in the general counsel's absence, be done by a deputy or associate general counsel or other attorney of the Board's Legal Division who has been duly designated for this purpose by the general counsel.

(3) *Director of Banking Supervision and Regulation.* Any action or determination required or permitted by this regulation to be done by the director of the Division of Banking Supervision and Regulation may, in the director's absence, be done by the deputy director or other official of the division who has been duly designated for this purpose by the director.

SUBPART B—PUBLISHED INFORMATION AND RECORDS AVAILABLE TO PUBLIC: PROCEDURES FOR REQUESTS

SECTION 261.5—Published Information

(a) *Federal Register.* The Board publishes in the *Federal Register* for the guidance of the public—

- (1) descriptions of the Board's central and field organization;
- (2) statements of the general course and method by which the Board's functions are

channeled and determined, including the nature and requirements of procedures;

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

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

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

(6) general notices of proposed rule-making;

(7) notices of applications received under the Bank Holding Company Act of 1956 (12 USC 1841 et seq.) and the Change in Bank Control Act (12 USC 1817);

(8) notices of formal public hearings ordered by the Board;

(9) notices of all Board meetings, pursuant to 5 USC 552b;

(10) notices identifying the Board's systems of records, pursuant to 5 USC 552a; and

(11) notices of agency data collection forms being reviewed under the Paperwork Reduction Act (5 USC 3501 et seq.).

(b) *Board's reports to Congress.* (1) *Annual report under Federal Reserve Act.* The Board's annual report to Congress pursuant to the Federal Reserve Act (12 USC 247), which is made public upon 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. The report includes—

(i) a full account of the policy actions taken by the Board and the Federal Open Market Committee, showing the votes taken and the underlying reasons (12 USC 247a);

(ii) material pertaining to administering Board functions under the Bank Holding Company Act of 1956 (12 USC 1843(c) and 1844(d));

(iii) material pertaining to bank mergers approved by the Board under section 18(c) of the Federal Deposit Insurance Act (12 USC 1828(c)(9)); and

(iv) reports required by section 114 of the Truth in Lending Act (15 USC 1613); section 602 of the Change in Bank Control Act (12 USC 1817(j)(14)); section 121 of the Securities and Exchange Act (15 USC 78w(b)); the Securities Act Amendments of 1975 (15 USC 78w); section 707 of the Equal Credit Opportunity Act (15 USC 1691f); section 18 of the Federal Trade Commission Improvement Act (12 USC 57a(f)(5)); section 918 of the Electronic Funds Transfer Act (15 USC 1693p); section 805 of the Community Reinvestment Act (12 USC 2904); and section 3(h) of the International Banking Act of 1978, Pub. L. 95-369.

(2) *Reports under other acts.* The Board also reports to Congress annually, or at more frequent intervals, under certain acts of Congress, including but not limited to the Freedom of Information Act (5 USC 552(e)); the Government in the Sunshine Act (5 USC 552b(i)); and the Full Employment and Balanced Growth Act of 1978 (12 USC 225a), concerning the administration of its functions under each of these acts.

(c) *Federal Reserve Bulletin.* (1) *Contents.* In the *Federal Reserve Bulletin*, which is issued monthly, the Board publishes—

- (i) economic and statistical information;
- (ii) articles on subjects of economic interest or relating to Board activities;
- (iii) regulations;
- (iv) statements of general policy;
- (v) interpretations of laws and regulations of general interest to the public;
- (vi) notices of Board action on certain types of applications; and
- (vii) Board orders and accompanying statements on certain types of adjudications.

(2) *Advanced release of information.* Some material published in the *Bulletin* is released in advance of publication, including certain regulations, interpretations, orders and opinions, and the Board's index of industrial production and other statistical series.

(d) *Other published information.* (1) *Statements of financial condition.* As required by section 11(a) of the Federal Reserve Act (12 USC 248(a)), the Board issues weekly a statement showing the condition of each Federal Reserve Bank and a consolidated statement of the condition of all Federal Reserve Banks.

(2) *Index of applications.* The Board also issues weekly an index of the applications received and the actions taken on such applications, as well as other matters issued, adopted, or promulgated by the Board.

(3) *Statement of changes in bank structure.* In addition, the Board issues weekly a statement showing changes in the structure of the banking industry resulting from mergers and the establishment of branches.

(4) *Press releases.* The Board frequently issues statements to the press and public regarding monetary and credit actions, regulatory actions, actions taken on certain types of applications, and other matters. Current press releases may be obtained from the Board's Publications Services Section.

(5) *Computer tapes.* The Board periodically prepares data of various kinds on computer tapes, which are available to the public through the National Technical Information Service and may be obtained by the procedure described in section 261.6(c)(3) of this regulation.

(6) *Regulatory Service.* The Board publishes the *Federal Reserve Regulatory Service*, which is a multivolume loose-leaf service containing statutes, regulations, interpretations, rulings, staff opinions, and procedural rules under which the Board operates. Parts of the service are also published as separate loose-leaf handbooks relating to consumer and community affairs, monetary policy and reserve requirements, and securities credit transactions. The service and each handbook contain subject and citation indexes, are updated monthly, and may be subscribed to on a yearly basis.

(7) *Lists of Board publications.* The Board's Publications Services Section maintains a list of Board publications that are available to the public. In addition, a partial

list of important publications is published in the *Federal Reserve Bulletin*.

(e) *Indexes to Board actions.* (1) The Board's Freedom of Information Office maintains an index to Board actions which provides identifying information about any matters issued, adopted, and promulgated by the Board since July 4, 1967. The index is updated weekly and is available to the public on microform. Copies of the index may be obtained upon request to the secretary of the Board subject to the current schedule of charges, as described in section 261.10 of this regulation.

(2) In addition, the Board publishes a weekly index, as described in paragraph (d)(2) of this section, which provides identifying information on a current basis about matters issued, adopted, and promulgated by the Board. The weekly index is available from the Publications Services Section on a subscription or a single-issue basis pursuant to a current schedule of charges. Back issues of this index are available from the secretary of the Board subject to the schedule of charges, described in section 261.10 of this regulation.

(f) *Obtaining Board publications.* All publications issued by the Board may be obtained from the Publications Services Section of the Federal Reserve Board, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (pedestrian entrance is on C Street, N.W.), including (1) current and available back issues of the Board's Annual Report to Congress (copies of the Board's Annual Report to Congress are also normally available for examination at each Federal Reserve Bank) and (2) single current and available back issues of the *Federal Reserve Bulletin*, which may be obtained at the prescribed rates (any individual or group may subscribe annually to the *Bulletin* at the prescribed rate).

SECTION 261.6—Records Available to Public upon Request

(a) *Types of records made available.* Subject to the provisions of this regulation, the follow-

ing records shall be made available for inspection and copying upon request, unless they were published promptly and made available for sale or without charge:

(1) orders made in the adjudication of cases, and final opinions, including concurring and dissenting opinions, and orders and opinions issued pursuant to authority delegated by the Board;

(2) interpretations and statements of policy adopted by the Board that are not published in the *Federal Register*;

(3) records of the final votes of Board members;

(4) administrative staff manuals and instructions to staff that affect the public; and

(5) other records subject to disclosure pursuant to 5 USC 552.

(b) *Exceptions and limitations.* (1) *Confidentiality.* The Board may delete identifying details from any record to prevent a clearly unwarranted invasion of personal privacy. The Board shall state in writing the reason for the deletion.

(2) *Deferred availability.* Availability of information in any record may be postponed, as provided in section 261.7 of this regulation.

(3) *Exempt records; discretionary release.* Some records are exempt from disclosure under 5 USC 552(b), as described in section 261.8 of this regulation. However, except where disclosure is expressly prohibited by statute, regulation, or order, the Board may release records that are exempt from mandatory disclosure whenever the Board or designated Board members, the secretary of the Board, the general counsel of the Board, the director of the Division of Banking Supervision and Regulation, or the appropriate Federal Reserve Bank, acting pursuant to this regulation or part 265 of this title, determines that such disclosure would be in the public interest. In no event shall the release of information that has been requested for commercial solicitation purposes be considered to be in the public interest unless such release is specifically authorized by the persons named in the records to be released.

(4) *Nonexempt information.* Although the Board may deny access to portions of a record, it shall release reasonably segregable nonexempt portions.

(5) *Requests for applications, notices, and reports.* The Board preliminarily identifies public portions of most applications filed under the Bank Holding Company Act, notices filed under the Change in Bank Control Act, and other reports filed in connection with its supervision of financial institutions. The public portions contain information that may be released by the Board or appropriate Federal Reserve Bank without further review. Each request for these applications, notices, and reports shall be considered to be a request for the public portions only, unless the requester specifically seeks access to the entire document.

(6) *Disposal of records.* Nothing in this regulation precludes the Board from disposing of records eligible for disposal in the normal course of business and in accordance with applicable law.

(c) *How to obtain access to records.* (1) Records of the Board subject to this section are available for inspection and copying, in response to requests for identifiable records pursuant to section 261.9 of this regulation, from 9:00 a.m. to 5:00 p.m. weekdays, at the office of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (the pedestrian entrance is on C Street, N.W.). Indexes of Board actions and copies of selected Board records are available in the Freedom of Information Office for immediate inspection without a request or other prior arrangements.

(2) The Board may determine that certain classes of publicly available filings shall be made available for inspection and copying only at the Federal Reserve Bank where those records are filed.

(3) The publicly available portions of Reports of Condition and Income of individual banks, as well as certain other data files produced by the Board, are distributed by the National Technical Information Service. Requests for these public reports should be addressed to:

Sales Office
National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, Virginia 22161
(703) 487-4650

SECTION 261.7—Deferred Availability of Certain Information

(a) *Information subject to deferred availability.* Certain types of information may not be published in the *Federal Register* or made available for inspection and copying until after a period of time the Board determines to be reasonably necessary to avoid the effects described in paragraph (b) of this section.

(b) *Reasons for deferred availability.* Information may be subject to deferred availability or deferred publication because earlier disclosure would likely—

- (1) interfere with accomplishing the objectives of the Board in the discharge of its statutory functions;
- (2) interfere with the orderly conduct of the foreign affairs of the United States;
- (3) permit speculators or others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;
- (4) result in unnecessary or unwarranted disturbances in the securities markets;
- (5) interfere with the orderly execution of the objectives or policies of other government agencies; or
- (6) impair the ability to negotiate any contract or otherwise harm the commercial or financial interests of the United States, the Board, any Federal Reserve Bank, or any department or agency of the United States.

SECTION 261.8—Exemptions from Disclosure

(a) *Types of information or records that are exempt from disclosure.* The following records and information of the Board are exempt from disclosure under this regulation.

(1) *National defense.* Any information or record that is specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such executive order.

(2) *Examination, inspection, operating, or condition reports, and confidential supervisory information.*

(i) Any matter that is contained in or related to confidential supervisory information prepared by, on behalf of, or for the use of the Board, any Federal Reserve Bank, or any federal or state financial institution supervisory agency that deems such documents or information confidential.

(ii) The Board may, however, determine that certain kinds of operating or condition reports may, for reasons of policy, be routinely disclosed to the public upon request. In such case, no special authorization shall be required for disclosure of the reports by members of the Board's staff or by staff of the Reserve Banks; and there shall be no limitation on the use of the reports by members of the public receiving them.

(3) *Trade secrets; commercial or financial information.*

(i) Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(ii) The Board may, however, make any information furnished in confidence in connection with an application for Board approval of a transaction available to the public in accordance with section 261.6 of this regulation, and without prior notice and to the extent it deems necessary, may comment on such information in any opinion or statement issued to the public in connection with a Board action to which such information pertains.

(4) *Records or information compiled for law enforcement purposes.* Any records or information compiled for law enforcement purposes, to the extent permitted under 5 USC 552(b)(7), including information relating to proceedings for—

(i) issuing cease-and-desist orders, suspension or removal orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, as amended, the Bank Holding Company Act of 1956, as amended, or the Federal Reserve Act of 1913, as amended;

(ii) terminating membership of an institution in the Federal Reserve System under section 9 of the Federal Reserve Act (12 USC 327);

(iii) suspending a depository institution from use of the credit facilities of the Federal Reserve System under section 4 of the Federal Reserve Act (12 USC 301); or

(iv) granting or revoking any approval, permission, or authority, except to the extent provided in this regulation and part 262 of this chapter concerning bank holding company and bank merger applications.

(5) *Internal personnel rules and practices.* Any information related solely to the internal personnel rules and practices of the Board, within the meaning of 5 USC 552(b)(2).

(6) *Personnel and medical files.* Any information contained in personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) *Inter- or intra-agency memorandums or letters.* Any matter contained in inter- or intra-agency memorandums or letters that would not be routinely available by law to a party (other than an agency) in litigation with an agency, including but not limited to—

(i) memorandums;

(ii) reports;

(iii) other documents prepared by the staffs of the Board or Federal Reserve Banks; and

(iv) records of deliberations of the Board and of discussions at meetings of the Board, any Board committee, or Board staff, that are not subject to 5 USC 552b.

(8) *Court order prohibitions.* Any document or information that is covered by an

order of a court of competent jurisdiction that prohibits its disclosure.

(9) *Statutory exemption.* Any information specifically exempted from disclosure by statute (other than 5 USC 552b), if the statute—

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

(b) *Segregation of nonexempt information.*

(1) *Partial release.* The Board shall provide any reasonably segregable portion of a record that is requested after deleting those portions that are exempt under this section. In determining whether exempt information is reasonably segregable, the Board shall consider all relevant factors, including but not limited to—

- (i) the amount and placement of nonexempt information in relation to the structure and size of the document; and
- (ii) the intelligibility and usefulness of the nonexempt information that is segregated balanced against the administrative burden and cost of segregation.

(2) *Reasonably segregable portions.* Subject to these considerations, reasonably segregable nonexempt portions of a document are those nonexempt portions—

- (i) whose meaning is not distorted by deletion;
- (ii) that are sufficiently detailed to be intelligible and useful to the requester; and
- (iii) from which a skillful and knowledgeable person could not reconstruct any exempt information.

(3) *Computer tapes.* Information stored on computer tape that can be segregated only by creating a new retrieval program is not considered reasonably segregable.

(c) *Prohibition against disclosure.* Except as provided in this regulation, no officer, employee, or agent of the Board or any Federal Reserve Bank shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board or Reserve Bank officers, employees, or agents properly entitled to such information for the

performance of official duties), whether by giving out or furnishing the information or a copy of it or by allowing any person to inspect or copy it, or otherwise.

SECTION 261.9—Procedures for Making Requests for Identifiable Records; Processing of Requests; Review of Denial of Request; Time Extensions

(a) *Procedures for making request for records.* (1) *Contents of request.* A request for identifiable records shall reasonably describe the records to which access is sought in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or disrupting any of the Board's operations. The request shall be submitted in writing to the secretary of the Board, and the envelope clearly marked "Freedom of Information Act Request." The request shall contain the following information:

- (i) the name and address of the person filing the request, and the telephone number at which the requester can be reached during normal business hours;
- (ii) the name of any pending litigation to which the request relates, the court, and its location;
- (iii) whether the requested information is intended for commercial use, and whether the requester is an educational or noncommercial scientific institution, or news media representative; and
- (iv) a statement agreeing to pay the applicable fees, or a statement identifying any fee limitation desired, or a request for a waiver or reduction of fees that satisfies section 261.10(h) of this regulation.

(2) *Defective requests.* (i) The Board need not accept or process a request that is not a request for identifiable records or that—

- (A) can be complied with only by designing an information-retrieval system; or
- (B) does not otherwise comply with the requirements of paragraph (a)(1) of this section.

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

(3) *Oral requests.* The Board may honor an oral request for records, but if the requester is dissatisfied with the Board's response and wishes to seek review, the requester must submit a written request, which shall be treated as an initial request.

(4) *Advance payment of fees.* Whenever the Board requires advance payment of any fee pursuant to section 261.10(g) of this regulation, the requester shall promptly remit the required advance payment to the Board as a condition to further processing of the request.

(b) *Procedures for responding to requests.* (1)

Time limits. In response to any request that satisfies paragraph (a) of this section, the Board shall, if necessary, cause an appropriate search to be conducted of records of the Board in existence on the date of receipt of the request, and shall determine within 10 working days of receipt of the request whether to comply with the request, unless the running of such time is suspended for payment of fees pursuant to section 261.10(g)(3) of this regulation, or such period is extended, pursuant to paragraph (e) of this section or section 261.7 of this regulation. The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency or by a Federal Reserve Bank, is the date the Office of the Secretary actually receives it.

(2) *Response to request.* The Board shall, within the time period specified in paragraph (b)(1) of this section, notify the requester of—

- (i) the Board's determination of the request;
- (ii) the reasons for the determination;
- (iii) the right of the requester to appeal to the Board any denial or partial denial, as specified in paragraph (d) of this section; and
- (iv) in the case of a denial of a request, the name and title or position of the person responsible for the denial.

(3) *Refusal to acknowledge records.* If a request covers records or types of records whose existence is confidential, such as records of enforcement actions against identifiable financial institutions, the Board may advise the requester that it can neither confirm nor deny the existence of the requested records and notify the requester of the legal basis for that determination.

(4) *Priority of responses.* The secretary will assign responsible staff to particular requests and will normally process requests in the order they are received. However, in the secretary's discretion, or upon a court order in a matter to which the Board is a party, a particular request may be processed out of turn.

(5) *Referrals.* To the extent a request covers documents that were created by, obtained from, or classified by another agency, the Board may refer the request to that agency for a response and inform the requester promptly of the referral.

(c) *Procedures for copying and review of records; number of copies; method of duplication.* (1) *Request for copies.* When a requester asks that documents be copied, copies shall be made at the fee established, as provided in section 261.10 of this regulation. Copies shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office in Washington, D.C., or makes other arrangements acceptable to the Board.

(2) *Number of copies; method of duplication.* The Board need not provide more than one copy of any record to any requester, and the Board may select the form of the copy provided, such as paper, microform, or other medium.

(3) *Request to review documents.* Requesters may review documents at the Board's Freedom of Information Office under staff supervision. Requesters may not disassemble or alter any record or file being inspected.

(d) *Appeal of denial of request for records.*

(1) *Request for review; time limits.* Any

person denied access to Board records requested in accordance with this section may file with the Board a written request for review of the denial by the Board or Board member(s) designated to hear such appeal. The request shall be filed within 10 working days of the date on which the denial was issued, or, where a request for documents has been partially approved but access to the documents has not been given, within 10 working days from the date such documents are transmitted to the requester. The request shall prominently display the word "Appeal" on the first page. An initial request for records may not be combined in the same letter with an appeal.

(2) *Untimely appeals.* The Board may consider an untimely appeal if—

(i) it is accompanied by a written request for leave to file an untimely appeal; and

(ii) the Board or designated Board member(s) determines, in its discretion and for good and substantial cause shown, that the appeal should be considered.

(3) *Decision on appeal; time limits.* The Board or designated Board member(s) shall make a determination with respect to any appeal within 20 working days of actual receipt of the appeal by the secretary and shall immediately notify the appealing party of the determination and the right to seek judicial review if the determination upholds, in whole or in part, the denial of the request for records. Such determination is not subject to review under section 265.3 of this chapter, which provides for review of actions taken under delegated authority.

(4) *Mootness of appeal.* (i) The Board, a Board member, or a staff person designated by the chairman may declare an appeal wholly or partially moot and instruct the secretary of the Board to reconsider the previous denial or to release the requested documents, where a determination is made that intervening circumstances or additional facts not known at the time of denial have or may have eliminated any need or justification for withholding the requested documents.

(ii) The secretary may reconsider a de-

nial being appealed if such intervening circumstances or additional facts come to the attention of the secretary while an appeal is pending.

(e) *Time extensions in unusual circumstances; failure to comply with time limits.* (1)

Time extensions. In unusual circumstances, as defined in 5 USC 552(a)(6), the time limits specified in paragraph (b)(1) and paragraph (d)(3) of this section may be extended for a period of time not to exceed 10 working days by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. The extension of time may be divided between the initial and appellate reviews but the total extensions relating to any request and resulting appeal may not exceed 10 working days.

(2) *Failure to comply with time limits.* If the Board fails to comply with the time limits and extensions specified in this section, the Board or other responsible Board employee shall, where practicable, give notice to the requester, stating the reasons for the delay and the date by which the Board expects to dispatch its determination. Without prejudice to the legal remedies provided the requester in 5 USC 552, the Board shall continue processing the request as quickly as possible and shall dispatch its determination when reached in the same manner as if it had been reached within the applicable time limits.

SECTION 261.10—Fee Schedules; Waiver of Fees

(a) *Fee schedules.* Records of the Board available for public inspection and copying are subject to a written schedule of fees for search, review, and duplication. (See appendix A for schedule of fees.) The fees set forth in the schedule of fees reflect the full allowable direct costs of search, duplication, and review, and may be adjusted from time to time by the secretary to reflect changes in direct costs.

(b) *Fees charged.* The fees charged only cover the full allowable direct costs of search, duplication, or review.

(1) "Direct costs" mean those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under section 261.9 of this regulation. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Duplication" refers to the process of making a copy of a document necessary to respond to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Such copies may take the form of paper copy, microform, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

(3) "Review" refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Commercial use.*

(1) The fees in the schedule of fees for document search, duplication, and review apply when records are requested for commercial use.

(2) "Commercial-use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(3) In determining whether a requester properly belongs in this category, the secretary shall look first to the use to which a requester will put the documents requested.

Where a requester does not explain its purpose, or where its explanation is insufficient, the secretary may seek additional clarification from the requester before categorizing the request as one for commercial use.

(d) *Educational, research, or media use.*

(1) Only the fees in the schedule of fees for document duplication apply when records are not sought for commercial use and the requester is a representative of the news media, or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. However, there is no charge for the first one hundred pages of duplication.

(2) "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education, which operates a program of scholarly research.

(3) "Noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis (as that term is used in paragraph (c) of this section) and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) "Representative of the news media" refers to any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) *Other uses.* For all other requests, the fees in the schedule of fees for document search and duplication apply. However, there is no charge for the first 100 pages of duplication or the first two hours of search time.

(f) *Aggregated requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. If the secretary reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the secretary may aggregate any such requests and charge accordingly. It is considered reasonable for the secretary to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(g) *Payment procedures.*

(1) *Fee payment.* The secretary may assume that a person requesting records pursuant to section 261.9 of this regulation will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (h) of this section.

(2) *Advance notification.* If the secretary estimates that charges are likely to exceed \$25, the requester shall be notified of the estimated amount of fees, unless he has indicated in advance willingness to pay fees as high as those anticipated. Upon receipt of such notice the requester may confer with the secretary as to the possibility of reformulating the request in order to lower the costs.

(3) *Advance payment.*

(i) The secretary may require advance payment of any fee estimated to exceed \$250. The secretary may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion.

(ii) For purposes of computing the time period for responding to requests under section 261.9(d) of this regulation, the running of the time period will begin only after the secretary receives the required payment.

(4) *Late charges.* The secretary may assess interest charges when fee payment is not

made within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 USC and will accrue from the date of the billing. This rate of interest is published by the secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if no responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The secretary shall apply the standards set out in paragraph (h) of this section in determining whether to waive or reduce fees.

(h) *Waiver or reduction of fees.*

(1) *Standards for determining waiver or reduction.* The secretary or his or her designee shall grant a waiver or reduction of fees chargeable under paragraph (b) of this section where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. The secretary or his or her designee shall also waive fees that are less than the average cost of collecting fees. In determining whether disclosure is in the public interest, the following factors will be considered:

(i) whether the subject of the requested records concerns "the operations or activities of the government";

(ii) whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) whether disclosure of the requested information will contribute to public understanding;

(iv) whether the disclosure is likely to contribute *significantly* to public under-

standing of government operations or activities;

(v) whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(vi) whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(2) *Contents of request for waiver.* The secretary will normally deny a request for a waiver of fees that does not include—

(i) a clear statement of the requester's interest in the requested documents;

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

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

(iv) if specialized use of the documents or information is contemplated, a statement of the requester's qualification that are relevant to the specialized use.

(3) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

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

SUBPART C—CONFIDENTIAL INFORMATION MADE AVAILABLE TO SUPERVISED INSTITUTIONS, FINANCIAL INSTITUTION SUPERVISORY AGENCIES, LAW ENFORCEMENT AGENCIES, AND OTHERS IN CERTAIN CIRCUMSTANCES

SECTION 261.11—Confidential Supervisory Information Made Available to Supervised Financial Institutions and Financial Institution Supervisory Agencies

(a) *Disclosure of confidential supervisory information to supervised financial institutions.*

Confidential supervisory information concerning a supervised bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other institution examined by the Federal Reserve System ("supervised financial institution") may be made available by the Board or the appropriate Federal Reserve Bank to the supervised financial institution.

(b) *Disclosure of confidential supervisory information by supervised financial institutions.*

(1) *Parent bank holding company, directors, officers, and employees.* Any supervised financial institution lawfully in possession of confidential supervisory information of the Board pursuant to this section may disclose such information, or portions thereof, to its directors, officers, and employees, and to its parent bank holding company and its directors, officers, and employees.

(2) *Certified public accountants and legal counsel.* Any supervised financial institution lawfully in possession of confidential supervisory information of the Board pursuant to this section may disclose such information, or portions thereof, to any certified public accountant or legal counsel employed by the supervised financial institution, subject to the following conditions:

(i) certified public accountants or legal counsel shall review the confidential supervisory information only on the premises of the supervised financial institution, and shall not make or retain any copies of such information;

(ii) the certified public accountants or legal counsel shall not disclose the confidential supervisory information for any purpose without the prior written approval of the Board's general counsel except as necessary to provide advice to the supervised financial institution, its parent bank holding company, or the officers, directors, and employees of such super-

vised financial institution and parent bank holding company.

(c) *Disclosure upon request to federal financial institution supervisory agencies.* Upon request, the director of the Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank may make available to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board and their regional offices and representatives, confidential supervisory information and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other supervised financial institution.

(d) *Disclosure upon request to state financial institution supervisory agencies.* Upon request, the director of the Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank may make available confidential supervisory information and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other supervised financial institution to—

(1) a state financial institution supervisory agency having direct supervisory authority over such supervised financial institution; or

(2) a state financial institution supervisory agency not having direct supervisory authority over such supervised financial institution if the requesting agency has entered into an information-sharing agreement with the appropriate Federal Reserve Bank and the information to be provided concerns a supervised financial institution that has acquired or has applied to acquire a financial institution subject to that agency's direct supervisory authority.

(e) *Discretionary disclosures.* The Board may determine, from time to time, to authorize other disclosures of confidential information as necessary.

(f) *Conditions and limitations.* The Board may impose any conditions or limitations on

disclosure under this section that it determines are necessary to effect the purposes of this regulation.

(g) *Other disclosure prohibited.* All confidential supervisory information or other information made available under this section shall remain the property of the Board. No supervised financial institution, financial institution supervisory agency, person, or any other party to whom the information is made available, or any other officer, director, employee or agent thereof, may disclose such information without the prior written permission of the Board's general counsel except in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any individual, corporation, or other entity. No person obtaining access to confidential supervisory information pursuant to this section may make a personal copy of any such information; and no person may remove confidential supervisory information from the premises of the institution or agency in possession of such information except as permitted by specific language in this regulation or by the Board.

(h) *Disclosure of foreign-bank Confidential Report of Operations.* (1) *Availability of foreign-bank Confidential Report of Operations to bank supervisory agencies.* Notwithstanding any other provision of this regulation, any Confidential Report of Operations (Form FR 2068) of a foreign banking organization may, upon written request to and approval by the director of the Division of Banking Supervision and Regulation (or his delegee), and with the concurrence of the general counsel (or his delegee), be made available for inspection to another bank supervisory authority having general supervision of any United States branch, agency, subsidiary bank or commercial lending company of the foreign banking organization, only for use where necessary in the performance of official duties. These reports shall be made available for inspection by authorized persons only on Federal Reserve premises under the same procedures as apply to personnel of the Federal Reserve System. All reports made available

under this paragraph shall remain the property of the Board; and no person, agency, or authority who obtains access to any such report, or any officer, director, or employee thereof, shall publish, publicize, or otherwise disclose any information contained in the report to any person.

(2) *Restrictions on disclosure by Federal Reserve System employees.* It is the Board's policy that the confidentiality of a foreign banking organization's Confidential Report of Operations (Form FR 2068) should be maintained at all times. Except as provided by paragraph (h)(1) of this section, information submitted to the Board as part of any Confidential Report of Operations is not available for public inspection by any person other than an officer, employee, or agent of the Board or of a Federal Reserve Bank properly entitled to such information in the performance of such person's official duties. Any employee that violates this section by releasing such a report to any unauthorized person may be subject to disciplinary action under 12 CFR 264.735-5 (Rules of Employee Responsibilities and Conduct).

SECTION 261.12—Confidential Information Made Available to Law Enforcement Agencies and Other Nonfinancial Institution Supervisory Agencies

(a) *Disclosure upon request.* Upon written request, the Board may make available to appropriate law enforcement agencies and to other non-financial institution supervisory agencies for use where necessary in the performance of official duties, reports of examination and inspection, confidential supervisory information, and other confidential documents and information of the Board concerning banks, bank holding companies and their subsidiaries, U.S. branches and agencies of foreign banks, and other examined institutions.

(b) *Eligibility.* Federal, state, and local law enforcement agencies and other non-financial institution supervisory agencies may file written requests with the Board for access to con-

fidential documents and information under this section of the regulation. Properly accredited foreign law enforcement agencies and other foreign-government agencies may also file written requests with the Board.

(c) *Contents of request.* To obtain access to confidential documents or information under this section of the regulation, the head of the law enforcement agency or non-financial institution supervisory agency (or their designees) shall address a letter request to the Board's general counsel, specifying—

- (1) the particular information, kinds of information, and where possible, the particular documents to which access is sought;
- (2) the reasons why such information cannot be obtained from the examined institution in question rather than from the Board;
- (3) a statement of the law enforcement purpose or other purpose for which the information shall be used;
- (4) whether the requested disclosure is permitted or restricted in any way by applicable law or regulation;
- (5) a commitment that the information requested shall not be disclosed to any person outside the agency without the written permission of the Board or its general counsel; and
- (6) if the document or information requested includes customer-account information subject to the Right to Financial Privacy Act, as amended (12 USC 3401 et seq.), a statement that such customer-account information need not be provided, or a statement as to why the act does not apply to the request, or a certification that the requesting agency has complied with the requirements of the act.

- (d) *Action on request.* (1) The general counsel shall review each request and may approve the request upon determining that—
- (i) the request complies with this section;
 - (ii) the information is needed in connection with a formal investigation or other official duties of the requesting agency;
 - (iii) satisfactory assurances of confidentiality have been given; and

(iv) no law prohibits the requested disclosure.

(2) The general counsel may impose any conditions or limitations on disclosure that the general counsel determines to be necessary to effect the purposes of this regulation or to ensure compliance with applicable laws or regulations.

(e) *Federal and state grand jury, criminal trial, and government administrative subpoenas.* The Board's general counsel shall review and may approve the disclosure of confidential information pursuant to federal and state grand jury, criminal trial, and government administrative subpoenas. The general counsel may impose such conditions or limitations on disclosure under this section that the general counsel determines are necessary to effect the purposes of this regulation, to ensure compliance with applicable laws or regulations, or to protect the confidentiality of the Board's information.

(f) *Requests for testimony or interviews.* Government agencies seeking to obtain testimony or interviews from current and former Federal Reserve System staff concerning any confidential information of the Board shall use the procedures set out in paragraph (c) of this section.

(g) *Other disclosure prohibited.* All reports and information made available under this section remain the property of the Board, and except as otherwise provided in this regulation, no person, agency, or authority to whom the information is made available, or any officer, director, or employee thereof, may disclose any such information except in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any individual or corporation.

SECTION 261.13—Other Disclosure of Confidential Supervisory Information

(a) *Board policy.* It is the Board's policy regarding confidential supervisory information that such information is confidential and privileged. Accordingly, the Board will not normally disclose this information to the public.

The Board, when considering a request for disclosure of confidential supervisory information under this section, will not authorize disclosure unless the person requesting disclosure is able to show a substantial need for such information that outweighs the need to maintain confidentiality.

(b) *Requests for disclosure.*

(1) *Requests from litigants for information or testimony.* Any person (except agencies identified in sections 261.11 and 261.12 of this regulation) seeking access to confidential supervisory information or seeking to obtain the testimony of present or former Board or Reserve Bank employees on matters involving confidential supervisory information of the Board, whether by deposition or otherwise, for use in litigation before a court, board, commission, or agency, shall file a written request with the general counsel of the Board. The request shall describe—

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

(ii) the judicial or administrative action for which the confidential supervisory information is sought;

(iii) the relationship of the confidential supervisory information to the issues or matters raised by the judicial or administrative action;

(iv) the requesting person's need for the information;

(v) the reason why the requesting person cannot obtain the information sought from any other source; and

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

(2) *All other requests.* Any other person (except agencies identified in sections 261.11 and 261.12 of this regulation) seeking access to confidential supervisory information for any other purpose shall file a written request with the general counsel of the Board. A request under this paragraph

(b) (2) shall describe the purpose for which such disclosure is sought.

(c) *Action on request.* (1) *Determination of approval.* The general counsel of the Board may approve a request made under this section provided that he or she determines that—

(i) the person making the request has shown a substantial need for confidential supervisory information that outweighs the need to maintain confidentiality; and

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

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

(d) *Exhaustion of administrative remedies for discovery purposes in civil, criminal, or administrative action.* Action on a request under this section by the general counsel of the Board shall exhaust administrative remedies for discovery purposes in any civil, criminal, or administrative proceeding. A request made pursuant to section 261.9 of this regulation does not exhaust administrative remedies for discovery purposes. Therefore, it is not necessary to file a request pursuant to section 261.9 to exhaust administrative remedies under this section.

(e) *Other disclosure prohibited.* All confidential supervisory information made available under this section shall remain the property of the Board. Any person in possession of such information shall not use or disclose such information for any purpose other than that authorized by the general counsel of the Board without his or her prior written approval.

SECTION 261.14—Subpoenas, Orders Compelling Production, and Other Process

(a) *Advice by person served.* Any person (including any officers, employee, or agent of the Board or any Federal Reserve Bank) who has documents or information of the Board that

may not be disclosed and who is served with a subpoena, order, or other judicial or administrative process requiring his or her personal attendance as a witness or requiring the production of documents or information in any proceeding, shall—

(1) promptly inform the Board's general counsel of the service and all relevant facts, including the documents and information requested, and any facts of assistance to the Board in determining whether the material requested should be made available; and

(2) at the appropriate time inform the court or tribunal that issued the process and the attorney for the party at whose instance the process was issued of the substance of these rules.

(b) *Appearance by person served.* Unless the Board has authorized disclosure of the information requested, any person who has Board information that may not be disclosed, and who is required to respond to a subpoena or other legal process, shall attend at the time and place required and decline to disclose or to give any testimony with respect to the information, basing such refusal upon the provisions of this regulation. If the court or other body orders the disclosure of the information or the giving of testimony, the person having the information shall continue to decline to disclose the information and shall promptly report the facts to the Board for such action as the Board may deem appropriate.

SUBPART D—REQUESTS FOR CONFIDENTIAL TREATMENT

SECTION 261.15—Scope of Subpart

(a) *Data collection forms.* This subpart does not apply to data collected by the Board on forms that are approved pursuant to the Paperwork Reduction Act (44 USC 3501 et seq.) and are deemed confidential by the Board. Any such form deemed confidential by the Board shall contain language so indicating on the face of the form or in its instructions. Such information may, however, be disclosed in aggregate form in such a manner that indi-

vidual company data is not disclosed or derivable.

(b) *Duty to submit information.* This subpart does not modify in any manner the obligation of any person or company to submit, pursuant to any law or regulation, any document, information, form, or other filing to the Board or any Federal Reserve Bank.

(c) *Public comments.* (1) Any comments submitted by a member of the public on applications and regulatory proposals being considered by the Board are public unless the Board or the secretary determines that confidential treatment is warranted.

(2) A request for confidential treatment of such comments shall be submitted in a separate letter of memorandum accompanying the comments and on which the words "Request for Confidential Treatment" are prominently displayed. Notwithstanding any other provision of this regulation, the Board need not inform any person submitting such comments of a decision not to afford confidential treatment to the comments.

SECTION 261.16—Submission and Form of Request for Confidential Treatment; Action on Request

(a) *Submission of request.* Any submitter of documents or information to the Board who desires that they be afforded confidential treatment pursuant to 5 USC 552(b)(4) shall file a request for confidential treatment with the Board (or in the case of documents filed with a Federal Reserve Bank, with that Reserve Bank), at the time they are submitted or a reasonable time after submission.

(b) *Form of request.* Each request for confidential treatment shall state in reasonable detail the facts and arguments supporting the request and its legal justification. Conclusory statements that particular information would be useful to competitors or would impair sales, or similar statements, generally will not be considered sufficient to justify confidential treatment.

(c) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated "Confidential" in the submission and clearly separated from information for which confidential treatment is not requested.

(d) *Action on request.* (1) Requests for confidential treatment of any documents shall be considered in connection with any request for access to the documents. At their discretion, appropriate Board or staff members (including Reserve Bank staff) may act on the request for confidentiality prior to any request for access to the documents.

(2) Any request for confidentiality pursuant to 5 USC 552(b)(4) shall be handled in accordance with section 261.17 of this subpart.

(3) Nothing in this section limits the secretary's authority to make determinations regarding requests for access to records under section 261.9.

(e) *Special procedures.* The Board may establish special procedures for particular documents, filings, or types of information by express provisions in this regulation or by instructions on particular forms that are approved by the Board. These special procedures shall take precedence over the procedures set out in this subpart.

SECTION 261.17—Confidential Commercial or Financial Information

(a) *Request for confidential information.* (1) The secretary shall notify a submitter of any request for access to all or a portion of information provided to the Board by the submitter if—

(i) the submitter requested confidential treatment of that information pursuant to 5 USC 552(b)(4) ("trade secrets and commercial or financial information obtained from a person and privileged or confidential"); and

(ii) the request by the submitter for confidential treatment was made within 10 years preceding the date of the request for access.

(2) Absent a request by a submitter for confidential treatment, the secretary may notify a submitter of a request for access to all or a portion of information provided by the submitter if it appears to the secretary that disclosure of the information may reasonably be expected to cause substantial competitive harm to the submitter.

(b) *Notice to submitter.* The notice given to the submitter pursuant to paragraph (a) of this section shall—

- (1) where possible, be given within five working days of the receipt of the request for access;
- (2) describe the request;
- (3) give the submitter a reasonable opportunity, not to exceed 10 working days, to submit written objections to disclosure of the information; and
- (4) if given orally, by promptly confirmed in writing by the secretary.

(c) *Notice to requester.* At the same time the secretary notifies the submitter, the secretary shall also notify the requester that the request is subject to the provisions of this section and that the submitter is being notified of the request.

(d) *Determination by secretary.* The secretary's determination whether or not to disclose any document for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the secretary determines to disclose the document or information and the submitter has objected to such disclosure pursuant to paragraph (b) of this section, the secretary shall provide the submitter with the reasons for disclosure, and shall delay release of the document or information for 10 working days following the date of the determination.

(e) *Exceptions to notice to submitter.* Notice to the submitter need not be given if—

- (1) the secretary determines, prior to giving such notice, that the request for access should be denied;
- (2) the requested information lawfully has been published or otherwise made available to the public;

(3) disclosure of the information is required by law (other than 5 USC 552); or
 (4) the submitter's claim of confidentiality under 5 USC 552(b)(4) appears obviously frivolous or has already been denied by the secretary, except that in this last instance the secretary shall give the submitter written notice of the determination to disclose the information at least five working days prior to release.

(f) *Notice of lawsuit.* (1) The secretary shall promptly notify any submitter of information or documents covered by this section of the filing of any suit against the Board pursuant to 5 USC 552 to compel disclosure of such documents or information.

(2) The secretary shall promptly notify the requester of any suit filed against the Board to enjoin the disclosure of any documents requested by the requester.

(g) *Exception for Board rulings.* Nothing in this section shall apply in connection with any determination by the Board to comment upon information submitted to the Board in any opinion or statement issued to the public as described in section 261.8 of this regulation.

APPENDIX A—Freedom of Information Fee Schedule

Duplication

Photocopy, per standard page	\$.08
Paper copies of microfiche, per frame	\$.07
Duplicate microfiche, per microfiche	\$.10

Search and Review

Clerical (Grades FR 4–FR 7), hourly rate	\$8.50
Technical (Grades FR 8–FR 11), hourly rate	\$12.80
Management/professional, hourly rate	\$25.90

Computer Search and Production

For each request the secretary will separately determine the actual direct cost of providing the service, including computer search time, tape or printout production, and operator salary.

Special Services

The secretary of the Board may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information and sending records by special methods such as express mail. The secretary may provide self-service photocopy machines and microfiche printers as a convenience to requesters and set separate per-page fees reflecting the cost of operation and maintenance of those machines.

Fee Waivers

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media the Board will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search

time. For other noncommercial-use requests no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time. For requesters qualifying for 100 free pages of reproduction, the fees for duplicate microfiche will be prorated to eliminate the charge for 100 frames.

The Board will waive in full fees that total less than \$4.

The secretary of the Board or his or her designee will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee reduction is available to employees, former employees, and applicants for employment who request records for use in prosecuting a grievance or complaint of discrimination against the Board.

Freedom of Information Act

5 USC 552; 80 Stat. 383; Pub. L. 89-554 (September 6, 1966).

SECTION 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 pub-

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

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it

is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided*, That the court's review of the matter shall be limited to the record before the agency.

(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) [Repealed]

(E) The court may assess against the United States reasonable attorney fees and other litigation cost 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) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(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)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) 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.

(e) 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 sub-

section (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.

(f) 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.

[5 USC 552. As amended by acts of June 5, 1967 (81 Stat. 54), effective July 4, 1967; Nov. 21, 1974 (88 Stat. 1561); Sept. 13, 1976 (90 Stat. 1247); Nov. 11, 1984 (98 Stat. 3357); and Oct. 27, 1986 (100 Stat. 3207-48). 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.]