

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 6015]
[August 10, 1967]

Board of Governors' Rules Regarding Availability of Information

*To All Banks and Trust Companies, and Others Concerned,
in the Second Federal Reserve District:*

Enclosed is a copy of the Rules Regarding Availability of Information of the Board of Governors of the Federal Reserve System, as revised effective July 4, 1967. Under the revised rules, previously unpublished records and information of the Board of Governors are made available to the public. These new rules replace the Rules Regarding Information, Submittals, and Requests, which begin on page 13 of the Board of Governors' pamphlet entitled "Rules of Organization and Procedure."

Additional copies of the enclosure will be furnished upon request.

ALFRED HAYES,
President.

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

**RULES REGARDING
AVAILABILITY OF INFORMATION
(12 CFR 261)**

As revised effective July 4, 1967



INQUIRIES WITH RESPECT TO THESE RULES

Any inquiry relating to these rules should be addressed to the Federal Reserve Bank of the district in which the inquiry arises.

STATUTORY AUTHORITY

These rules are issued pursuant to the provisions of section 552, Title 5, United States Code, which is published in the Appendix hereto.

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RULES REGARDING AVAILABILITY OF INFORMATION *

(12 CFR 261)

As revised effective July 4, 1967

SECTION 261.1—BASIS AND SCOPE

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

SECTION 261.2—DEFINITIONS

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

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

SECTION 261.3—PUBLISHED INFORMATION

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

- (1) descriptions of its central and field organization;
- (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

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

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

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

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

(6) general notices of proposed rule making.

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

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

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

and opinions, a monthly summary of business conditions, the Board's index of industrial production, and certain other statistical series.

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

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

SECTION 261.4—RECORDS AVAILABLE TO THE PUBLIC UPON REQUEST

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

(b) **Opinions, orders, statements of policy, interpretations, and staff manuals and instructions.**—Subject to the provisions of §§ 261.5 and 261.6, the Board makes available for inspection and copying (1) all final opinions (including concurring and dissenting opinions) and orders made in the adjudication of cases, including such opinions and orders made pursuant to authority delegated by the Board under Part 265 of this Chapter; (2) statements of policy and interpretations adopted by the Board that are not published in the Federal Register; and (3) administrative staff manuals and instructions to staff that affect any member of the public. However, to the extent required to prevent a clearly unwarranted invasion of personal privacy, the Board deletes identifying details in any material of the kinds above described; and in each such case the justification for such deletion is explained in writing. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public as to any material described in this paragraph which is issued, adopted, or promulgated after July 4, 1967.

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

(d) **Obtaining access to records.**—Records of the Board subject to this section are available for inspection and copying during regular business hours at the offices of the Board of Governors of the Federal Reserve System, Federal Reserve Building, 20th and Constitution Avenue, Washington, D. C., 20551, or, in the case of records containing information required to be disclosed under section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78), at the offices of the Federal Deposit Insurance Corporation or at any Federal Reserve Bank. Every request for access to records of the Board, other than those containing information required under section 12 of the Securities Exchange Act, shall be submitted in writing to the Secretary of the Board, shall state the name and address of the person requesting access to such records, and shall describe such records in a manner reasonably sufficient to permit their identification without undue difficulty; and such person shall pay a fee in an amount based upon \$5 per hour for the time required to locate such records and prepare them for inspection, plus 10 cents per standard page for any copying thereof.

SECTION 261.5—DEFERMENT OF AVAILABILITY OF CERTAIN INFORMATION

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

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

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

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

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

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

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

SECTION 261.6—EXEMPTIONS FROM DISCLOSURE

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

(1) is exempted from disclosure by statute or executive order;

(2) is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use

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of, the Board or a Federal Reserve Bank, relating to the affairs of any bank or affiliate thereof, bank holding company or subsidiary thereof, broker, finance company, or any other person engaged, or proposing to engage, in the business of banking, extending credit, or managing or controlling banks;

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

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

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

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

(7) is contained in inter-agency or intra-agency memoranda or letters that would not be routinely available by law to a private party in litigation with the Board, including but not limited to memoranda, reports, and other documents pre-

pared by the staffs of the Board or of the Federal Reserve Banks, and records of deliberations and discussions at meetings of the Board or of any committee of the Board or of the Board's staff.

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

(c) Prohibition against disclosure.—Except as provided in this Part, no officer, employee, or agent of the Board or of any Federal Reserve Bank shall disclose or permit the disclosure of any unpublished information of the Board to anyone (other than an officer, employee, or agent of the Board or of a Federal Reserve Bank properly entitled to such information for the performance of his official duties), whether by giving out or furnishing such information or a copy thereof or by allowing any person to inspect or copy such information or copy thereof, or otherwise. Notwithstanding the foregoing, unpublished economic, statistical, or similar information or unpublished information regarding interpretations by the Board of statutory or regulatory provisions may be disclosed, orally or in writing, by any officer, employee, or agent of the Board or of any Federal Reserve Bank who has knowledge of the subject matter to any person who, in the judgment of such officer, employee, or agent, has a proper interest

therein, subject, however, to the restrictions stated in § 261.5 and this § 261.6.

(d) **Appeal from denial of access to information.**—Any person who is denied access to records of the Board may, within 5 days thereafter, file with the Board a written request for review of such action; and such review shall not be subject to the procedure prescribed in § 265.3 of this Chapter with respect to review of actions taken pursuant to authority delegated by the Board.

SECTION 261.7—SUBPOENAS

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

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

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

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

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

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

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

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

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

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

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

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

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

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(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 also shall maintain and make available for public inspection and copying a current index 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. 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, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. 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, 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 the burden is on the agency to sustain its action. 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. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(4) 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.

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

(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

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

(3) specifically exempted from disclosure by statute;

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

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

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

(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(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.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.