

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 7698]
September 2, 1975]

PRIVACY ACT OF 1974

Proposed Amendments to Rules Regarding Availability of Information

To All Member Banks, and Others Concerned,
in the Second Federal Reserve District:

The Board of Governors of the Federal Reserve System proposes to amend its "Rules Regarding Availability of Information" by adding a new part — 261a — to implement the requirements of the Privacy Act of 1974.

Printed below is the text of the proposal. Comments thereon should be submitted by September 12, 1975, and may be sent to our Legal Department.

PAUL A. VOLCKER,
President.

[12 CFR Part 261a]

PRIVACY ACT OF 1974

Proposed Promulgation of Board Rules

Pursuant to its authority under the Privacy Act of 1974 (the "Act"), 5 U.S.C. §552a, the Board of Governors of the Federal Reserve System proposes to amend Title 12 of the Code of Federal Regulations by adding a new Part 261 which is intended to implement the requirements of section (f) of the Act. Generally, the objective of the Act is the protection of the personal privacy of individuals identified in information systems maintained by Federal agencies subject to the Act. In support of this objective, section (f) of the Act requires that each agency subject to the Act promulgate rules by which an individual upon request may be notified of the existence of a record in a "system of records" pertaining to him, gain access to that record, request amendment to that record, and appeal an initial adverse determination with respect to a request for amendment of that record.

The purpose of proposed Part 261a is to provide for the procedures under which the requirements of section (f) of the Act will be met. Further, proposed Part 261a: (1) indicates the restrictions on the disclosure of certain information to persons other than to whom it pertains, (2) specifies the fees for the photocopying or preparation of certain records, (3) recites the penalty for unauthorized access to certain records and (4) indicates the authority under which certain portions of Board information may be exempted from certain requirements of the Act.

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views, comments, or arguments. Any such

material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 12, 1975.

Notice is given that it is proposed to make Part 261a effective, after consideration of comments received by the Board, on September 27, 1975, the effective date of the Act.

Proposed Part 261a would read as follows:

RULES REGARDING ACCESS TO AND REVIEW
OF PERSONAL INFORMATION IN SYSTEMS
OF RECORDS (12 CFR 261a)

Sec.

- 261a.1 Purpose and Scope
- 261a.2 Definitions
- 261a.3 Procedures for Requests Pertaining to Individual Records in a Record System
- 261a.4 Requirements for Identification of Individuals Making Requests
- 261a.5 Disclosure of Requested Information to Individuals
- 261a.6 Special Procedures — Medical Records
- 261a.7 Request for Correction or Amendment to Record
- 261a.8 Agency Review of Request for Amendment of Record
- 261a.9 Appeal of Initial Adverse Determination on Correction or Amendment

261a.10 Disclosure of Record to Person Other Than Individual to Whom it Pertains

261a.11 Fees

261a.12 Penalties

261a.13 Exemptions

Authority: 5 U.S.C. §552a; 5 U.S.C. §553;
5 U.S.C. §552

SECTION 261a.1 — PURPOSE AND SCOPE

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

SECTION 261a.2 — DEFINITIONS

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

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

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

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

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

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

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

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

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

(a) Requests for access to personal information in a designated system of records may be made by the person to whom such information pertains. Every such request shall be made in writing and shall specify that it is made pursuant to the Privacy Act. Each

request should identify the designated system of records in which the requested record is to be found, should reasonably describe the information requested and, except as provided in section 261a.4, should include a notarized statement attesting to the identity of the requestor.

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

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

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

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

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

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

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

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

subsection 261a.3(c), unless good cause for delay is communicated to the requestor.

(b) Fees for copying such records will be assessed in accordance with subsection 261a.11.

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

SECTION 261a.6 — SPECIAL PROCEDURES — MEDICAL RECORDS

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

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

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

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

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

(a) As appropriate, the Secretary of the Board or the Director of the Division of Personnel shall acknowledge each request made pursuant to section 261a.7 within 10 business days of its receipt. Such acknowledgment may request additional information necessary for a determination of the request for amendment or correction.

(b) As appropriate, the Secretary of the Board or the Director of the Division of Personnel shall promptly review each request made pursuant to section 261a.7 in light of the criteria of accuracy, relevance, timeliness, completeness and necessity set forth in subsections

(e)(1) and (e)(5) of the Privacy Act, 5 U.S.C. § 552a.

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

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

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

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

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

(c) If the Board or designated official affirms the initial denial of a request to amend or correct made pursuant to section 261a.7, such determination shall be communicated to the requestor together with a statement of the reasons therefor and the requestor shall be informed of the right of judicial review of the determination. The requestor may then file a concise statement setting forth disagreement with the affirmation of denial within 30 days of notification of such determination.

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

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

(b) The restrictions on disclosure in paragraph (a) do not apply to any disclosure — 1) to those officers and employees of the Board who have a need for the record in the performance of their duties; 2) that is required under the Freedom of Information Act (5

U.S.C. § 552); 3) for a routine use listed with respect to a designated system of records; 4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code; 5) to a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable; 6) to the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value; 7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought; 8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual; 9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee; 10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or 11) pursuant to the order of a court of competent jurisdiction.

SECTION 261a.11 — FEES

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

SECTION 261a.12 — PENALTIES

(a) The Privacy Act, 5 U.S.C. § 522a(1)(3), provides:

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretense shall be guilty of a misdemeanor and fined not more than \$5,000.00.

SECTION 261a.13 — EXEMPTIONS

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

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

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

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

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

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

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

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

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

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