

FEDERAL RESERVE BANK  
OF NEW YORK

[ Circular No. **7756** ]  
[ November 24, 1975 ]

**Rules Regarding Availability of Information**

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**Rules Regarding Access to and Review of Personal Information  
in Systems of Records**

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

Enclosed is a copy of the Board of Governors' Rules Regarding Availability of Information (12 CFR 261), as amended effective February 19, 1975, and its Rules Regarding Access to and Review of Personal Information in Systems of Records (12 CFR 261a), effective September 28, 1975.

The pamphlet supersedes the earlier printing of the Rules Regarding Availability of Information, effective July 4, 1967, as amended, and adds a new section, effective September 28, 1975, to implement the requirements of the Privacy Act of 1974.

Additional copies of the enclosure will be furnished upon request.

PAUL A. VOLCKER,  
*President.*

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

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**RULES REGARDING AVAILABILITY OF INFORMATION**

(12 CFR 261)

As amended effective February 19, 1975

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

(12 CFR 261a)

Effective September 28, 1975



## RULES REGARDING AVAILABILITY OF INFORMATION

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

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# RULES REGARDING AVAILABILITY OF INFORMATION\*

(12 CFR 261)

As amended effective February 19, 1975

## SECTION 261.1—BASIS AND SCOPE

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

## SECTION 261.2—DEFINITIONS

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

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

## SECTION 261.3—PUBLISHED INFORMATION

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

(1) descriptions of its central and field organization;

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

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

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

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

(6) general notices of proposed rule making.

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

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

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

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

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

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

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

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

#### SECTION 261.4—RECORDS AVAILABLE TO THE PUBLIC UPON REQUEST

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

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

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

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

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

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

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

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

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

SECTION 261.5—DEFERMENT OF  
AVAILABILITY OF  
CERTAIN INFORMATION

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

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

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

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

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

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

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

SECTION 261.6—EXEMPTIONS FROM  
DISCLOSURE

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

(1) is exempted from disclosure by statute or is specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and is in fact classified pursuant to such executive order;

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

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

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

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

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

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

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

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

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

ployee, 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.



## STATUTORY APPENDIX

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

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

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

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

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of 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—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

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

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

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

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

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

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

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

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

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

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

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

(F) Whenever the court orders the production

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

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

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

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

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

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions or judicial review of that determination under paragraph (4) of this subsection.

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

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

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

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

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

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

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

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

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

(3) specifically exempted from disclosure by statute;

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

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

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

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

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

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

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

(c) This section does not authorize withholding of information or limit the availability of rec-

ords to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

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

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

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

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

(4) the results of each proceeding conducted pursuant to subsection (a) (4) (F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly

withholding records or an explanation of why disciplinary action was not taken;

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

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

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

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

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

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

(12 CFR 261a)

Effective September 28, 1975

## SECTION 261a.1—PURPOSE AND SCOPE

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

## SECTION 261a.2—DEFINITIONS

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

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

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

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

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

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

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

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

## SECTION 261a.3—PROCEDURES FOR REQUESTS PERTAINING TO INDIVIDUAL RECORDS IN A RECORDS SYSTEM<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Fees for copying such records will be

assessed in accordance with subsection 261a.11.

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

**SECTION 261a.6—SPECIAL PROCEDURES—MEDICAL RECORDS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### SECTION 261a.11—FEES

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

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

#### SECTION 261a.12—PENALTIES

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

#### SECTION 261a.13—EXEMPTIONS

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

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

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

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

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

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

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

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

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

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

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