

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. **10168** ]  
May 13, 1987

**BOARD RULES REGARDING AVAILABILITY OF INFORMATION**

**Procedures for Accessing Board Records Pursuant to the Freedom of Information Act**

*To All Depository Institutions, and Others Concerned,  
in the Second Federal Reserve District:*

The Board of Governors of the Federal Reserve System has requested public comment on a proposed revision of its Rules Regarding Availability of Information to clarify the procedures for handling requests for access to Board records, either under the Freedom of Information Act or the Federal Reserve Act.

Printed on the reverse side is an excerpt of the summary portion of the Board's proposal, which has been reprinted from the *Federal Register* of April 23, 1987 (52 FR 13458). Comments should be sent, by June 22, 1987, to the Board of Governors, as specified in the notice; copies of the complete text of the proposal will be furnished upon request directed to the Supervision Support Department (Tel. No. 212-720-5908).

In a related action, the Board of Governors has also amended, effective May 27, 1987, its Rules Regarding Availability of Information to revise the schedule of fees for requests for Board records pursuant to the Freedom of Information Act. The amendment has been published in the *Federal Register* of April 28, 1987 (52 FR 15299); copies of the amendment will also be furnished upon request directed to the Supervision Support Department.

E. GERALD CORRIGAN,  
*President.*

(OVER)

**12 CFR Part 261**

**[Docket No. R-0601]**

**Rules Regarding Availability of Information**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board of Governors of the Federal Reserve System ("Board") proposes to amend its Rules Regarding Availability of Information. The proposed changes to that regulation include: (1) A description of the Board's procedures in processing requests under the Freedom of Information Act ("FOIA"); (2) further delegation of authority to the Board's General Counsel to act on requests for information by law enforcement agencies and others; (3) additional provisions regarding the availability of information to federal and state financial institutions' supervisory authorities; (4) disclosure by financial institutions of examination or inspection reports to appropriate agents of such institutions; (5) notice of FOIA requests to submitters of confidential commercial

or financial information, and procedures for requesting confidential treatment of such information and for addressing the proposed disclosure of information that a submitter believes should not be disclosed; and (6) technical amendments.

On March 25, 1987, the Board approved publication for comment of the proposed changes to its fee schedules pertaining to requests for Board documents pursuant to the Freedom of Information Reform Act of 1986, Pub. L. 99-570, 52 FR 10233 (March 31, 1987). Those proposed changes will be addressed pursuant to that other rulemaking and are repeated in the present notice primarily for the convenience of the public. See § 261.10.

This action is being taken as part of the Board's Regulatory Planning and Review Program to simplify and clarify all its regulations. The proposal incorporates certain new procedures that will facilitate the release of nonexempt information while protecting the rights of submitters of exempt information.

**DATE:** Comments should be received by June 22, 1987.

**ADDRESS:** Interested parties are invited

to submit written comments to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, or to deliver such comments to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.). Written comments should refer to Docket No. R-0601. Comments received may be inspected in Room B-1122 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information. (12 CFR 261.6(a)).

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division (202/452-3920); Elaine M. Boutilier, Senior Attorney, Legal Division (202/452-2418); Kenneth M. Kinoshita, Attorney, Legal Division (202/452-3721); or for the hearing impaired *only*, Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

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Counsel to act on requests for information by law enforcement agencies and others; (3) additional provisions regarding the availability of information to federal and state financial institutions' supervisory authorities; (4) disclosure by financial institutions of examination or inspection reports to appropriate agents of such institutions; (5) notice of FOIA requests to submitters of confidential commercial or financial information, and procedures for requesting confidential treatment of such information and for addressing the proposed disclosure of information that a submitter believes should not be disclosed; and (6) technical amendments.

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Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The purpose of this proposed revision of the Board's Rules Regarding Availability of Information is to set forth more clearly the procedures for requesting access to documents that are records of the Board, either under the FOIA or the Federal Reserve Act. The revision also changes certain procedures for obtaining access to documents. These provisions and changes are described in more detail below.

#### A. Subpart A—General Provisions

Subpart A describes the authority, purpose and scope of the regulation, and gives new expanded definitions for the terms used in the regulation. New definitions of "records of the Board" and "search" are designed to clarify these terms in accordance with law and to facilitate the orderly processing of requests. Definitions of "Board's official files", "report of examination", "report of inspection" and "search" have been added. Subpart A also provides for alternative authority when the official named in the regulation is not available to take action.

#### B. Subpart B—Published Information and Records Available to Public; Procedures for Requests

Section 261.5 lists and explains the various types of information published by the Board. This information is readily available to the public, either from a public library or through the Board's Publications Services Section.

Section 261.6 describes the types of information that are available to the public upon request. Requests for such documents are generally made pursuant to the FOIA, under the procedures set forth in § 261.9. In addition, certain data files produced by the Board may be obtained through the National Technical Information Service ("NTIS"). As of January 1987, data files available from NTIS included: Bank Credit (1979-1984), Bank Holding Company Annual Tape (Y-6), Bank Holding Company Quarterly Tape (Y-9), Call and Income Report, Capacity Utilization, Consumer Installment Credit, Electric Power Used by Industries, Flow of Funds, Industrial Production Tape, Money Stock Tape (1959-1984), Reserves Tape (1959-1984), Selected Interest Rates H-15 Tape, Survey of Consumer Credit (1977), Survey of Consumer Finance and High Income Supplement (1983) and Survey of Currency and Transaction Accounts (1984).

Section 261.7 provides that some types of information may not be released until after a period of time determined by the Board to be necessary to avoid certain consequences. For example, deferred publication or deferred availability of information may be necessary where information relates to the negotiation of procurement or other contracts for the Federal Reserve System, or relates to the determination of monetary or credit policies, including but not limited to discount rates, reserve requirements, and margin requirements. Immediate, rather than deferred access to such information could, for example, impair the Board's ability to negotiate contracts in a manner most advantageous to the Board, or could lead to speculation in the money markets which could impair the Board's ability to implement its monetary or credit policies.

Section 261.8 lists the types of information that are exempt from disclosure. These exemptions generally follow the exemptions provided in the FOIA, 5 U.S.C. 552(b). The primary distinction between these exemptions and those included in the FOIA is that the FOIA exemption for matters related to geological and geophysical information and data concerning wells (5 U.S.C. 552(b)(9)) is omitted, and a provision regarding information covered by a court order prohibiting disclosure is added. Section 261.8(a)(4) reflects a recent change in the language of exemption 7 in the FOIA, 5 U.S.C. 552(b)(7). As is the case with requests made pursuant to FOIA, the Board will release any reasonably segregable portion of a document after deleting information exempt from disclosure.

Section 261.9 describes the procedures for making a request for documents, the processing of such request, administrative appellate review of the denial of a request, and the provisions for extensions of time for responding to the request.

A request for documents must be for identifiable records; that is, it must contain a description that identifies a circumscribable body of documents in such a way that the Board's staff can identify, search for, aggregate, collect, and produce such documents without unduly burdening or disrupting any of the Board's functions.

A request should be submitted in writing and should be clearly marked "Freedom of Information Act Request" to ensure that it is immediately delivered to the FOIA office at the Board. Failure to so designate a request may result in delays in the response. It is also necessary that a request identify whether the requested information is

intended for commercial use, and whether the requester is an educational institution, a noncommercial scientific institution, or a media representative. This identification information is necessary to determine the fees to be charged under § 261.10.

When responding to a request, the Board may advise the requester that it can neither confirm nor deny the existence of the requested records. For example, the Board may decline to confirm or deny the existence of particular supervisory actions regarding identifiable institutions.

The revised regulation, at § 261.9(c)(2), provides that the Board may select the form of the copies of records released in response to a request; e.g., copies may be on paper, microform or in computer readable format.

Section 261.9(d) sets forth the procedures for appealing a denial of a request for records under the FOIA. An appeal must be filed in writing within 10 working days of the date of the denial, and the Board (or a designated Board member) will make a determination on the appeal within 20 days of receipt of the appeal by the Secretary. The section also adds new procedures regarding untimely appeals and new provisions regarding the mootness of certain appeals.

In unusual circumstances, the Board may extend the time limits for response to either an initial request or an appeal. The time extension is set in 5 U.S.C. 552(a)(6) as 10 working days. These 10 days may be used either for the initial or appellate reviews, or both, but the total extension for either or both may not exceed 10 working days. "Unusual circumstances" means: (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 demanded in a single request; or (iii) the need for consultation with others at the Board or with another agency having substantial interest in the determination of the request.

If the Board fails to meet the time deadlines, including any extension, it will notify the requester of the delay and the reason. Such notice does not affect the requester's legal rights of judicial review under the FOIA. The Board will continue to process the request as quickly as possible and will send out the determination in the usual manner.

To facilitate the processing of requests for information, provisions have been added regarding the contents of requests, the treatment of defective

requests, and oral requests, § 261.9(a), the priority of responses to requests and the referral of requests to other agencies, § 261.9(b), and the consequences of failure to comply with applicable time limits, § 261.9(e).

Section 261.10 provides for the schedule of fees and the procedures for requesting a waiver of the fees. This section has been previously published for comment and is expected to go into final effect in late April 1987. Prior to publication of final rules pursuant to this notice, it will be designated § 261.8 of the Board's current Rules Regarding Availability of Information. It is proposed herein that the section will be renumbered as § 261.10 in this proposed revision of the Rules. The fees are required to reflect the Board's direct costs of search, duplication and review. These fees are set forth in Appendix A. Under the Freedom of Information Reform Act, requesters are classified into four different categories for fee assessment purposes: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters.

**Commercial use requesters**—A commercial use request is defined as a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade or profit as these phrases are commonly known or have been interpreted by the courts in the context of the FOIA. When the Board receives a request for documents appearing to be for commercial use, fees will be assessed for the total search time, review time, and all duplication of the documents. Requesters should note that the Board may assess fees for the search for and review of documents even if no documents are ultimately released. If the request for documents primarily serves the commercial interest of the requester, the Board may, but is not required to, consider a request for waiver or reduction of fees based on an assertion that disclosure would be in the public interest. The procedures for requesting a waiver of fees are set forth in § 261.10(h).

**Educational and noncommercial scientific institution requesters**—An "educational institution" is defined as an accredited institution of higher learning engaged in scholarly research. A "noncommercial scientific institution" is defined as an independent non-profit institution whose purpose is to conduct scientific research. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100 pages. To be eligible for this reduction in fees,

the requester must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are in furtherance of scholarly or scientific research. To be eligible for free search time, the requester must reasonably describe the records sought.

**Representatives of the news media**—This term is defined as any representative of established news media outlets, i.e., any organization such as a television or radio station, or a newspaper or magazine of general circulation, or a person working for an organization which regularly publishes information for dissemination to the general public whether electronically or in print. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100 pages. To be eligible for free search time, the requester must reasonably describe the records sought.

**All other requesters**—The Board will assess fees for search and duplication to all requesters who do not fit in the above categories, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge.

To prevent abuse of the provision granting 100 pages of duplication and two hours of search time free of charge, this rule includes the section of the proposed OMB guidelines permitting aggregation of requests that are reasonably believed to have been broken down to evade fees.

Section 261.10(g) provides that the Board may require advance payment of fees if the total fees are estimated to exceed \$250, or where a requester has previously failed to make timely payment of fees due. This subpart also includes the section of the proposed OMB guidelines permitting interest to be charged on fees over 30 days past due at the rate prescribed in 31 U.S.C. 3717 for an outstanding debt on a U.S. Government claim. This rate is set annually by the Secretary of the Treasury equal to the average 12-month investment rate on Treasury tax and loan accounts.

### C. Subpart C—Confidential Information Made Available to Supervised Institutions, Bank Supervisory Agencies, Law Enforcement Agencies, and Others

This Subpart sets forth the circumstances and conditions under

which confidential information may be made available to federal and state agencies and to others. The procedures in this Subpart address the Board's general authority over its records under the Federal Reserve Act, but these procedures are without prejudice to the right of any person to invoke the FOIA procedures set out in Subpart B.

Section 261.11 generally provides that reports of examination and inspection and confidential supervisory information may be disclosed to federal and state financial institutions supervisory agencies, such as the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the various state banking departments and commissions.

Section 261.11(b) provides that the Board may determine that reports of examination or inspection may be disclosed by designated members of the staff on a routine basis for purposes determined by the Board. For example, disclosures by the Director of the Divisions of Banking Supervision and Regulation have been authorized to be made of transfer agent reports of examination pursuant to section 17(c)(3) of the Securities and Exchange Act (12 CFR 265.2(c) (25)), of information acquired pursuant to Parts 207, 220, 221, and 224 of Title 12, Code of Federal Regulations (12 CFR 265.2(c)(20)), and of certain information regarding possible violations of law pursuant to section 3004(b) of the Employee Retirement Income Security Act (12 CFR 265.2(c)(31)).

Section 261.11(c) authorizes the Director of the Board's Division of Banking Supervision and Regulation to provide copies of the Board's reports of examination and inspection to the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board. The addition of the Federal Home Loan Bank Board has been made as a consequence of the greater frequency of cross-industry acquisitions and the resulting need for exchange of information among supervisory agencies.

Section 261.11(d)(1) authorizes the Director of the Board's Division of Banking Supervision and Regulation and the Federal Reserve Banks to provide reports of examination and other appropriate information concerning state member banks and bank holding companies to state financial institutions supervisory authorities having general supervisory authority over such state member banks and bank holding companies.

Section 261.11(d)(2) authorizes the Director of the Board's Division of

Banking Supervision and Regulation or the Federal Reserve Banks to provide reports of examination and reports of inspection of banks, companies, or their affiliates or subsidiaries to state financial institutions supervisory authorities which do not have general supervisory authority over such banks, companies, or their affiliates or subsidiaries under certain circumstances. Under the Board's current regulation, such a release may be made only upon the Board's approval. The new regulation would permit such release where the reports and other information concern banks, companies, or their subsidiaries or affiliates which are not subject to the general supervisory authority of the requesting state agency, provided that the examined institutions have applied to acquire or have acquired financial institutions which are subject to the general supervisory authority of the requesting state agency. The amendment would facilitate review by state financial institutions supervisory authorities of applications by out-of-state financial organizations to acquire financial institutions subject to the general supervision of the requesting state agency, and also facilitate the continual supervision of such financial institutions by state financial institutions supervisory authorities. The amendment confirms procedures adopted last year by the Board and the Federal Financial Institutions Examination Council.

Section 261.11(f) sets forth the conditions under which another bank supervisory authority may inspect a Confidential Report of Condition of a foreign banking organization.

Section 261.12 sets forth the procedures for making confidential documents or information of the Board available to law enforcement agencies for use where necessary in the performance of official duties. This section expands the authority of the General Counsel, under delegated authority, to provide confidential information to law enforcement agencies. The current rule, § 261.6(b)(1), only permits the General Counsel to release confidential information to agencies of the United States for use where necessary in the performance of their official duties, and prohibits disclosure of the information by that agency to any other person.

The proposed rule would give the General Counsel delegated authority to release, upon request, confidential Board information, including but not limited to reports of examination and inspection, to federal and state law enforcement agencies and properly

accredited foreign law enforcement agencies under certain circumstances. The law enforcement agency must show that the information is needed in connection with a formal investigation or other official duties of that agency, and must give satisfactory assurances of confidentiality.

This change is proposed to increase the speed and efficiency of the Board's response to legitimate law enforcement agency requests, by defining the standards and procedures that govern such requests, and to include other than federal agencies in the class of agencies that are eligible to request information. The Board has had some experience with requests from state law enforcement agencies and deems it appropriate to delegate the authority to respond to these requests to the General Counsel. In determining whether to release the documents to the law enforcement agency, the General Counsel will consider the law enforcement purpose of the request for documents and their availability elsewhere (such as from the institution at issue in the investigation). The General Counsel will require a commitment not to disclose the information to any other entity without the prior written permission of the Board or its General Counsel, and may also impose whatever additional conditions deemed necessary to protect the confidentiality of the information or to insure compliance with applicable laws or regulations. In the case of federal and state grand juries, criminal trial and administrative subpoenas, the General Counsel will review the subpoenas and may approve release of information pursuant to the subpoenas with appropriate limitations to protect the confidentiality of the information released.

Section 261.13 provides that the General Counsel may act on requests for access to confidential information that relate to private civil litigation, and also addresses the release of confidential supervisory information by an examined institution to appropriate agents of that institution.

A person seeking confidential information of the Board (including, but not limited to, reports of examination or inspection) for use in private civil litigation must exhaust all administrative remedies for access to the information prior to obtaining a subpoena for the documents. This section sets forth the administrative procedure for requesting access to such information in such circumstances. Accordingly, the person should request access to confidential information from

the General Counsel at least 45 days prior to the time access is desired. The Board has delegated to the General Counsel the authority to act on such requests. As a general matter, however, the Board believes that litigants should address their discovery requests primarily to records of the examined institution rather than to confidential records of the Board. Accordingly, § 261.13(b)(2) requires the General Counsel to find compelling circumstances before approving any such requests.

It is the Board's long-standing policy that reports of examination and materials derived therefrom are confidential and privileged and should not be discovered except in the most compelling circumstances. Reports of examination are used by the Board as an aid in carrying out its important responsibility to maintain the safety and soundness of the banking system by detecting and correcting unsafe practices and violations of law. The confidentiality of such reports is crucial to the effectiveness of the examination process. To the extent that bank officers become reluctant to discuss their institutions' affairs with the Federal Reserve's examiners, the ability of the Federal Reserve to detect violations of law and other supervisory problems and to correct such problems in a timely manner would be impaired. Similarly, it is important that the Board's examiners be absolutely candid in their reports to the Board. Nothing is more likely to chill such candor than knowledge that persons foreign to the examination process may gain access to these reports.

As a result, the Board believes that litigants desiring access to confidential information concerning the affairs of a bank or bank holding company should focus on discovery of the institution's own records rather than seeking discovery of the Board's reports of examination. On numerous occasions, Congress and the courts have affirmed the Board's view that reports of examination are confidential and privileged. See, e.g., *United States v. Provident National Bank*, 41 F.R.D. 209 (E.D. Pa. 1966); *Gregory v. FDIC*, 631 F.2d 896 (D.C. Cir. 1980).

Under § 261.13(d)(2) any financial institution possessing a report of examination or inspection provided to it by its Federal Reserve Bank subsequent to an examination may disclose the report to its parent bank holding company without prior permission of the Board if the parent agrees in writing to preserve the confidentiality of the report.

Under § 261.13(d)(3) an examined financial institution that has lawfully obtained a report of its examination or inspection may disclose, under certain conditions, such reports or portions thereof to appropriate agents of the institution. The conditions under which this information may be provided are that (1) prior to such disclosure the financial institution shall consult with the appropriate Federal Reserve Bank regarding the qualification of the agent under this section; (2) the information is necessary to the performance of specifically identified responsibilities of the agent; (3) the documents are reviewed on the premises of the examined institution; (4) prior to review, the agent agrees in writing to preserve the confidentiality of the reports and any information contained in the reports; and (5) the agent agrees in writing not to disclose any confidential Board information, including for purposes of any trial, without first obtaining approval of the Board's General Counsel.

It should be noted that reports of examination and inspection are not substitutes for audit reports prepared by independent certified public accountants, and the Board's examiners do not generally follow audit procedures in preparing the reports. Accordingly, persons are cautioned not to rely on these reports in lieu of a full and reasonable self-inspection or audit of the financial institution's own records.

Section 261.14 gives the procedures to be followed when a person having confidential Board documents is served with a subpoena, order or other judicial or administrative process requiring his personal attendance as witness or production of the documents. The only amendment to this provision is that it is expanded to include administrative subpoenas and orders as well as judicial subpoenas and orders, and the change from Secretary to General Counsel as the person to be notified of such service of process.

#### D. Subpart D—Requests for Confidential Treatment

Subpart D is a new section in the Rules Regarding Availability of Information. It provides procedures for a person submitting information or documents to the Board ("submitter") to request confidential treatment for all or part of those documents.

Under § 261.16 a submitter desiring confidential treatment for documents or information being submitted must request confidentiality at the time they are submitted. This request for confidential treatment must give a legal basis, with supporting facts and

arguments, for providing confidentiality. The submitter must also separate material for which confidentiality is being requested from other material and clearly mark it "Confidential."

The Board will consider any requests for confidentiality at such time as a request for access to those documents are made. The Board (or Reserve Bank or its staff) may also act on the request for confidentiality prior to any request for access. It is current practice for Reserve Banks to review applications under the Bank Holding Company at the time they are received to separate those parts that will be accorded confidential treatment from the publicly available portion of the application.

Section 261.17 sets forth special procedures for handling requests for confidentiality under subsection (b)(4) of FOIA (5 U.S.C. 552(b)(4)), for material believed to contain "trade secrets and commercial or financial information obtained from a person privileged and confidential." Under this section, when a request is filed for information for which the submitter has requested (b)(4) protection, the Board may notify the submitter of the request for access, except in the situation specified in § 261.17(d). At the same time the Board will notify the requester that the request is subject to the provisions of this section. The submitter will have up to ten working days in which to file written objections to the disclosure of the requested information. Any such objections filed will be considered by the Secretary when making the determination regarding disclosure of the information. The Secretary's determination will be communicated to both the requester and submitter on the date the determination is made. If the determination is to release the information, and the submitter had filed objections to such disclosure, the actual release of the documents will be delayed for up to ten additional working days after the date of such determination. Should the submitter of such information sue to restrain disclosure, or a requester whose request has been denied should sue to compel disclosure, the Secretary will promptly notify the other party of the lawsuit.

#### Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment is a change to agency procedures and

practice and does not have a particular effect on small entities.

#### List of Subjects in 12 CFR Part 261

Freedom of Information Act, Federal Reserve System.

For the reasons set out in this notice, and pursuant to the Board's authority under section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*) and under section 5 of the Bank Holding Company Act (12 U.S.C. 1844) to exercise general supervision of and to examine state member banks and bank holding companies, and section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) to delegate functions to members and employees of the Board and to the Reserve Banks, the Board proposes to revise its Rules Regarding Availability of Information, 12 CFR Part 261, as follows:

### PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

#### Subpart A—General Provisions

##### Sec.

- 261.1 Authority, purpose, and scope.  
261.2 Definitions.  
261.3 Custodian of records; certification; service; alternative authority.

#### Subpart B—Published Information and Records Available to Public; Procedures for Requests

- 261.5 Published information.  
261.6 Records available to public upon request.  
261.7 Deferred availability of certain information.  
261.8 Exemptions from disclosure.  
261.9 Procedures for making requests for identifiable records; processing of requests; appellate review of denial of request; time extensions.  
261.10 Fee schedules; waiver of fees.

#### Subpart C—Confidential Information Made Available to Supervised Institutions, Financial Institution Supervisory Agencies, Law Enforcement Agencies, and Others in Certain Circumstances

- 261.11 Confidential information made available to supervised institutions and financial institutions supervisory agencies.  
261.12 Confidential information made available to law enforcement agencies and other nonfinancial institutions supervisory agencies.  
261.13 Other disclosure of confidential information.  
261.14 Subpoenas, orders compelling production, and other process.

#### Subpart D—Requests for Confidential Treatment

- 261.15 Scope of subpart.  
261.16 Submission and form of request for confidential treatment; action on request.  
261.17 Confidential commercial or financial information.

Authority: 5 U.S.C. 552, 12 U.S.C. 248(k), 321, and 1844.

#### Subpart A—General Provisions

##### § 261.1 Authority, purpose, and scope.

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

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

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

(2) Subpart B implements the Freedom of Information Act (5 U.S.C. 552) and explains:

(i) The kinds of information the Board regularly publishes;

(ii) The types of records made available to the public upon request;

(iii) The kinds of information exempt from disclosure or subject to deferred availability; and

(iv) The procedures for obtaining information and for processing information requests.

(3) Subpart C sets forth:

(i) The kinds of confidential information made available to supervised institutions, supervisory agencies, law enforcement agencies; and others in certain circumstances;

(ii) The procedures for disclosure;

(iii) The procedures for processing law enforcement requests; and

(iv) The procedures with respect to subpoenas, orders compelling production, and other process.

(4) Subpart D contains the procedures relating to requests for confidential treatment of documents and information.

##### § 261.2 Definitions:

For purposes of this regulation:

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

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

a Reserve Bank, a Federal or state financial institutions supervisory agency, or a bank or bank holding company.

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

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

(i) Constitute part of the Board's official files; or

(ii) Are maintained for administrative reasons in the regular course of business in official files in any division or office of the Board or any Federal Reserve Bank in connection with the transaction of any official business.

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

(i) Handwritten notes; personal files of Board members and employees; tangible exhibits, formulas, designs, or other items of valuable intellectual property; extra copies of documents and library and museum materials kept solely for reference or exhibition purposes; unaltered publications otherwise available to the public in Board publications, libraries, or established distribution systems;

(ii) Documents, including lists, and other material not in existence or in the Board's possession or control on the date a request for records is received;

(iii) Documents no longer in the possession of the Board which have been disposed of in accordance with law;

(iv) Copies of transcripts provided to the Board under any reporting service contract and that may be obtained directly from the contractor;

(v) Documents of other agencies made available to the Board on a confidential basis by such agencies;

(vi) Documents that are not the property of the Board and which have been made available to the Board on a temporary or otherwise limited basis with its consent.

(e) "Report of examination" means the report prepared by the Board concerning



its examination of a state member bank of the Federal Reserve System, and includes reports of inspection of bank holding companies, U.S. branch or agency of a foreign bank, and other institutions examined by the Federal Reserve System. Such reports of examination may be prepared either solely by the Board or jointly by the Board and an appropriate state bank supervisory agency. "Reports of examination" may include reports of examination of other financial institutions prepared and provided to the Federal Reserve System by other federal and state financial institution supervisory agencies.

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

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

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

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

**§ 261.3 Custodian records; certification; service; alternative authority.**

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

(b) *Certification of record.* The Secretary of the Board may certify the authenticity of any record of the Board, or of any copy of such record, for any purpose, and for or before any duly constituted federal or state court, tribunal, or agency.

(c) *Service of subpoenas or other process.* Subpoenas or other judicial or administrative process demanding

access to records of the Board shall be addressed to and served upon the Secretary of the Board at the Board's offices in Washington, DC 20551.

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

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

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

**Subpart B—Published Information and Records Available To Public; Procedures for Requests**

**§ 261.5. Published information.**

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

- (1) Descriptions of the Board's central and field organization;
- (2) Statements of the general course and method by which the Board's functions are channeled and determined, including the nature and requirements of procedures;
- (3) Rules of procedure, descriptions of forms available and the places at which they may be obtained, and instructions on the scope and contents of all papers, reports, and examinations;
- (4) Substantive rules of general applicability, statements of general policy, and interpretations of general applicability;
- (5) Every amendment, revision, or repeal of the foregoing;
- (6) General notices of proposed rulemaking;
- (7) Notices of applications received under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) and the Change in Bank Control Act (12 U.S.C. 1817);
- (8) Notices of formal public hearings ordered by the Board;

(9) Notices identifying the Board's systems of records, pursuant to 5 U.S.C. 552a;

(10) Notices of all Board meetings, pursuant to 5 U.S.C. 552b; and

(11) Notices of agency data collection forms being reviewed under the Paperwork Reduction Act (5 U.S.C. 3501 et seq.).

(b) *Board's reports to Congress—*(1) *Annual report under Federal Reserve Act.* The Board's annual report to Congress pursuant to the Federal Reserve Act (12 U.S.C. 247), which is made public upon its submission to Congress, contains a full account of the Board's operations during the year, an economic review of the year, and legislative recommendations to Congress. The report includes:

(i) A complete record of the policy actions taken by the Board and the Federal Open Market Committee, showing the votes taken and the underlying reasons (12 U.S.C. 247a);

(ii) Material pertaining to administering Board functions under the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and 1844(d));

(iii) Material pertaining to bank mergers approved by the Board under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(9)); and

(iv) Reports required by section 114 of the Truth in Lending Act (15 U.S.C. 1613); section 602 of the Change in Bank Control Act (12 U.S.C. 1817(j)(14)); section 121 of the Securities and Exchange Act (15 U.S.C. 78w(b)); section 707 of the Equal Credit Opportunity Act (15 U.S.C. 1601f); section 18 of the Federal Trade Commission Improvement Act (12 U.S.C. 57a(f)(5)); section 918 of the Electronic Funds Transfer Act (15 U.S.C. 1693p); section 806 of the Community Reinvestment Act (12 U.S.C. 2904); the Securities Act Amendments of 1975 (15 U.S.C. 78w); and section 3(h) of the International Banking Act of 1978, Pub. L. 95-309.

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

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

(i) Economic and statistical information;

(ii) Articles on subjects of economic interest or relating to Board activities;

(iii) Regulations;

(iv) Statements of general policy;

(v) Interpretations of laws and regulations of general interest to the public;

(vi) Notices of Board action on certain types of applications; and

(vii) Board orders and accompanying statements on certain types of adjudications.

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

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

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

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

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

(5) *Computer tapes.* The Board periodically prepares data of various kinds on computer tapes, which are available to the public upon request pursuant to a current schedule of changes.

(6) *Regulatory Service.* The Board published *The Federal Reserve Regulatory Service*, which is a multivolume looseleaf service containing statutes, regulations, interpretations, rulings, staff opinions, and procedural rules under which the Board operates. Parts of the Service are also published as separate looseleaf handbooks relating to Consumer and Community Affairs, Monetary Policy and Reserve Requirements, and Securities Credit Transactions. The Service and each handbook contain subject and citation indexes, are

updated monthly, and may be subscribed to on a yearly basis.

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

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

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

(f) *Obtaining Board publications.* All publications issued by the Board may be obtained from the Publications Services Section of the Federal Reserve Board, 20th Street and Constitution Ave., NW., Washington, DC 20551 (pedestrian entrance is on C Street, NW.), including:

(1) Current and available back issues of the Board's Annual Report to Congress (copies of the Board's Annual Report to Congress are also normally available for examination at each Federal Reserve Bank);

(2) Single, current and available back issues of the *Federal Reserve Bulletin* which may be obtained at the prescribed rates (any individual or group may subscribe annually to the *Bulletin* at the prescribed rate).

#### § 261.6 Records available to public upon request

(a) *Types of records made available.* Subject to the provisions of this regulation, the following records shall be made available for inspection and copying upon request, unless they were publish promptly and made available for sale or without charge:

(1) Orders made in the adjudication of cases and final opinions, including concurring and dissenting opinions, and

orders and opinions issued pursuant to authority delegated by the Board;

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

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

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

(5) Other records subject to disclosure pursuant to 5 U.S.C. 552.

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

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

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

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

(5) *Requests for applications and reports.* The Board preliminarily identifies public portions of most applications and reports filed in connection with its supervision of financial institutions. The public portions contain information that may be released without further review. The Board will consider each request for these applications and reports to be a request for the public portions only, unless the requester specifically seeks access to the entire document.

(6) *Disposal of records.* Nothing in this regulation precludes the Board from

disposing of records eligible for disposal in the normal course of business and in accordance with applicable law.

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

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

(3) The publicly available portions of Reports of Condition and Income of individual banks, as well as certain other data files produced by the Board, are distributed by the National Technical Information Service. Requests for these public reports should be addressed to: Sales Office, National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4650.

**§ 261.7 Deferred availability of certain information.**

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

(b) *Reasons for deferred availability.* Information may be subject to deferred availability of deferred publication because earlier disclosure would:

(1) Interfere with accomplishing the objectives of the Board in the discharge of its statutory functions;

(2) Interfere with the orderly conduct of the foreign affairs of the United States;

(3) Permit speculators or others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;

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

(5) Interfere with the orderly execution of the objectives or policies of other Government agencies; or

(6) Impair the ability to negotiate any contract or otherwise harm the commercial or financial interests of the United States, the Board, any Federal Reserve Bank, or any department or agency of the United States.

**§ 261.8 Exemptions from disclosure.**

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

(1) *National defense.* Any information or record that is:

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive order; or

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

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

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

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

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

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

(4) *Records or information compiled or law enforcement purposes.* Any records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552b, including information relating to proceedings for:

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

(ii) Terminating membership of an institution in the Federal Reserve System under section 9 of the Federal Reserve Act (12 U.S.C. 327);

(iii) Suspending a depository institution from use of the credit facilities of the Federal Reserve System under section 4 of the Federal Reserve Act (12 U.S.C. 301); or

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

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

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

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

(i) Memorandums;

(ii) Reports;

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

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

(8) *Court order prohibitions.* Any document or information that is covered by an order of a court of competent jurisdiction that prohibits its disclosure.

(9) *Statutory Exemption.* Specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), if the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(b) *Segregation of nonexempt information.* (1) The Board shall provide any reasonably segregable portion of a recording to any person requesting such

record after deleting those portions that are exempt under this section. In determining whether exempt information is reasonably segregable, the Board shall consider all relevant factors, including but not limited to:

(i) The amount and placement of nonexempt information in relation to the structure and size of the document; and

(ii) The intelligibility and usefulness of the nonexempt information that is segregated balanced against the administrative burden and cost of segregation.

(2) Subject to these considerations, reasonably segregable nonexempt portions of a document are those nonexempt portions:

(i) Whose meaning is not distorted by deletion;

(ii) That are sufficiently detailed to be intelligible and useful to the requester; and

(iii) From which a skillful and knowledgeable person could not reconstruct any exempt information.

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

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

(d) *Foreign banking organization confidential report of operations.* It is the Board's policy that the confidentiality of a foreign banking organization's Confidential Report of Operations (Form F.R. 2068) should be maintained at all times. Except as provided in § 261.11(e) of this regulation, information submitted to the Board as part of any Confidential Report of Operations is not available for public inspection by any person other than an officer, employee, or agent of the Board or a Federal Reserve Bank properly entitled to such information in the performance of such person's official duties. Any employee who violates this section by releasing such a Report to any unauthorized person may be subject to disciplinary action under 12 CFR 264.735-5 (Rules of Employee Responsibilities and Conduct).

§ 261.9 *Procedures for making requests for identifiable records; processing of requests; appellate review of denial of request; time extensions.*

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

(i) The name and address of the person filing the request, and the telephone number at which the requester can be reached during normal business hours;

(ii) The name of any pending litigation to which the request relates, the court, and its location;

(iii) Whether the requested information is intended for commercial use, and whether the requester is an educational or noncommercial scientific institution, or news media representative; and

(iv) A statement agreeing to pay the applicable fees; or a statement identifying any fee limitation desired; or a request for a waiver or reduction of fees that satisfies § 261.10 of this regulation.

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

(A) Can be complied with only by designing an information retrieval system; or

(B) Does not otherwise comply with the requirements of paragraph (a) of this section.

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

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

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

(b) *Procedures for responding to requests—(1) Time limits.* In response to any request that satisfies paragraph (a) of this section, the Board shall, if necessary, cause an appropriate search to be conducted of records of the Board in existence on the date of receipt of the request, and shall determine within ten working days of receipt of the request whether to comply with the request, unless the running of such time is tolled for payment for fees pursuant to § 261.10 of this regulation, or such period is extended, pursuant to paragraph (e) of this section or Subpart D of this regulation. The date of receipt for a request that is addressed incorrectly or that is referred to the Board by another agency or by a Federal Reserve Bank will be the date the Office of the Secretary actually receives it.

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

(i) The Board's determination of the request;

(ii) The reasons for the determination;

(iii) The right of the requester to appeal to the Board any denial or partial denial, as specified in paragraph (d) of this section; and

(iv) In the case of a denial of a request, the name and title or position of the person responsible for the denial.

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

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

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

(c) *Procedures for copying and review of records; number of copies; method of duplication—(1) Request for copies.* When a requester asks that documents be copied, copies shall be made at the fee established, as provided in § 261.10 of this regulation. Copies shall be sent to

the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office in Washington, DC., or makes other arrangements acceptable to the Board.

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

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

(d) *Appeal of denial of request for records—(1) Request for appellate review; time limits.* Any person denied access to Board records requested in accordance with this section may file with the Board a written request for appellate review of the denial by the Board or Board member(s) designated to hear such appeal. Such request shall be filed within ten working days of the date on which the denial was issued, or, where a request for documents has been partially approved but access to the documents has not been given, within ten working days from the date such documents are transmitted to the requester. The request shall prominently display the word "Appeal" on the first page. An initial request for records may not be combined in the same letter with an appeal.

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

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

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

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

(4) *Mootness of appeal.* (i) The Board, a Board member, or a staff person designated by the Chairman may declare an appeal wholly or partially

moot and instruct the Secretary of the Board to reconsider the previous denial or to release the requested documents, where a determination is made that intervening circumstances or additional facts not known at the time of denial have or may have eliminated any need or justification for withholding the requested documents.

(ii) The Secretary of the Board may reconsider a denial being appealed if such intervening circumstances or additional facts come to the attention of the Secretary while an appeal is pending.

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

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

#### § 261.10 Fee schedules; waiver of fees.

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

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

(1) "Direct costs" mean those expenditures which the Board actually incurs in searching for and duplicating

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

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

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

(c) *Commercial use.* (1) The fees in the Schedule of Fees for document search, duplication, and review apply when records are requested for commercial use.

(2) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade, or profit as these phrases are commonly known or have been interpreted by the courts in the context of the Freedom of Information Act.

(3) In determining whether a requester properly belongs in this category, the Secretary shall look first to the use to which a requester will put the documents requested. Where a requester does not explain its purpose, or where its explanation is insufficient, the Secretary may draw reasonable inferences from the requester's identity and charge fees accordingly. For example, the Secretary may presume that a document request written on corporate letterhead stationery that merely recites a list of the documents wanted is for a commercial use.

(d) *Educational, research, or media use.* (1) Only the fees in the Schedule of Fees for document duplication apply when records are not sought for

commercial use and the requester is a representative of the news media, or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. However, there is no charge for the first one hundred pages of duplication.

(2) "Educational institution" refers to an accredited institution of higher learning engaged in scholarly research.

(3) "Noncommercial scientific institution" refers to an independent nonprofit institution whose purpose is to conduct scientific research.

(4) "Representative of the news media" refers to any representative of established news media outlets, i.e., any organization such as a television or radio station, or a newspaper or magazine of general circulation, or person working for such organization which regularly publishes information for dissemination to the general public whether electronically or in print.

"Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

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

(f) *Aggregated requests.* If the Secretary reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such request accordingly.

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

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

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

(3) *Late charges.* The Secretary may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent.

Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A. This rate of interest is published by the Secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

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

(i) The relation of the records to the operations or activities of the Board;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the disclosure requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(2) *Contents of request for waiver.* The Secretary or his or her designee will normally deny a request for a waiver of fees that does not include:

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

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

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

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

(3) *Burden of proof.* In all cases the burden shall be on the requester to

present evidence or information in support of a request for a waiver of fees.

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

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

#### Appendix A to § 261.10—Freedom of Information Fee Schedule

##### Duplication

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

##### Search and Review

Clerical (Grades FR4-FR7), hourly rate.....	\$8.50
Technical (Grades FR8-FR11), hourly rate.....	\$12.80
Management/professional, hourly rate.....	\$25.90

##### Computer Search and Production

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

##### Special Services

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

##### Fee Waivers

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media, the Board will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other noncommercial use requests no fees will be assessed for review time, for the first

100 pages of reproduction, or for the first two hours of search time. For requesters qualifying for 100 free pages of reproduction, the fees for duplicate microfiche will be prorated to eliminate the charge for 100 frames.

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

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

**Subpart C—Confidential Information Made Available to Supervised Institutions, Financial Institution Supervisory Agencies, Law Enforcement Agencies, and Others in Certain Circumstances**

**§ 261.11 Confidential information made available to supervised institutions and financial institutions supervisory agencies.**

(a) *Routine disclosure of reports of examination and inspection and confidential supervisory information to supervised institutions.* A copy of each report of examination or inspection or confidential supervisory information concerning a supervised bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other institution examined by the Federal Reserve System may be made available by the Board or the appropriate Federal Reserve Bank to the supervised institution. This report of examination or inspection or confidential supervisory information is provided for the use of the directors, executive officers, and employees of the examined financial institution in connection with the performance of their duties.

(b) *Other routine disclosures.* From time to time, the Board may determine that reports of examination or inspection or confidential supervisory information may be disclosed by designated members of the staff on a routine basis for purposes determined by the Board.

(c) *Disclosure upon request to federal financial institutions supervisory agencies.* The Director of the Board's Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank, upon request, may make available to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board and their regional

offices and representatives, reports of examination and inspection, confidential supervisory information, and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company, U.S. branch or agency of a foreign bank, or other examined financial institution.

(d) *Disclosure upon request to state financial institutions supervisory agencies.* Upon request, the Director of the Board's Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank may make available reports of examination and inspection, confidential supervisory information, and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company, U.S. branch or agency of a foreign bank, or other examined institution ("supervised institution"), to:

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

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

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

(f) *Foreign Bank Confidential Report of Operations.* (1) Notwithstanding any other provision of this Regulation, any Confidential Report of Operations (Form F.R. 2088) of a foreign banking organization may, upon written request to and approval by the Director of the Division of Banking Supervision and Regulation (or the Director's delegee), and with the concurrence of the General Counsel (or delegee), be made available for inspection to another bank supervisory authority having general supervision of any United States branch, agency, subsidiary, bank, or commercial

lending company of the foreign banking organization, only for use where necessary in the performance of official duties.

(2) These reports shall be made available for inspection by authorized persons only on Federal Reserve premises under the same procedures applicable to personnel of the Federal Reserve System.

(3) Any report made available under this paragraph remains the property of the Board. No person, agency, or authority who obtains access to such report, or any officer, director, or employee thereof, may publish, publicize, or otherwise disclose any information contained in the report to any person.

(g) *Conditions and limitations.* The Board may impose such conditions or limitations on disclosure under this section that it determines are necessary to effect the purposes of this Regulation, to insure compliance with applicable laws or regulations, or to protect the confidentiality of the Board's information.

**§ 261.12 Confidential information made available to law enforcement agencies and other nonfinancial institutions supervisory agencies.**

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

(b) *Eligibility.* Federal, state, and local law enforcement agencies and other nonfinancial institutions supervisory agencies may file written requests with the Board for access to confidential documents and information under this section of the regulation. Properly accredited foreign law enforcement agencies and other foreign government agencies may also file written requests with the Board.

(c) *Contents of request.* To obtain access to confidential documents or information under this section of the regulation, the head of the law enforcement agency or nonfinancial institution supervisory agency (or their designees) shall address a letter request to the Board's General Counsel, specifying:

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

(2) The reasons why such information cannot be obtained from the examined institution in question rather than from the Board;

(3) A statement of the law enforcement purpose or other purpose for which the information shall be used;

(4) Whether the requested disclosure is permitted or restricted in any way by applicable law or regulation;

(5) A commitment that the information requested shall not be disclosed to any person outside the agency without the written permission of the Board or its General Counsel; and

(6) If the document or information requested includes customer account information subject to the Right to Financial Privacy Act, as amended (12 U.S.C. 3401), a statement that such customer account information need not be provided, or a statement as to why the Act does not apply to the request, or a certification that the requesting agency has complied with the requirements of the Act.

(d) *Action on request.* (1) The General Counsel shall review each request and may approve the request upon determining that:

(i) The request complies with this section;

(ii) The information is needed in connection with a formal investigation or other official duties of the requesting agency;

(iii) Satisfactory assurances of confidentiality have been given; and

(iv) No law prohibits the requested disclosure.

(2) The General Counsel may impose any conditions or limitations on disclosure that the General Counsel determines to be necessary to effect the purposes of this Part or to insure compliance with applicable laws or regulations.

(e) *Routine disclosures.* From time to time the Board may determine that reports of examination or inspection may be disclosed by designated members of the staff on a routine basis for purposes determined by the Board.

(f) *Federal and state grand jury, criminal trial, and government administrative subpoenas.* The Board's General Counsel shall review and may approve the disclosure of confidential information pursuant to federal and state grand jury, criminal trial, and government administrative subpoenas. The General Counsel may impose such conditions or limitations on disclosure under this section that it determines are necessary to effect the purposes of this

Part, to insure compliance with applicable laws or regulations, or to protect the confidentiality of the Board's information.

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

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

#### § 261.13 Other disclosure of confidential information.

(a) *Policy statement.* It is the Board's long-standing policy regarding its reports of examination and inspection and confidential supervisory information that such information is confidential and privileged and should not be disclosed except in the most compelling circumstances. Any party desiring information concerning the affairs of a bank or bank holding company should seek that information from the bank or bank holding company rather than seek disclosure of the Board's reports of examination and inspection and confidential supervisory information.

(b) *Requests related to private litigants.* (1) *Exhaustion of administrative remedies.* Any person (except agencies identified in §§ 261.11 and 261.12 of this regulation) desiring access to confidential information of the Board for use in litigation before a court, board, commission, or agency must file a written request with the General Counsel of the Board at least 45 calendar days before access is desired.

(2) *Action on request.* The General Counsel may approve a request made under this section provided that he or she determines that the requester has made a showing of compelling circumstances that require disclosure to the requester of confidential information, and if the General Counsel determines that such disclosure is consistent with the regulatory responsibilities and policies of the Board. The General Counsel may, in granting approval of a request made

under this section, impose such conditions or limitations on use of any information disclosed as he or she feels is necessary to protect the confidentiality of the Board's information.

(c) *Requests for testimony.* Any person desiring to obtain the testimony of present or former Board or Reserve Bank employees on matters involving confidential information of the Board, whether by deposition or otherwise, shall use the procedures set out in paragraph (b) of this section.

(d) *Disclosure of reports of examination and inspection and confidential supervisory information by financial institutions to affiliated persons—(1) Limitation on disclosure.* Financial institutions lawfully in possession of reports of examination or inspection or confidential supervisory information pursuant to § 261.11 of this regulation are prohibited from disclosing such reports or information to any person except as permitted by this paragraph.

(2) *Parent companies.* Any financial institution lawfully in possession of reports of examination or inspection or confidential supervisory information pursuant to § 261.11 of this regulation may disclose such reports or information, or portions of them, to its parent bank holding company without consulting the Board provided that the parent company agrees in writing with the financial institution to preserve the confidentiality of such reports and information pursuant to this regulation.

(3) *Agents.* Any financial institution lawfully in possession of reports of examination or inspection or confidential supervisory information pursuant to § 261.11 of this regulation may disclose such reports or information to appropriate agents of the financial institution, subject to the following conditions:

(i) Prior to any disclosure of such reports or information, the financial institution shall consult with the appropriate Reserve Bank regarding the qualification of the agent to receive information under this paragraph;

(ii) The reports or information to be made available is material and necessary to the performance of specifically identified responsibilities of the agent;

(iii) The reports and information are not removed from the premises of the financial institution and are reviewed only on its premises;

(iv) Prior to review, the agent agrees in writing with the financial institution to preserve the confidentiality of the reports and information; and



(v) The agent agrees in writing with the financial institution not to disclose any confidential Board information obtained under this section in connection with any trial of any civil, criminal, or administrative action without first seeking the prior approval of the Board's General Counsel pursuant to the procedures set forth in paragraph (b) of this section.

(e) *Other disclosures prohibited.* All reports and information made available under this section remain the property of the Board, and except as otherwise provided in this regulation, no person, partnership, company, or other entity to whom the information is made available, or any officer, director, partner, employee, or other associate thereof, may disclose any such information.

**§ 261.14 Subpoenas, orders compelling production, and other process.**

(a) *Advice by person served.* Any person (including any officer, employee, or agent of the Board or any Federal Reserve Bank) who has documents or information of the Board that may not be disclosed and who is served with a subpoena, order, or other judicial or administrative process requiring his or her personal attendance as a witness or the production of documents or information in any proceeding, shall:

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

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

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

Board for such action as the Board may deem appropriate.

**Subpart D—Requests for Confidential Treatment**

**§ 261.15 Scope of subpart.**

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

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

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

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

**§ 261.16 Submission and form of request for confidential treatment; action on request.**

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

(b) *Form of request.* Each request for confidential treatment shall state in reasonable detail the facts and arguments supporting the request and its legal justification. Conclusory statements that particular information would be useful to competitors or would impair sales, or similar statements,

generally will not be considered sufficient to justify confidential treatment.

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

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

(2) Any request for confidentiality pursuant to 5 U.S.C. 552(b)(4) will be handled in accordance with § 261.17 of this subpart.

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

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

**§ 261.17 Confidential commercial or financial information.**

(a) *Notice to submitter.* Whenever a request for access to Board records submitted pursuant to section 261.6 of this regulation covers, in whole or in part, any document or information for which confidential treatment has been requested pursuant to 5 U.S.C. 552(b)(4) ("trade secrets and commercial or financial information obtained from a person and privileged or confidential"), or when it otherwise appears to the Secretary that the document requested contains information that may be deemed confidential under 5 U.S.C. 552(b)(4), the Secretary may notify the submitter of the document of the request for access. This notice shall: (1) Where possible, be given within five working days of the receipt of the request for access; (2) describe the request; and (3) give the submitter a reasonable opportunity, not to exceed ten working days, to submit written objections to the granting of the request. The notice to the submitter, if given orally, shall be

promptly confirmed in writing by the Secretary.

(b) *Notice to requester.* At the same time the Secretary gives notice to the submitter, the Secretary shall also give notice to the requester that the request is subject to the provisions of this section and that notice of the request is being given to the submitter.

(c) *Determination by Secretary.* The Secretary's determination whether or not to disclose any document for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary determines to disclose the document or information and the submitter has objected to such disclosure under paragraph (a) of this section, the Secretary shall delay actual release of the document or information for ten working days following the date of the determination.

(d) *Exceptions to notice to submitter.* Notwithstanding any other provision in this section, no notice to any submitter is required: (1) if the Secretary determines, prior to giving such notice, that the request for access should be denied; (2) if the information requested lawfully has been published or otherwise made available to the public; (3) if disclosure of the information is required by law (other than 5 U.S.C. 552); or (4) if the submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) is deemed to be insubstantial or has already been denied by the Secretary.

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

(2) The Secretary shall promptly notify the requester of any suit filed against the Board pursuant to 5 U.S.C. 552 to enjoin the disclosure of any documents requested by the requester.

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

By order of the Board of Governors, April 16, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-8955 Filed 4-22-87 8:45 am]

BILLING CODE 6210-01-M

**FEDERAL RESERVE SYSTEM****12 CFR Part 261****[Docket No. R-0597]****Freedom of Information; Rules on Availability of Information****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System has amended its Rules Regarding Availability of Information to implement the Freedom of Information Reform Act ("FOI Reform Act"), Pub. L. 99-570, by revising the schedule of fees applicable to requests for Board records pursuant to the Freedom of Information Act ("FOIA").

**EFFECTIVE DATE:** May 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division (202/452-3920); Elaine M. Boutillier, Senior Attorney, Legal Division (202/452-2418); or for the hearing impaired only, Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The FOI Reform Act requires each agency to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under the Freedom of Information Act . . .". The Board published its proposed rule for comment on March 31, 1987 (52 FR 10233). Three comments were received. One comment was submitted by a bank holding company and stated that the features of the rulemaking considered by the commenter to be discriminatory stem from the statute and OMB's guidelines rather than from the Board's proposed action. Another comment was submitted

by a freelance journalist who objected to the definition of "freelance journalist" in the section on news media. Again, this is a definition set by OMB, which has addressed in their final guidelines similar concerns raised by freelance journalists. This commenter and the third commenter also objected generally to considerations respecting fee waiver determinations set out in proposed § 261.8(h)(1), describing them as unnecessary and impermissible. These considerations are intended to provide guidance in interpretation of the statutory standards, however, and clearly do not amend or supersede those standards. One commenter also asked that the notice required by § 261.8(g)(2) be made applicable to the situation described in § 261.8(g)(5), but the Board believes this advance notice requirement is applicable as suggested without further amendment.

The third comment was submitted by a public citizens group which primarily reiterated that group's comments to OMB on its proposed guidelines, which have been addressed by OMB. This group also objected to the Board's proposal to require submission of certain information by persons seeking waiver of fees. However, the Board considers it necessary for a person requesting waiver of fees to establish his or her entitlement to such a waiver, and the Board understands that such showings will normally be made more easily by the news media and by educational institution requesters than by other types of requesters.

The schedule adopted by the Board must conform to the guidelines promulgated by the Office of Management of Budget ("OMB"). OMB published final guidelines on March 27, 1987 (52 FR 10018). The fee schedule and related items included in this rule have been modified to conform to those final guidelines. OMB made various modifications to its proposed guidelines as a result of the public comments received. These changes primarily addressed the public's concerns about some definitions of terms proposed by OMB. Accordingly, OMB modified many of the definitions published in the proposed guidelines. Most of the modifications were meant to merely clarify the proposed definition, however, two significant definitions were modified substantively: The scope of "educational institution" was enlarged to include educational institutions providing any level of education, from preschool to postgraduate research; and the definition of "news media" was redrafted to clarify the extent of the coverage.

OMB also added the requirement that a requester who has not indicated in advance his willingness to pay fees as high as are anticipated by the agency to be notified by the agency whenever fees are expected to exceed \$25. This requirement has been added as section (g)(2) in the Board's rule.

Pursuant to the FOI Reform Act and the OMB guidelines, the Secretary has set fees to recover the full direct costs incurred by the Board in searching for, reviewing, and duplicating documents in response to FOIA requests. This rule sets forth the schedule of fees and the procedures for requesting a waiver of the fees. The fees are set forth in Appendix A. In compliance with the FOI Reform Act, requesters are classified into four different categories for fee assessment purposes: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters.

*Commercial use requesters*—A commercial use request is a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. When the Board receives a request for documents appearing to be for commercial use, fees will be assessed for the total search time, review time, and all duplication of the documents. Requesters should note that the Board may assess fees for the search for and review of documents even if no documents are ultimately released.

*Educational and noncommercial scientific institution requesters*—An "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research. A "noncommercial scientific institution" is defined as an independent non-profit institution whose purpose is to conduct scientific research. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100 pages. To be eligible for this reduction in fees, the requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are in furtherance of scholarly or scientific research. To be eligible for

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free search time, the requester must reasonably describe the records sought.

**Representative of the news media**—This term is defined as any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100 pages. To be eligible for free search time, the requester must reasonably describe the records sought.

**All other requesters**—The Board will assess fees for search and duplication to all requesters who do not fit in the above categories, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge. Requesters should note that the Board may assess fees for the search for documents even if no documents are ultimately released.

To prevent abuse of the provisions granting 100 pages of duplication and two hours of search time free of charge, subpart (f) permits the Secretary to aggregate requests that are reasonably believed to have been broken down to evade fees.

Subpart (g) provides that the Board may require advance payment of fees if the total fees are estimated to exceed \$250, or where a requester has previously failed to make timely payment of fees due. This subpart also permits interest to be charged on fees over 30 days past due at the rate prescribed in 31 U.S.C. 3717 for an outstanding debt on a U.S. Government claim. This rate is set annually by the Secretary of the Treasury equal to the average 12-month investment rate on Treasury tax and loan accounts.

The FOI Reform Act requires that fees shall be waived or reduced (1) "if the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) such disclosure "is not primarily in the commercial interest of the requester." Subpart (h) sets forth the required contents of a request for a waiver or reduction of fees and the six factors the Secretary will consider in determining whether to grant the request. The six enumerated factors that reflect the new statutory standard which agencies are required to take into consideration in determining whether the two basic requirements for a fee waiver or reduction are met. The Secretary will apply those factors to fee waiver requests sequentially, on a case-by-case basis.

#### List of Subjects in 12 CFR Part 261

Freedom of Information Act, Federal Reserve System.

For the reasons set out in this notice, and pursuant to the Board's authority under section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) to delegate functions to members and employees of the Board and to the Reserve Banks, the Board amends its Rules Regarding Availability of Information (12 CFR Part 261) as follows:

#### PART 261—[AMENDED]

1. The authority citation for Part 261 continues to read as follows:

Authority: 5 U.S.C. 552.

#### § 261.4 [Amended]

2. In § 261.4, paragraph (g) is removed.  
3. Section 261.8 is added to read as follows:

#### § 261.8 Fee schedules; waiver of fees.

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

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

(1) "Direct costs" mean those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under section 261.4 of this Part. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

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

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

(c) *Commercial use.* (1) The fees in the Schedule of Fees for document search, duplication, and review apply when records are requested for commercial use.

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

(3) In determining whether a requester properly belongs in this category, the Secretary shall look first to the use to which a requester will put the documents requested. Where a requester does not explain its purpose, or where its explanation is insufficient, the Secretary may seek additional clarification from the requester before categorizing the request as one for commercial use.

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

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

(3) "Noncommercial scientific institution" refers to an independent nonprofit institution whose purpose is to conduct scientific research.

(4) "Representative of the news media" refers to any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that

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would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

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

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

(g) *Payment procedures—(1) Fee payment.* The Secretary may assume that a person requesting records pursuant to § 261.4 of this Part will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (h) of this section.

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

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

(ii) For purposes of computing the time period for responding to requests under section 261.4(d) of this Part, the running of the time period will begin only after the Secretary receives the required payment.

(4) *Late charges.* The Secretary may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A. and will accrue from the date of the billing. This rate of interest is published by the Secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

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

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

(i) *The subject of the request:* Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) *The informative value of the information to be disclosed:* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) *The contribution to an understanding of the subject by the general public likely to result from disclosure:* Whether disclosure of the requested information will contribute to "public understanding";

(iv) *The significance of the contribution to the public*

*understanding:* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) *The existence and magnitude of a commercial interest:* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) *The primary interest in disclosure:* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester".

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

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

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

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

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

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

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

**Appendix to § 261.8—Freedom of Information Fee Schedule**

<b>Duplication:</b>	
Photocopy, per standard page.....	\$ .06
Paper copies of microfiche, per frame.....	.07
Duplicate microfiche, per microfiche.....	.10
<b>Search and review:</b>	
Clerical (Grades FR4-FR7), hourly rate .....	8.50
Technical (Grades FR8-FR11), hourly rate .....	12.80
Management/professional, hourly rate .....	25.90

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

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

Fee waivers: For qualifying educational and noncommercial scientific institution requesters and representatives of the news media the Board will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other non-commercial use requests no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time. For requesters qualifying for 100 free pages of reproduction, the fees for duplicate microfiche will be prorated to eliminate the charge for 100 frames.

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

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

By order of the Board of Governors,  
effective April 22, 1987.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 87-9496 Filed 4-27-87; 8:45 am]

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