

ANNUAL REPORT TO CONGRESS  
ON  
THE FREEDOM OF INFORMATION ACT  
FOR JANUARY - SEPTEMBER 1997

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

JANUARY 30, 1998

The following information is submitted to the Congress by the Board of Governors of the Federal Reserve System in accordance with the requirements of the Freedom of Information Act (5 U.S.C. §552).

During the first three quarters of 1997, the Board received 3,691 requests for records through the Freedom of Information Section of the Office of the Secretary, and furnished 30,179 records, consisting of 372,566 pages and 968 microfiche.

**(1) The number of determinations not to comply with requests for records made pursuant to the Board's Rules Regarding Availability of Information and 5 U.S.C. §552(a) and the reasons for those determinations.**

During the first three quarters of 1997, the Board's staff made initial determinations to deny, in whole or in part, 250 requests for records. These determinations were based on the following statutory exemptions:

Exemptions Invoked	No. of Times Invoked
552 (b) 4	66
552 (b) 4, 5	30
552 (b) 4, 5, 6	6
552 (b) 4, 5, 6, 8	35
552 (b) 4, 5, 7, 8	6
552 (b) 4, 5, 8	41
552 (b) 4, 6	13
552 (b) 4, 6, 8	3
552 (b) 4, 8	6
552 (b) 5	6
552 (b) 5, 6	3
552 (b) 5, 6, 8	1
552 (b) 5, 8	6
552 (b) 6	16
552 (b) 6, 8	2
552 (b) 7	2
552 (b) 8	8

(2) The number of determinations whereby the Board did not provide records because of the requesters' failure to identify records adequately or non-possession of records.

Failure to identify records adequately	1
Non-possession of records	123
Unable to identify some records	16

(3) The names and titles or positions of each person responsible for the initial denial of records and the number of instances of participation for each.

William W. Wiles, Secretary	220
Jennifer J. Johnson, Deputy Secretary	28
Barbara R. Lowrey, Associate Secretary	2

(4) The number of appeals made by persons under 5 U.S.C. §552(a)(6) and the Board's Rules Regarding Availability of Information and the result of those appeals.

Appeals pending January 1, 1997	3
Appeals received January - September 1997	13
Initial denial affirmed in full	12
Initial denial affirmed in part	0
Withdrawn/Cancelled	4
Appeals pending January 1, 1998	0

(5) Authority relied upon for total or partial denials on appeal.

Exemptions Invoked	No. of Times Invoked
552(b) 4	4
552(b) 4, 5, 6, 8	2
552(b) 4, 5, 7, 8	1
552(b) 4, 5, 8	1
552(b) 5	2
552(b) 5, 8	1
No Responsive Documents	1

(6) The names and titles or positions of each

person responsible for the denial of records upon appeal and the number of instances of participation for each.

Susan M. Phillips, Member of the Board	3
Alice M. Rivlin, Vice Chairman	9

(7) The results of each proceeding conducted pursuant to 5 U.S.C. §552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

No such proceedings were conducted.

(8) A copy of every rule made by the Board regarding the Freedom of Information Act.

The Board published a proposed rule on June 10, 1997, and a final rule on October 20, 1997, to implement the Electronic Freedom of Information Act Amendments (Attachments A and B).

(9) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section.

The Board's fee schedule for 1997 is attached (Appendix A of Attachments A and B). During 1997, the Board collected \$41,296 for material furnished in accordance with the Freedom of Information Act.

(10) Other information indicative of efforts to administer fully this section.

#### Costs

The Board maintains a separate Freedom of Information Office with a full-time staff of seven. In addition, many other staff members fill requests from the public for copies of Board records on a part-time basis. During 1997, the Board spent approximately \$674,605 directly

in administering the Act.

**Extensions of time.**

The Act permits an agency, in certain circumstances, to extend the 10-day period for replying to requests. In 1997, this period was extended 360 times for the following reasons:

	No. of Times
(1) to consult with another agency or with two or more components of the Board having a substantial interest in the determination of the request.	360
(2) to continue to search for, collect, and examine voluminous records that fall within the scope of the request.	0
(3) to search for and collect the material from the appropriate Federal Reserve Bank.	0

The total number of instances where court appeals were taken on the basis of exhaustion of administrative procedures because the agency was unable to comply with the request within the applicable time limits.

None

The total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time.

None

Unpublished internal memoranda or instructions setting forth procedures to be followed by agency personnel

in administering the Act or defining its coverage, together with a statement indicating whether the memoranda or instructions are publicly available or, if not, the legal basis for non-disclosure of any such document.

The Board's Freedom of Information Office maintains 27 volumes describing present and past office procedures, which are updated continually. These volumes also contain legal memorandums and other documents that are useful to office staff. The volumes are generally available to the public for inspection, with the exception of internal documents concerning personnel information, legal advice or other exempt information.

#### **Index of Board Actions**

Since July 4, 1967, the Board's Freedom of Information office has maintained an Index of Board Actions that is updated weekly and is available to the public for inspection and sale.

In addition, the Board publishes a weekly release, "Actions of the Board, Its Staff, and the Federal Reserve Banks: Applications and Reports Received (H.2)," providing identifying information on matters issued, adopted, and promulgated by the Board and on all applications received by the Federal Reserve System. Annual subscriptions and individual issues within the last 12 months are available from the Board's Publications Services. Subscription and per issue costs are furnished on request. The H.2 also is available on the Board's Public Web site. An electronic version of documents relating to actions taken by the Board, its Staff, and the Federal Reserve Banks may be found under the heading "Public Information: Actions, Orders, and Other Documents" on the Board's Public Web site. A copy of the Board's Public Web Site Home Page also is attached (Attachment C).

**FEDERAL RESERVE SYSTEM****12 CFR Part 261**

[Docket No. R-0975]

**Rules Regarding Availability of Information****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Proposed rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) hereby proposes to amend its Rules Regarding Availability of Information (Rules) to reflect recent changes in the Freedom of Information Act (FOIA) as a result of the Electronic Freedom of Information Act Amendments (EFOIA). In order to account for future amendments to the Rules, the sections have been renumbered.

The review of the Board's Rules that produced this proposal was conducted

in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994. In this regard, the amendments to the Rules clarify certain provisions and simplify the processing of requests for access to information in certain circumstances. For example, the amendments conform the language of the Rules to changes in the law.

**DATES:** Comments must be submitted on or before July 25, 1997.

**ADDRESSES:** Comments, which should refer to Docket No. R-0975, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. The mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room MP-500 between 9:00 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boutilier, Senior Counsel, (202/452-2418), Legal Division; or Susanne K. Mitchell, Manager, Freedom

of Information Office (202/452-2407). For the hearing impaired *only*, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** Last year, Congress passed the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231, which amends the Freedom of Information Act, 5 U.S.C. 552. Among other things, EFOIA requires agencies to promulgate regulations that provide for expedited processing of requests for records, and permits agencies to promulgate regulations that provide for multitrack processing of requests. In addition to proposing appropriate amendments to its Rules to comply with EFOIA, the Board has taken this opportunity, in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, to review and streamline those Rules.<sup>1</sup>

In addition, the Board is proposing to amend the Rules to take account of various statutes that have been enacted since the Rules were last revised in

<sup>1</sup> The regulatory citations contained in this proposed rule refer to the proposed regulation herein, rather than to the existing regulation. As noted above, the sections have been renumbered.

1988.<sup>2</sup> Section 913 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and section 2547 of the Bank Fraud Act (codified at 12 U.S.C. 1818(u)), for example, require the Board to "publish and make available to the public" enforcement orders, including any modifications or terminations thereof, and certain other enforceable written actions. Such documents were previously included under the definition of "confidential supervisory information," the disclosure of which is restricted under language in the Board's Rules.

In 1996, the Board published for comment proposed amendments to the Rules (61 FR 7436, February 28, 1996). These proposed changes primarily concerned Subpart C of the Rules and the definitions in Subpart A of terms that are used in Subpart C. In addition to those proposed changes, the Board proposed changes to certain portions of Subpart B and Subpart D to clarify the Board's procedures in processing FOIA requests. The proposed changes to Subparts A, B and D are being republished herein, and comments received on those previously proposed changes are discussed in this Supplementary Information. Subpart C is not being republished, and comments received on the previously published changes are still under consideration.

#### Subpart A

Subpart A contains the General Provisions, describing the authority, purpose and scope, listing the definitions applicable to this part, and explaining the responsibilities of the Secretary of the Board as custodian of the Board's records. The proposed changes to this subpart are made primarily in the "Authority" section to clarify the ability of the Board to provide exempt records to certain entities outside of the FOIA process in specific circumstances. In addition, certain definitions that have been included in the section on FOIA fees and fee waivers would be moved forward to the "Definitions" section.

Section 261.3 has been amended to clarify that authority delegated to the General Counsel and other officers of the Board may be subdelegated. An additional change to § 261.3(c) states that the Secretary of the Board is the Board's agent for service of all process, and that the Board will not accept process on behalf of employees in

connection with purely private matters except as specifically provided by law.

#### Subpart B

Changes are proposed in Subpart B to comply with the EFOIA requirements for expedited processing. The Board also is proposing to implement multitrack processing. In addition, the Board is proposing changes to the section on fees and fee waivers; and portions of this Subpart have been reorganized and streamlined.

Section 261.10 lists the information that the Board publishes on a regular or intermittent basis. The proposed changes are intended merely to streamline and simplify the language. No substantive changes are intended.

Section 261.11 describes the information that is made available for inspection or copying, either in the Board's reading room or over the Internet, as required by EFOIA. The Board notes that the records provided over the Internet cover a much smaller scope than those available in the Board's reading room, because the requirement to provide records over the Internet covers only records created by the Board after November 1, 1996.

Section 261.12 describes the procedures for requesting records that are not published or available for inspection. This section includes the requirement that FOIA requests not be combined with any other requests to the Board except requests under the Privacy Act, which was in the 1996 proposed rule. This requirement is intended to ensure that FOIA requests are delivered promptly to the Board's Freedom of Information Office (FOI Office) when they are received, which may not occur if the FOIA request is included in a request for other action by the Board. When this amendment was proposed in 1996 (61 FR 7436, February 28, 1996), one commenter opposed it on grounds that it would prohibit a requester from combining a FOIA request with comments submitted in connection with an application under the Bank Holding Company Act of 1956 (BHCA), 12 U.S.C. 1841 *et seq.* The commenter believes that combining a FOIA request with substantive comments regarding an application may be necessary when a requester is unable to obtain non-confidential portions of an application prior to the closing of the comment period. A separate, clearly identified FOIA request delivered directly to the Secretary insures a faster FOIA response, however, because comment letters are not routinely sent to the FOIA office for action.

Section 261.13 describes the Board's procedures for processing FOIA

requests. This section has been extensively revised to reflect the changes required by EFOIA. The proposed rule provides for multitrack processing. Fast-track processing will apply to records that are easily identifiable by the FOI Office staff and that have already been cleared for release to the public. Fast-track requests will be handled as expeditiously as possible, in the order in which they are received.

All information requests that do not meet the fast-track processing standards will be handled under regular processing procedures. A requester who desires fast-track processing but whose request does not meet those standards may contact the FOI Office staff to narrow the request so that it will qualify for fast-track processing. The statutory time limit for regular-track processing would be extended to twenty business days, from the previous ten business days.

Expedited processing may be provided where a requester has demonstrated a compelling need for the records, or where the Board has determined to expedite the response. The time limit for expedited processing is set at ten business days, with expedited procedures for an appeal of the Secretary's determination not to provide expedited processing. Under EFOIA, there are only two types of circumstances that can meet the compelling need standard: Where failure to obtain the records expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. For ease of administration and consistency, the proposal uses the term "representative of the news media," to describe a person primarily engaged in disseminating information, because this term is used for the FOIA fee schedule, and thus, is known to those familiar with FOIA and the Board's Rules. To demonstrate a compelling need, a requester must submit a certified statement, a sample of which may be obtained from the FOI Office.

Section 261.14 lists the exemptions from disclosure under FOIA. This section has been reorganized and streamlined, but no substantive changes are proposed.

Sections 261.15 and 261.16, which were previously located in Subpart D, have been moved to Subpart B for clarity, since they apply only to FOIA requests. Accordingly, a separate Subpart D will no longer be necessary.

<sup>2</sup>The Board's Rules have been implemented in a manner consistent with these and other changes described in this proposal.



These provisions implement Executive Order 12,600, June 23, 1987, by establishing certain predisclosure notification procedures for confidential business or financial information that may be exempt under (b)(4) of the FOIA, 5 U.S.C. 552(b)(4).<sup>3</sup>

Section 261.15 sets forth the procedures for requesting confidential treatment. The Board wishes to emphasize that failure to properly segregate confidential material from other material may result in the release of that material without prior notice to the submitter. This is particularly important in light of the Board's intention, in connection with processing BHCA applications, to provide, upon request, the public portion of an application within three business days of the request. In order to meet this deadline, the Board's and Reserve Bank's staff must rely on the applicant to properly designate the material submitted. A careful review of the material designated as "Confidential" will be made and any information improperly labelled as "Confidential" will be provided to requesters immediately upon identification as publicly available.

Section 261.16 sets forth the procedures for responding to a FOIA request for information that has been designated by the submitter as confidential. It provides for notice to the submitter that permits the submitter to provide written objections to the release of the confidential information. Section 261.16(e) describes the information that a submitter should include in its written submission objecting to the release of the documents, including whether the information was provided voluntarily under the standards set by the court case, *Critical Mass Energy Project v. NRC*, 975 F.2d. 871 (D.C. Cir. 1992). If the information was not provided voluntarily, the submitter is to provide detailed facts and arguments showing either the likelihood of substantial competitive harm resulting from release of the information, or that release would impair the Board's ability to obtain necessary information in the future.

<sup>3</sup> These provisions are intended only to address matters of the kind covered by Executive Order 12,600, June 23, 1987. This language in this section, however, does not preclude the Board or its staff from giving notice to submitters in other situations such as, for example, where documents obtained pursuant to a confidentiality commitment are subpoenaed in civil litigation. The Board exercises its discretion in such cases consistent with applicable law. The Board does not disclose its receipt of federal grand jury subpoenas, however, except in accordance with law following consultation with appropriate law enforcement authorities.

Section 261.17 contains the FOIA fee schedules and the standards for waiver of fees. The fee schedule provisions have been revised to clarify that the processing time of a FOIA request does not begin in cases where advance payment is required until payment is received, or where a person has requested a waiver of the fees and has not agreed to pay the fees if the waiver request is denied. When similar amendments were proposed in 1996, one commenter objected to the suspension of processing where a waiver is requested and the requester has not indicated in writing that he or she will pay the applicable fees if the waiver request is denied. The commenter believes that this procedure will unnecessarily delay requests for information that also contain a fee waiver request, and accordingly, asks the Board to ensure that non-profit community and consumers' groups, particularly those representing the interests of low and moderate income or minority people, have access to public information at reduced or waived fees. The Board reviews each fee waiver request pursuant to the standards set forth in the Act and its Rules. The fact that a requester is a non-profit community group, by itself, does not justify a waiver of the fees under the terms of the Act. If, however, the non-profit community group demonstrates in its request for a waiver of fees that the information will be distributed to the community and will contribute significantly to the public understanding of the activities of the Board, then the requester should qualify under the Act and the Board's Rules for a waiver of the fees. This justification must be made, however, on each request for which a fee waiver is sought.

Additionally, the standards under which the Secretary may grant a request for waiver of fees have been modified to reflect the development of case law in this area. The rule provides for administrative appeal of a denial of a waiver request, which formalizes the Board's current procedure of permitting such administrative appeals.

### Subpart C

The sections in Subpart C have been renumbered to be consistent with the renumbering of Subparts A and B in this proposal. No substantive changes are proposed at this time. Proposed changes to this Subpart were published in 1996 (61 FR 7436, February 28, 1996), and the comments received on these changes are still under consideration.

### Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. These amendments simplify some of the procedures regarding release of information and require disclosure of information in certain instances in accordance with law. The requirements to disclose apply to the Board, therefore they should not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act Analysis

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information in this proposed regulation should be sent to the Office of Management and Budget, Paperwork Reduction Act Project (7100-0281), Washington, DC 20503, with copies of such comments to be sent to Mary McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in §§ 261.12, 261.13, 216.16 and 261.17. (The hour burden for requests for confidential treatment made under § 261.15 would be included in the hour burden associated with the information collections for which the respondent desires confidential treatment.) The respondents may include small for-profit institutions. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to this information collection request unless it displays a currently valid OMB control number. The OMB control number is 7100-0281.

It is estimated that there would be 5,000 annual respondents for requests and appeals made under 12 CFR 261.12 and 261.13, including approximately 100 that include requests made under 12 CFR 261.17 to waive fees. The burden per response for these requests ranges from 15 to 60 minutes, with an average of 30 minutes. It is estimated that there would be 30 written objections by submitters of exempt information made under 12 CFR 261.16, with an average burden per response of 2 hours. The estimated total annual

burden is 2,560 hours. Based on hourly cost of \$20 for the requests and appeals and \$75 for the written objections, the annual cost to the public is estimated to be \$54,500. Generally, requests made under 12 CFR 261.12, 261.13, 261.16, and 261.17 are not exempt from disclosure under the Freedom of Information Act.

Comments are invited on: a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Confidential business information, Federal Reserve System, Freedom of Information, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 261 as follows:

#### PART 261—RULES REGARDING AVAILABILITY OF INFORMATION:

1. The authority citation for part 261 is revised to read as follows:

**Authority:** 5 U.S.C. 552; 12 U.S.C. 248(i) and (k), 321 *et seq.*, 611 *et seq.*, 1442, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o), 1821(t), 1830, 1844, 1951 *et seq.*, 2601, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 29 U.S.C. 1204; 31 U.S.C. 5301 *et seq.*; 42 U.S.C. 3601; 44 U.S.C. 3510.

#### Subpart D—[Removed]

2. Subpart D—consisting of §§ 261.15 through 261.17, is removed.

#### §§ 261.11—261.14 [Redesignated as §§ 261.20—261.23]

3. Sections 261.11 through 261.14 in subpart C are redesignated as §§ 261.20 through 261.23, respectively, in subpart C.

4. Subparts A and B are revised to read as follows: 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

261.10 Published information.  
261.11 Records available for public inspection and copying.  
261.12 Records available to public upon request.  
261.13 Processing requests.  
261.14 Exemptions from disclosure.  
261.15 Request for confidential treatment.  
261.16 Request for access to confidential commercial or financial information.  
261.17 Fee schedules; waiver of fees.

#### Subpart A—General Provisions

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

(a) **Authority.** (1) This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Freedom of Information Act, 5 U.S.C. 552; Sections 9, 11, and 25A of the Federal Reserve Act, 12 U.S.C. 248(i) and (k), 321 *et seq.* (including 326), 611 *et seq.*; Section 22 of the Federal Home Loan Bank Act, 12 U.S.C. 1442; the Federal Deposit Insurance Act, 12 U.S.C. 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o); section 5 of the Bank Holding Company Act, 12 U.S.C. 1844; the Bank Secrecy Act, 12 U.S.C. 1951 *et seq.* and Chapter 53 of Title 31; the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.*; the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.*; the International Banking Act, 12 U.S.C. 3101 *et seq.*; the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.*; the Securities and Exchange Act, 15 U.S.C. 77uu(b), 78q(c)(3); the Employee Retirement Income Security Act, 29 U.S.C. 1204; the Money Laundering Suppression Act, 31 U.S.C. 5301, the Fair Housing Act, 42 U.S.C. 3601; the Paperwork Reduction Act, 44 U.S.C. 3510; and any other applicable law that establishes a basis for the exercise of governmental authority by the Board.

(2) This part establishes mechanisms for carrying out the Board's statutory responsibilities under all of the statutes in paragraph (a)(1) of this section to the extent those responsibilities require the disclosure, production, or withholding of information. In this regard, the Board has determined that the Board, or its delegates, may disclose exempt information of the Board, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the Board's supervisory or regulatory authorities, including but not limited to, authority granted to the Board in the Federal Reserve Act, 12 U.S.C. 221 *et seq.*, the Bank Holding Company Act, 12 U.S.C. 1841 *et seq.*, and the International Banking Act, 12

U.S.C. 3101 *et seq.* The Board has determined that all such disclosures, made in accordance with the rules and procedures specified in this part, are authorized by law.

(3) The Board has also determined that it is authorized by law to disclose information to a law enforcement or other federal or state government agency that has the authority to request and receive such information in carrying out its own statutory responsibilities, or in response to a valid order of a court of competent jurisdiction or of a duly constituted administrative tribunal.

(b) **Purpose.** This part sets forth the categories of information made available to the public, the procedures for obtaining documents and records, the procedures for limited release of exempt and confidential supervisory information, and the procedures for protecting confidential business information.

(c) **Scope.** (1) This subpart A contains general provisions and definitions of terms used in this part.

(2) Subpart B of this part implements the Freedom of Information Act (FOIA) (5 U.S.C. 552).

(3) Subpart C of this part sets forth:

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

(ii) The procedures for disclosure; and

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

##### § 261.2 Definitions.

For purposes of this part:

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

(b) **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.

(c)(1) **Confidential supervisory information** means:

(i) Exempt information consisting of reports of examination, inspection and visitation, confidential operating and condition reports, and any information derived from, related to, or contained in such reports;

(ii) Information gathered by the Board in the course of any investigation, suspicious activity report, cease-and-desist orders, civil money penalty enforcement orders, suspension, removal or prohibition orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, the Bank Holding Company Act of 1956, the

Federal Reserve Act, the International Banking Act of 1978, and the International Lending Supervision Act of 1983; except

(A) Such final orders, amendments, or modifications of final orders, or other actions or documents that are specifically required to be published or made available to the public pursuant to 12 U.S.C. 1818(u), or other applicable law, including the record of litigated proceedings; and

(B) The public section of Community Reinvestment Act examination reports, pursuant to 12 U.S.C. 2906(b); and

(iii) Any documents prepared by, on behalf of, or for the use of the Board, a Federal Reserve Bank, a Federal or State financial institutions supervisory agency, or a bank or bank holding company or other supervised financial institution.

(2) *Confidential supervisory information* does not include documents prepared by a supervised financial institution for its own business purposes and that are in its possession.

(d) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under § 261.12.

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

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

(g) *Exempt information* means information that is exempt from disclosure under § 261.14.

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

(i)(1) *Records of the Board* include:

(i) In written form, or in nonwritten or machine-readable form; all information coming into the possession and under the control 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 that constitute part of the Board's official files; or

(ii) That 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 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.

(j) *Report of examination* means the report prepared by the Board, or other federal or state financial institution supervisory agency, concerning the examination of a financial institution, and includes reports of inspection and reports of examination of U.S. branches or agencies of foreign banks and representative offices of foreign organizations, and other institutions examined by the Federal Reserve System.

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

(l) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(1) The term "news" means information that is about current events or that would be of current interest to the public.

(2) 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.

(3) "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.

(m)(1) *Review* refers to the process of examining documents, located in response to a request for access, to

determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release.

(2) *Review* does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(n)(1) *Search* means a reasonable search, by manual or automated means, of the Board's official files and any other files containing Board records as seem reasonably likely in the particular circumstances to contain documents of the kind requested. For purposes of computing fees under § 261.17, 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 research, creation of any document, or extensive modification of an existing program or system that would significantly interfere with the operation of the Board's automated information system.

(o) *Supervised financial institution* includes a bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or any other institution that is supervised by the Board.

#### § 261.3 Custodian of records; certification; service; alternative authority.

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

(b) *Certification of record.* The Secretary may certify the authenticity of any Board record, or 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 any Board records or making any claim against the Board, shall be addressed to and served upon the Secretary of the Board at the Board's office at 20th and C Streets, N.W., Washington, D.C. 20551. Neither the Board nor the Secretary are agents for service of process on behalf of any employee in respect of purely private legal disputes, except as specifically provided by law.

(d) *Alternative authority.* Any action or determination required or permitted

by this part to be done by the Secretary, the General Counsel, or the Director of any Division may be done by any employee who has been duly designated for this purpose by the Secretary, General Counsel, or the appropriate Director.

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

#### § 261.10 Published information.

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

- (1) Descriptions of the Board's central and field organization;
- (2) Statements of the general course and method by which the Board's functions are channeled and determined, including the nature and requirements of procedures;
- (3) Rules of procedure, descriptions of forms available and the place where they may be obtained, and instructions on the scope and contents of all papers, reports, and examinations;
- (4) Substantive rules, interpretations of general applicability, and statements of general policy;
- (5) Every amendment, revision, or repeal of the foregoing;
- (6) 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 all Board meetings, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b);
- (9) Notices identifying the Board's systems of records, pursuant to the Privacy Act of 1974 (5 U.S.C. 552a); and
- (10) 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.** 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, the policy actions by the Federal Open Market Committee, an economic review of the year, and legislative recommendations to Congress. The Board also makes periodic reports to Congress under certain statutes, including but not limited to the Freedom of Information Act (5 U.S.C. 552); the Government in the Sunshine Act (5 U.S.C. 552b); the Full Employment and Balanced Growth Act of 1978 (12 U.S.C. 225a); and the Privacy Act (5 U.S.C. 552a).

(c) **Federal Reserve Bulletin.** This publication is issued monthly and

contains economic and statistical information, articles relating to the economy or Board activities, and descriptions of recent actions by the Board.

(d) **Other published information.** Among other things, the Board publishes the following information.

(1) **Weekly publications.** The Board issues the following publications weekly:

(i) A statement showing the condition of each Federal Reserve Bank and a consolidated statement of the condition of all Federal Reserve Banks, pursuant to 12 U.S.C. 248(a);

(ii) An index of applications received and the actions taken on the applications, as well as other matters issued, adopted, or promulgated by the Board; and

(iii) A statement showing changes in the structure of the banking industry resulting from mergers and the establishment of branches.

(2) **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.

(3) **Call Report and other data.** Certain data from Reports of Condition and Income submitted to the Board are available through the National Technical Information Service and may be obtained by the procedure described in § 261.11(c)(2)(iii).

(4) **Federal Reserve Regulatory Service.** This is a multivolume looseleaf service published by the Board, containing statutes, regulations, interpretations, rulings, staff opinions, and procedural rules under which the Board operates. Portions of the service are also published as separate looseleaf handbooks relating to consumer and community affairs, monetary policy and reserve requirements, payments systems, 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.

(e) **Index to Board actions.** The Board's Freedom of Information Office maintains an index to Board actions, which is updated weekly and provides identifying information about any matters issued, adopted, and promulgated by the Board since July 4, 1967. Copies of the index may be obtained upon request to the Freedom of Information Office subject to the current schedule of fees in § 261.17.

(f) **Obtaining Board publications.** The Publications Services Section maintains a list of Board publications that are available to the public. In addition, a

partial list of publications is published in the *Federal Reserve Bulletin*. All publications issued by the Board, including available back issues, may be obtained from the Publications Services of the Federal Reserve Board, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (pedestrian entrance is on C Street, N.W.). Subscription or other charges may apply to some publications.

#### § 261.11 Records available for public inspection and copying.

(a) **Types of records made available.** Unless they were published promptly and made available for sale or without charge, the following records shall be made available for inspection and copying at the Freedom of Information Office:

(1) Final opinions, including concurring and dissenting opinions, as well as final orders and written agreements, made in the adjudication of cases;

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

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

(4) Copies of all records released to any person under § 261.12 that, because of the nature of their subject matter, the Board has determined are likely to be requested again;

(5) A general index of the records referred to in paragraph (a)(4) of this section; and

(6) The public section of Community Reinvestment Act examination reports.

(b) **Reading room procedures.** (1) Information available under this section is available for inspection and copying, from 9:00 a.m. to 5:00 p.m. weekdays, at the Freedom of Information Office of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (the pedestrian entrance is on C Street, N.W.).

(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.

(c) **Electronic records.** (1) Except as set forth in paragraph (c)(2) of this section, information available under this section that was created on or after November 1, 1996, shall also be available on the Board's website, found at <http://www.bog.frb.fed.us>

(2) **NTIS.** 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.

(3) *Privacy protection.* The Board may delete identifying details from any record to prevent a clearly unwarranted invasion of personal privacy.

#### **§ 261.12 Records available to public upon request.**

(a) *Types of records made available.* All records of the Board that are not available under §§ 261.10 and 261.11 shall be made available upon request, pursuant to the procedures and exceptions in this subpart B.

(b) *Procedures for requesting records.* (1) A request for identifiable records shall reasonably describe the records in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations.

(2) The request shall be submitted in writing to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & C Street, N.W., Washington, D.C. 20551; or sent by facsimile to the Freedom of Information Office, (202) 872-7562 or 7565. The request shall be clearly marked Freedom of Information Act Request.

(3) A request may not be combined with any other request to the Board except for a request under 12 CFR 261a.3(a) (Rules Regarding Access to and Review of Personal Information under the Privacy Act of 1974) and a request made under § 261.23(b)(1)(ii).

(c) *Contents of request.* The request shall contain the following information:

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

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

(3) 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 § 261.17(h); and

(4) If the request is being made in connection with on-going litigation, a statement indicating whether the requester will seek discretionary release of exempt information from the General Counsel upon denial of the request by

the Secretary. A requester who intends to make such a request to the General Counsel may also address the factors set forth in § 261.23(b).

(d) *Defective requests.* The Board need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this section. The Board may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(e) *Oral requests.* The Freedom of Information Office 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.

#### **§ 261.13 Processing requests.**

(a) *Receipt of requests.* Upon receipt of any request that satisfies § 261.12(b), the Freedom of Information Office shall assign the request to the appropriate processing schedule, pursuant to paragraph (b) of this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency or by a Federal Reserve Bank, is the date the Freedom of Information Office actually receives the request.

(b) *Multitrack processing.* (1) The Board provides different levels of processing for categories of requests under this section. Requests for records that are readily identifiable by the Freedom of Information Office and that have already been cleared for public release may qualify for fast-track processing. All other requests shall be handled under normal processing procedures, unless expedited processing has been granted pursuant to paragraph (c)(2) of this section.

(2) The Freedom of Information Office will make the determination whether a request qualifies for fast-track processing. A requester may contact the Freedom of Information Office to learn whether a particular request has been assigned to fast-track processing. If the request has not qualified for fast-track processing, the requester will be given an opportunity to limit in order to qualify for fast-track processing. Limitations of requests must be in writing.

(c) *Expedited processing.* Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the Board has determined to expedite the response, the Board shall process the request as soon as practicable.

(1) To demonstrate a compelling need for expedited processing, the requester shall provide a certified statement, a sample of which may be obtained from the Freedom of Information Office. The statement, certified to be true and correct to the best of the requester's knowledge and belief, shall demonstrate that:

(i) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester is a representative of the news media, as defined in § 261.2, and there is urgency to inform the public concerning actual or alleged Board activity.

(2) In response to a request for expedited processing, the Secretary shall notify a requester of the determination within ten working days of receipt of the request. If the Secretary denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (i) of this section, and the Board shall respond to the appeal within ten working days after the appeal was received by the Board.

(d) *Priority of responses.* The Freedom of Information Office shall normally process requests in the order they are received in the separate processing tracks. 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.

(e) *Time limits.* The time for response to requests shall be 20 working days, except:

(1) In the case of expedited treatment under paragraph (c) of this section;

(2) Where the running of such time is suspended for payment of fees pursuant to § 261.17(b)(2);

(3) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B). In such circumstances, the time limit may be extended for a period of time not to exceed:

(i) 10 working days as provided 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; or

(ii) Such alternative time period as mutually agreed to by the Freedom of Information Office and the requester when the Freedom of Information Office notifies the requester that the request cannot be processed in the specified time limit.

(f) *Response to request.* In response to a request that satisfies § 261.12(b), an appropriate search shall be conducted of records of the Board in existence on the

date of receipt of the request, and a review made of any responsive information located. The Secretary shall notify the requester of:

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

(2) The reasons for the determination;

(3) The amount of information withheld;

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

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

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

(h) *Providing responsive records.* (1) Copies of requested records 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 Freedom of Information Office or makes other acceptable arrangements, or the Board deems it appropriate to send the documents by another means.

(2) The Board shall provide a copy of the record in any form or format requested if the record is readily reproducible by the Board in that form or format, but the Board need not provide more than one copy of any record to a requester.

(i) *Appeal of denial of request.* Any person denied access to Board records requested under § 261.12 may file a written appeal with the Board, as follows:

(1) The appeal shall prominently display the phrase Freedom of Information Act Appeal on the first page, and shall be addressed to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & C Street, N.W., Washington, D.C. 20551; or sent by facsimile to the Freedom of Information Office, (202)872-7562 or 7565.

(2) An initial request for records may not be combined in the same letter with an appeal.

(3) The appeal shall be filed within 10 working days of the date on which the denial was issued, or the date on which documents in partial response to the request were transmitted to the requester, whichever is later. 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 determines, in its discretion and for good and substantial cause shown, that the appeal should be considered.

(4) The Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Freedom of Information Office, and the determination letter shall notify the appealing party of the right to seek judicial review.

(5) The Secretary may reconsider a denial being appealed if intervening circumstances or additional facts not known at the time of denial come to the attention of the Secretary while an appeal is pending.

#### § 261.14 Exemptions from disclosure.

(a) *Types of records exempt from disclosure.* Pursuant to 5 U.S.C. 552(b), the following records of the Board are exempt from disclosure under this part:

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

(2) *Internal personnel rules and practices.* Any information related solely to the internal personnel rules and practices of the Board.

(3) *Statutory exemption.* Any information 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.

(4) *Trade secrets; commercial or financial information.* Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) *Inter- or intra-agency memorandums.* Information contained in inter- or intra-agency memorandums or letters that would not be 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 (the Government in the Sunshine Act).

(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) *Information compiled for law enforcement purposes.* Any records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7); including information relating to administrative enforcement proceedings of the Board.

(8) *Examination, inspection, operating, or condition reports, and confidential supervisory information.* Any matter that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, including a state financial institution supervisory agency.

(b) *Segregation of nonexempt information.* The Board shall provide any reasonably segregable portion of a record that is requested after deleting those portions that are exempt under this section.

(c) *Discretionary release.* (1) Except where disclosure is expressly prohibited by statute, regulation, or order, the Board may release records that are exempt from mandatory disclosure whenever the Board or designated Board members, the Secretary of the Board, the General Counsel of the Board, the Director of the Division of Banking Supervision and Regulation, or the appropriate Federal Reserve Bank, acting pursuant to this part or 12 CFR part 265, determines that such disclosure would be in the public interest.

(2) The Board may make any exempt information furnished in connection with an application for Board approval of a transaction available to the public in accordance with § 261.12, 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.

(d) *Delayed release.* Publication in the *Federal Register* or availability to the public of certain information may be delayed if immediate disclosure would likely:

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

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



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

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

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

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

(e) *Prohibition against disclosure.*

Except as provided in this part, 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).

**§ 261.15 Request for confidential treatment.**

(a) *Submission of request.* Any submitter of information to the Board who desires confidential treatment pursuant to 5 U.S.C. 552(b)(4) and § 261.14(a)(4) shall file a request for confidential treatment with the Board (or in the case of documents filed with a Federal Reserve Bank, with that Federal Reserve Bank) at the time the information is submitted or a reasonable time after submission.

(b) *Form of request.* Each request for confidential treatment shall state in reasonable detail the facts supporting the request and its legal justification. Conclusory statements that release of the information would cause competitive harm 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 separated from information for which confidential treatment is not requested. Failure to segregate confidential information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(d) *Exceptions.* This section does not apply to:

(1) Data collected on forms that are approved pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and are deemed confidential by the Board. Any such form deemed confidential by the Board shall so

indicate on the face of the form or in its instructions. The data may, however, be disclosed in aggregate form in such a manner that individual company data is not disclosed or derivable.

(2) Any comments submitted by a member of the public on applications and regulatory proposals being considered by the Board, unless the Board or the Secretary determines that confidential treatment is warranted.

(3) A determination by the Board to comment upon information submitted to the Board in any opinion or statement issued to the public as described in § 261.14(c).

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

**§ 261.16 Request for access to confidential commercial or financial information.**

(a) *Request for confidential information.* A request by a submitter for confidential treatment of any information shall be considered in connection with a request for access to that information. At their discretion, appropriate Board or staff members (including Federal Reserve Bank staff) may act on the request for confidentiality prior to any request for access to the documents.

(b) *Notice to the submitter.* When a request for access is received pursuant to the Freedom of Information Act (5 U.S.C. 552):

(1) The Secretary shall notify a submitter of the request, if:

(i) The submitter requested confidential treatment of that information pursuant to 5 U.S.C. 552(b)(4); and

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

(2) Absent a request for confidential treatment, the Secretary may notify a submitter of a request for access to information provided by the submitter if the Secretary reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(3) The notice given to the submitter shall:

(i) Be given as soon as practicable after receipt of the request for access;

(ii) Describe the request; and

(iii) Give the submitter a reasonable opportunity, not to exceed ten working days from the date of notice, to submit

written objections to disclosure of the information.

(c) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(1) The Secretary determines that the request for access should be denied;

(2) The requested information lawfully has been made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary, except that in this last instance the Secretary shall give the submitter written notice of the determination to disclose the information at least five working days prior to disclosure.

(d) *Notice to requester.* At the same time the Secretary notifies the submitter, the Secretary shall also notify the requester that the request is subject to the provisions of this section.

(e) *Written objections by submitter.*

Upon receipt of notice of a request for access to its information, the submitter may provide written objections to release of the information. Such objections shall state whether the information was provided voluntarily or involuntarily to the Board.

(1) If the information was voluntarily provided to the Board, the submitter shall provide detailed facts showing that the information is customarily withheld from the public.

(2) If the information was not provided voluntarily to the Board, the submitter shall provide detailed facts and arguments showing:

(i) The likelihood of substantial harm that would be caused to the submitter's competitive position; or

(ii) That release of the information would impair the Board's ability to obtain necessary information in the future.

(f) *Determination by Secretary.* The Secretary's determination whether or not to disclose any information 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 information and the submitter has objected to such disclosure pursuant to paragraph (e) of this section, the Secretary shall provide the submitter with the reasons for disclosure, and shall delay disclosure for ten working days from the date of the determination.

(g) *Notice of lawsuit.* (1) The Secretary shall promptly notify any submitter of information covered by this section of

the filing of any suit against the Board to compel disclosure of such information.

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

**§ 261.17 Fee schedules; waiver of fees.**

(a) *Fee schedules.* The fees applicable to a request for records pursuant to §§ 261.11 and 261.12 are set forth in Appendix A to this section. These fees cover only the full allowable direct costs of search, duplication, and review. No fees will be charged where the average cost of collecting the fee (calculated at \$5.00) exceeds the amount of the fee.

(b) *Payment procedures.* The Secretary may assume that a person requesting records pursuant to § 261.12 will pay the applicable fees, unless the request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (f) of this section.

(1) *Advance notification of fees.* If the estimated charges are likely to exceed \$100, the Freedom of Information Office shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Freedom of Information Office to reformulate the request to lower the costs.

(2) *Advance payment.* 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. The time period for responding to requests under § 261.13(e), and the processing of the request shall be suspended until the Freedom of Information Office 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 is at the rate prescribed in 31 U.S.C. 3717 and accrues from the date of the billing.

(c) *Categories of uses.* The fees assessed depend upon the intended use for the records requested. In determining which category is appropriate, the Secretary shall look to the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary may seek additional clarification before categorizing the request.

(1) *Commercial use.* The fees for search, duplication, and review apply when records are requested for commercial use.

(2) *Educational, research, or media use.* The fees for 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. The first 100 pages of duplication, however, will be provided free.

(3) *All other uses.* For all other requests, the fees for document search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(d) *Nonproductive search.* Fees for search and review may be charged even if no responsive documents are located or if the request is denied.

(e) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary reasonably believes that a requester is separating a request 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.

(f) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in § 261.13(e), shall not begin until a determination has been made on the request for a waiver or reduction of fees.

(1) *Standards for determining waiver or reduction.* The Secretary shall grant a waiver or reduction of fees 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 operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

(i) Whether the subject of the records concerns the operations or activities of the government;

(ii) Whether disclosure of the information is likely to contribute

significantly to public understanding of government operations or activities;

(iii) Whether the requester has the intention and ability to disseminate the information to the public;

(iv) Whether the information is already in the public domain;

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

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

(2) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include:

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

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

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

(iv) A description of the method by which the information will be disseminated to the public; and

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

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

(4) *Determination by Secretary.* The Secretary shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with § 261.13(f).

(g) *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 of 1974 (5 U.S.C. 552a)) are \$50 or less; but the Secretary may waive fees in excess of that amount.

(h) *Special services.* The Secretary 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 or overnight delivery.



APPENDIX A TO § 261.17—FREEDOM  
OF INFORMATION FEE SCHEDULE

Duplication:	
Photocopy, per standard page ....	\$ .10
Paper copies of microfiche, per frame .....	.10
Duplicate microfiche, per micro- fiche .....	.35
Search and review:	
Clerical/Technical, hourly rate .....	20.00
Professional/Supervisory, hourly rate .....	38.00
Manager/Senior Professional, hourly rate .....	65.00
Computer search and production:	
Computer operator search, hour- ly rate .....	32.00
Tapes (cassette) per tape .....	6.00
Tapes (cartridge), per tape .....	9.00
Tapes (reel), per tape .....	18.00
Diskettes (3½"), per diskette .....	4.00
Diskettes (5¼"), per diskette .....	5.00
Computer Output (PC), per minute .....	.10
Computer Output (mainframe) ....	( <sup>1</sup> )

<sup>1</sup> Actual cost.

By order of the Board of Governors of the  
Federal Reserve System, June 5, 1997.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 97-15114 Filed 6-9-97; 8:45 am]

BILLING CODE 6210-01-U

**FEDERAL RESERVE SYSTEM****12 CFR Part 261**

[Docket No. R-0975]

**Rules Regarding 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 (Board) hereby amends its Rules Regarding Availability of Information (Rules) to reflect recent changes in the Freedom of Information Act (FOIA) as a result of the Electronic Freedom of Information Act Amendments (EFOIA). In order to account for future amendments to the Rules, the sections have been renumbered.

The review of the Board's Rules that produced this final rule was conducted in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994. In this regard, the amendments to the Rules clarify certain provisions and simplify the processing of requests for access to information in certain circumstances.

**EFFECTIVE DATE:** November 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boutilier, Senior Counsel, (202/452-2418), Legal Division; or Susanne K. Mitchell, Manager, Freedom of Information Office (202/452-2407). For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD)(202/452-3544), Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** Last year, Congress passed the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231, which amends the Freedom of Information Act, 5 U.S.C. 552. Among other things, EFOIA requires agencies to promulgate regulations that provide for expedited processing of requests for records, and permits agencies to promulgate regulations that provide for multitrack processing of requests. In addition to amending its Rules to comply with EFOIA, the Board has taken this opportunity, in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, to review and streamline those Rules.<sup>1</sup> In addition, the Board is amending the Rules to take

account of various statutes that have been enacted since the Rules were last revised in 1988.<sup>2</sup>

To implement these changes, the Board published proposed changes to Subparts A, B, and D of its Rules on June 10, 1997 (62 FR 31526). The Board received four comments: one from a Federal Reserve Bank, one from a commercial bank, one from a credit union, and one from a community group. Three of the comments supported the proposal; the community group, however, opposed some of the proposed changes. A discussion of the specific comments is included in the section-by-section analysis. In 1996, the Board published for comment proposed amendments to the Rules (61 FR 7436, February 28, 1996) that primarily concerned Subpart C of the Rules and the definitions in Subpart A of terms that are used in Subpart C. In addition, the Board had proposed changes to certain portions of Subpart B and Subpart D, which were republished in the June 1997 proposed rule. The changes to Subparts A, B and D are being adopted in this final rule; the proposed amendments to Subpart C are still under consideration.

**Subpart A**

Subpart A contains the General Provisions, describing the authority, purpose, and scope; listing the definitions applicable to this part, and explaining the responsibilities of the Secretary of the Board as custodian of the Board's records. The changes to this subpart are primarily in the "Authority" section to clarify the ability of the Board to provide exempt records to certain entities outside of the FOIA process in specific circumstances. In addition, certain definitions that were included in the section on FOIA fees and fee waivers have been moved forward to the "Definitions" section. One commenter noted that the definition of "records" specifically excludes handwritten notes, and questions the authority for this exclusion. The intention was to exclude personal notes that are not a part of official Board records. This, however, is accomplished by the exclusion of personal files, so the reference to handwritten notes has been deleted.

Section 261.3 is amended to clarify that authority delegated to the General Counsel and other officers of the Board may be subdelegated. An additional change to § 261.3(c) states that the Secretary of the Board is the Board's agent for service of all process, and that

<sup>1</sup> The regulatory citations contained in this final rule refer to the regulation, as amended. As noted above, the sections have been renumbered.

<sup>2</sup> The Board's Rules have been implemented in a manner consistent with these and other changes described in this final rule.

the Board will not accept process on behalf of employees in connection with purely private matters except as specifically provided by law.

#### Subpart B

Subpart B is amended to comply with the EFOIA requirements for expedited processing. The Board also is implementing multitrack processing. In addition, the Board has revised the section on fees and fee waivers; and portions of this Subpart have been reorganized and streamlined.

Section 261.10 lists the information that the Board publishes on a regular or intermittent basis. This section has been streamlined. No substantive changes have been made.

Section 261.11 describes the information that is made available for inspection or copying, either in the Board's reading room or over the Internet, as required by EFOIA. The records provided over the Internet cover a much smaller scope than those available in the Board's reading room, because the requirement to provide records over the Internet covers only records created by the Board after November 1, 1996. One of the commenters suggested that the Board expand the categories of documents provided over the Internet to include policies, interpretations, orders, and requests for comments, as well as provide indexing and an appropriate search mechanism on the website. The Board is in the process of expanding the information that is made available over the Internet. Legal interpretations dating from January 1996, and Press Releases, which include some Board orders, have been placed on the website. The remaining Board orders dating after November 1, 1996, will be provided in the near future. Other information that the Board believes is of interest to the public is being provided as quickly as the Board's resources permit. With regard to indexing or a search mechanism, there is a general index provided on the site, and the Board expects to install a search mechanism soon. Another commenter requested that the Board place the text of the public sections of its Community Reinvestment Act examination reports on its website. The Board expects to have this information on its website by the end of this year. This commenter also noted that the Board has not placed its administrative manuals on its website. EFOIA requires such manuals to be made available in the reading room if they are not published and offered for sale. All Board manuals of this type are published and offered for sale.

Section 261.12 describes the procedures for requesting records that are not published or routinely made available for inspection. This section includes the requirement that FOIA requests not be combined with any other requests to the Board except requests under the Privacy Act. This requirement is intended to ensure that FOIA requests are delivered promptly to the Board's Freedom of Information Office (FOI Office) when they are received, which may not occur if the FOIA request is included in a request for other action by the Board. One commenter opposed this amendment on grounds that it would prohibit a requester from combining a FOIA request with comments submitted in connection with an application under the Bank Holding Company Act of 1956 (BHCA), 12 U.S.C. 1841 *et seq.* The commenter believes that it should be permissible to combine a FOIA request with substantive comments regarding an application, or in the alternative, a process should be established for making requests under the Board's *ex parte* rules for processing BHCA applications. A separate, clearly identified FOIA request delivered directly to the Secretary insures a faster FOIA response, however, because comment letters are not routinely sent to the FOIA office for action. Procedures for BHCA applications are set forth in the Board's Regulation Y, which was recently revised after notice and comment.

Section 261.13 describes the Board's procedures for processing FOIA requests. This section has been extensively revised to reflect the changes required by EFOIA. In the review process, one sentence was inadvertently dropped from the section when it was published for comment. The existing rule states that the Secretary will assign responsible staff to process particular requests. This provision has been restored to section 261.13(d) to provide the Secretary with the authority to assign the requests to the appropriate staff at the Board.

The revised regulation provides for multitrack processing. Fast-track processing will apply to records that are easily identifiable by the FOI Office staff and that have already been cleared for release to the public. Fast-track requests will be handled as expeditiously as possible, in the order in which they are received. All information requests that do not meet the fast-track processing standards will be handled under regular processing procedures. A requester who desires fast-track processing but whose request does not meet those standards may contact the FOI Office staff to

narrow the request so that it will qualify for fast-track processing. The statutory time limit for regular-track processing is extended to twenty business days, from the previous ten business days.

Expedited processing may be provided where a requester has demonstrated a compelling need for the records, or where the Board has determined to expedite the response. The time limit for determination whether to grant expedited processing is set at ten days, with expedited procedures for an appeal of the Secretary's determination not to provide expedited processing. Under EFOIA, there are only two types of circumstances that can meet the compelling need standard: where failure to obtain the records expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. For ease of administration and consistency, the section uses the term "representative of the news media," to describe a person primarily engaged in disseminating information, because this term is used for the FOIA fee schedule, and thus, is known to those familiar with FOIA and the Board's Rules. To demonstrate a compelling need, a requester must submit a certified statement. A form for the certified statement may be obtained from the FOI Office. One commenter objected that the definition of "compelling need" does not include public interest requesters who wish to comment on pending BHCA applications. The definition of compelling need is established by EFOIA, not the Board.

Section 261.14 lists the exemptions from disclosure under FOIA. This section has been reorganized and streamlined, but no substantive changes have been made.

Sections 261.15 and 261.16, which were previously located in Subpart D, have been moved to Subpart B for clarity, since they apply only to FOIA requests. Accordingly, a separate Subpart D is no longer necessary. These provisions implement Executive Order 12,600, June 23, 1987, by establishing certain predisclosure notification procedures for confidential business or financial information that may be exempt under (b)(4) of the FOIA, 5 U.S.C. 552(b)(4).<sup>3</sup>

<sup>3</sup> These provisions are intended only to address matters of the kind covered by Executive Order 12,600. This, however, does not preclude the Board

Section 261.15 sets forth the procedures for requesting confidential treatment. The Board wishes to emphasize that failure to properly segregate confidential material from other material may result in the release of that material without prior notice to the submitter. This is particularly important in light of the Board's intention, in connection with processing BHCA applications, to provide, upon request, the public portion of an application within three business days of the request. In order to meet this deadline, the Board's and Reserve Bank's staff must rely on the applicant to properly designate the material submitted. A careful review of the material designated as "Confidential" will be made and any information improperly labeled as "Confidential" will be provided to requesters immediately upon identification as publicly available.

Section 261.16 sets forth the procedures for responding to a FOIA request for information that has been designated by the submitter as confidential. It provides for notice to the submitter that permits the submitter to provide written objections to the release of the confidential information. Section 261.16(e) describes the information that a submitter should include in its written submission objecting to the release of the documents, including whether the information was provided voluntarily under the standards set by the court case, *Critical Mass Energy Project v. NRC*, 975 F.2d. 871 (D.C. Cir. 1992). If the information was not provided voluntarily, the submitter must provide detailed facts and arguments showing either the likelihood of substantial competitive harm resulting from release of the information, or that release would impair the Board's ability to obtain necessary information in the future.

Section 261.17 contains the FOIA fee schedules and the standards for waiver of fees. The fee schedule provisions have been revised to clarify that the processing time of a FOIA request does not begin until payment is received in cases where advance payment is

or its staff from giving notice to submitters in other situations where, for example, documents obtained pursuant to a confidentiality commitment are subpoenaed in civil litigation. The Board exercises its discretion in such cases consistent with applicable law. The Board does not disclose its receipt of federal grand jury subpoenas, however, except in accordance with law following consultation with appropriate law enforcement authorities

required. Where a person has requested a waiver of the fees and has not agreed to pay the fees, the processing time does not begin until a fee waiver has been granted, or if the waiver is denied, until the requester has agreed to pay the applicable fees. One commenter objected to this provision, stating that it unfairly affects nonprofit groups with limited budgets that must promise to pay the fees for an application in order to receive it in a timely manner. This commenter requested that the Board establish a procedure to certify groups, on an ongoing basis, for fee waivers, instead of making the determination on a case-by-case basis.

FOIA, itself, establishes certain categories that receive favorable treatment with regard to fees, e.g., the news media and educational institutions. FOIA also provides for fee waivers where disclosure of the information is in the public interest (not based on the requester's status). Thus, a requester must meet the standards for a fee waiver in each request. This requirement is supported by the legislative history (see, 132 Cong. Rec. H. 9463 (Oct. 8, 1986) (Rep. English)) and court decisions (see, *National Wildlife Federation v. Hamilton*, No. 95-017-BU(D. Mont. July 15, 1996)). The Board reviews each fee waiver request pursuant to the standards set forth in the Act and its Rules. If a non-profit community group demonstrates in its request for a waiver of fees that the requested information will be distributed to the public and will contribute significantly to the public understanding of the activities of the Board, then the requester should qualify under the Act and the Board's Rules for a waiver of the fees.

The standards under which the Secretary may grant a request for waiver of fees have been modified to reflect the development of case law in this area. Additionally, the regulation provides for administrative appeal of a denial of a waiver request, which reflects the Board's current procedure of permitting such administrative appeals.

### Subpart C

The sections in Subpart C have been renumbered to be consistent with the renumbering of Subparts A and B in this proposal. No substantive changes have been made at this time. Proposed changes to this Subpart were published in 1996 (61 FR 7436, February 28, 1996),

and the comments received on these changes are still under consideration.

### Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the amendments will not have a significant economic impact on a substantial number of small entities. These amendments simplify some of the procedures regarding release of information and require disclosure of information in certain instances in accordance with law. The requirements to disclose apply to the Board, therefore they should not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0281.

The collection of information requirements in this regulation are found in 12 CFR 261.12, 261.13, 261.16, and 261.17. (The hour burden for requests for confidential treatment made under 261.15 are included in the hour burden associated with the information collections for which the respondent desires confidential treatment.) The information will be used to fulfill requests for information made under the Freedom of Information Act, or to determine the appropriateness of fulfilling such requests. The respondents may include small entities. This information is required to obtain a benefit (5 U.S.C. 552). Generally, requests made under 12 CFR 261.12, 261.13, 261.16, and 12 CFR 261.17 are not exempt from disclosure under the Freedom of Information Act.

The annual hour burden estimates are presented in the following table. There is estimated to be no annual cost burden over the annual hour burden, and no associated capital or start up cost. One comment specifically addressing the burden estimates was received from a federal credit union, stating that the burden estimates seemed accurate.

	Estimated annual frequency	Estimated response time (hours)	Estimated annual burden hours
Initial request (261.12 (b) and (c) and 261.13(c)) .....	4,900	.5	2,450
Limits on an earlier request that included a request for expedited processing that has been denied (261.13(b)(2)) .....	100	.5	50
Appeal of denial of request (261.13(i)) .....	30	2	60
Written objections by submitter to release of data (261.16(e)) .....	30	2	60
Request to waive or reduce fees (261.17(f)) .....	100	.5	50
<b>Total</b> .....			<b>2,670</b>

The Federal Reserve has a continuing interest in the public's opinions of its collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0281), Washington, DC 20503.

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

Confidential business information, Federal Reserve System, Freedom of Information, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 261 as follows:

**PART 261—RULES REGARDING AVAILABILITY OF INFORMATION**

1. The authority citation for part 261 is revised to read as follows:

**Authority:** 5 U.S.C. 552; 12 U.S.C. 248(i) and (k), 321 *et seq.*, 611 *et seq.*, 1442, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o), 1821(t), 1830, 1844, 1951 *et seq.*, 2601, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 29 U.S.C. 1204; 31 U.S.C. 5301 *et seq.*; 42 U.S.C. 3601; 44 U.S.C. 3510.

**Subpart D—[Removed]**

2. Subpart D, consisting of §§ 261.15 through 261.17, is removed.

**§§ 261.11–261.14 [Redesignated as §§ 261.20–261.23]**

3. Sections 261.11 through 261.14 in Subpart C are redesignated as §§ 261.20 through 261.23, respectively, in Subpart C.

4. Subparts A and B are revised to read as follows:

**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**

- 261.10 Published information.
- 261.11 Records available for public inspection and copying.
- 261.12 Records available to public upon request.
- 261.13 Processing requests.
- 261.14 Exemptions from disclosure.
- 261.15 Request for confidential treatment.
- 261.16 Request for access to confidential commercial or financial information.
- 261.17 Fee schedules; waiver of fees.

**Subpart A—General Provisions**

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

(a) *Authority.* (1) This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Freedom of Information Act, 5 U.S.C. 552; Sections 9, 11, and 25A of the Federal Reserve Act, 12 U.S.C. 248(i) and (k), 321 *et seq.*, (including 326), 611 *et seq.*; Section 22 of the Federal Home Loan Bank Act, 12 U.S.C. 1442; the Federal Deposit Insurance Act, 12 U.S.C. 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o); section 5 of the Bank Holding Company Act, 12 U.S.C. 1844; the Bank Secrecy Act, 12 U.S.C. 1951 *et seq.*, and Chapter 53 of Title 31; the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.*; the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.*; the International Banking Act, 12 U.S.C. 3101 *et seq.*; the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.*; the Securities and Exchange Act, 15 U.S.C. 77uuu(b), 78q(c)(3); the Employee Retirement Income Security Act, 29 U.S.C. 1204; the Money Laundering Suppression Act, 31 U.S.C. 5301, the Fair Housing Act, 42 U.S.C. 3601; the Paperwork Reduction Act, 44 U.S.C. 3510; and any other applicable law that establishes a basis for the exercise of governmental authority by the Board.

(2) This part establishes mechanisms for carrying out the Board's statutory responsibilities under statutes in paragraph (a)(1) of this section to the extent those responsibilities require the disclosure, production, or withholding of information. In this regard, the Board

has determined that the Board, or its delegates, may disclose exempt information of the Board, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the Board's supervisory or regulatory authorities, including but not limited to, authority granted to the Board in the Federal Reserve Act, 12 U.S.C. 221 *et seq.*, the Bank Holding Company Act, 12 U.S.C. 1841 *et seq.*, and the International Banking Act, 12 U.S.C. 3101 *et seq.* The Board has determined that all such disclosures, made in accordance with the rules and procedures specified in this part, are authorized by law.

(3) The Board has also determined that it is authorized by law to disclose information to a law enforcement or other federal or state government agency that has the authority to request and receive such information in carrying out its own statutory responsibilities, or in response to a valid order of a court of competent jurisdiction or of a duly constituted administrative tribunal.

(b) *Purpose.* This part sets forth the categories of information made available to the public, the procedures for obtaining documents and records, the procedures for limited release of exempt and confidential supervisory information, and the procedures for protecting confidential business information.

(c) *Scope.* (1) This subpart A contains general provisions and definitions of terms used in this part.

(2) Subpart B of this part implements the Freedom of Information Act (FOIA) (5 U.S.C. 552).

(3) Subpart C of this part sets forth:

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

**§ 261.2 Definitions.**

For purposes of this part:

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

(b) *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.

(c)(1) *Confidential supervisory information* means:

(i) Exempt information consisting of reports of examination, inspection and visitation, confidential operating and condition reports, and any information derived from, related to, or contained in such reports;

(ii) Information gathered by the Board in the course of any investigation, suspicious activity report, cease-and-desist orders, civil money penalty enforcement orders, suspension, removal or prohibition orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, Pub.L. 89-695, 80 Stat. 1028 (codified as amended in scattered sections of 12 U.S.C.), the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.*, the Federal Reserve Act, 12 U.S.C. 221 *et seq.*, the International Banking Act of 1978, Pub.L. 95-369, 92 Stat. 607 (codified as amended in scattered sections of 12 U.S.C.), and the International Lending Supervision Act of 1983, 12 U.S.C. 3901 *et seq.*; except—

(A) Such final orders, amendments, or modifications of final orders, or other actions or documents that are specifically required to be published or made available to the public pursuant to 12 U.S.C. 1818(u), or other applicable law, including the record of litigated proceedings; and

(B) The public section of Community Reinvestment Act examination reports, pursuant to 12 U.S.C. 2906(b); and

(iii) Any documents prepared by, on behalf of, or for the use of the Board, a Federal Reserve Bank, a federal or state financial institutions supervisory agency, or a bank or bank holding company or other supervised financial institution.

(2) *Confidential supervisory information* does not include documents prepared by a supervised financial institution for its own business purposes and that are in its possession.

(d) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under § 261.12.

(e) *Duplication* refers to the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or

that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microform, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk).

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

(g) *Exempt information* means information that is exempt from disclosure under § 261.14.

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

(i)(1) *Records of the Board* include:

(i) In written form, or in nonwritten or machine-readable form; all information coming into the possession and under the control 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 that constitute part of the Board's official files; or

(ii) That 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 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.

(j) *Report of examination* means the report prepared by the Board, or other federal or state financial institution supervisory agency, concerning the examination of a financial institution, and includes reports of inspection and reports of examination of U.S. branches or agencies of foreign banks and representative offices of foreign organizations, and other institutions examined by the Federal Reserve System.

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

(l) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(1) The term "news" means information that is about current events or that would be of current interest to the public.

(2) 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.

(3) "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 they are not actually employed by it.

(m)(1) *Review* refers to the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release.

(2) *Review* does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(n)(1) *Search* means a reasonable search, by manual or automated means, of the Board's official files and any other files containing Board records as seem reasonably likely in the particular circumstances to contain information of the kind requested. For purposes of computing fees under § 261.17, 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 research, creation of any document, or extensive modification of an existing program or system that would significantly interfere with the operation of the Board's automated information systems.

(o) *Supervised financial institution* includes a bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or any other institution that is supervised by the Board.

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

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

(b) *Certification of record.* The Secretary may certify the authenticity of any Board record, or 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 any Board records or making any claim against the Board, shall be addressed to and served upon the Secretary of the Board at the Board's office at 20th and C Streets, N.W., Washington, D.C. 20551. Neither the Board nor the Secretary are agents for service of process on behalf of any employee in respect of purely private legal disputes, except as specifically provided by law.

(d) *Alternative authority.* Any action or determination required or permitted by this part to be done by the Secretary, the General Counsel, or the Director of any Division may be done by any employee who has been duly designated for this purpose by the Secretary, General Counsel, or the appropriate Director.

**Subpart B—Published Information and Records Available to Public; Procedures for Requests****§ 261.10 Published information.**

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

(1) Descriptions of the Board's central and field organization;

(2) Statements of the general course and method by which the Board's functions are channeled and determined, including the nature and requirements of procedures;

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

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

(5) Every amendment, revision, or repeal of the foregoing in paragraphs (a)(1) through (a)(4) of this section;

(6) 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 all Board meetings, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b);

(9) Notices identifying the Board's systems of records, pursuant to the Privacy Act of 1974 (5 U.S.C. 552a); and

(10) 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.* 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, the policy actions by the Federal Open Market Committee, an economic review of the year, and legislative recommendations to Congress. The Board also makes periodic reports to Congress under certain statutes, including but not limited to the Freedom of Information Act (5 U.S.C. 552); the Government in the Sunshine Act (5 U.S.C. 552b); the Full Employment and Balanced Growth Act of 1978 (12 U.S.C. 225a); and the Privacy Act (5 U.S.C. 552a).

(c) *Federal Reserve Bulletin.* This publication is issued monthly and contains economic and statistical information, articles relating to the economy or Board activities, and descriptions of recent actions by the Board.

(d) *Other published information.*

Among other things, the Board publishes the following information:

(1) *Weekly publications.* The Board issues the following publications weekly:

(i) A statement showing the condition of each Federal Reserve Bank and a consolidated statement of the condition of all Federal Reserve Banks, pursuant to 12 U.S.C. 248(a);

(ii) An index of applications received and the actions taken on the applications, as well as other matters issued, adopted, or promulgated by the Board; and

(iii) A statement showing changes in the structure of the banking industry resulting from mergers and the establishment of branches.

(2) *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.

(3) *Call Report and other data.* Certain data from Reports of Condition and Income submitted to the Board are available through the National Technical Information Service and may

be obtained by the procedure described in § 261.11(c)(2).

(4) *Federal Reserve Regulatory Service.* This is a multivolume looseleaf service published by the Board, containing statutes, regulations, interpretations, rulings, staff opinions, and procedural rules under which the Board operates. Portions of the service are also published as separate looseleaf handbooks relating to consumer and community affairs, monetary policy and reserve requirements, payments systems, 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.

(e) *Index to Board actions.* The Board's Freedom of Information Office maintains an index to Board actions, which is updated weekly and provides identifying information about any matters issued, adopted, and promulgated by the Board since July 4, 1967. Copies of the index may be obtained upon request to the Freedom of Information Office subject to the current schedule of fees in § 261.17.

(f) *Obtaining Board publications.* The Publications Services Section maintains a list of Board publications that are available to the public. In addition, a partial list of publications is published in the *Federal Reserve Bulletin*. All publications issued by the Board, including available back issues, may be obtained from Publications Services, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (pedestrian entrance is on C Street, N.W.). Subscription or other charges may apply to some publications.

**§ 261.11 Records available for public inspection and copying.**

(a) *Types of records made available.* Unless they were published promptly and made available for sale or without charge, the following records shall be made available for inspection and copying at the Freedom of Information Office:

(1) Final opinions, including concurring and dissenting opinions, as well as final orders and written agreements, made in the adjudication of cases;

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

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

(4) Copies of all records released to any person under § 261.12 that, because



of the nature of their subject matter, the Board has determined are likely to be requested again;

(5) A general index of the records referred to in paragraph (a)(4) of this section; and

(6) The public section of Community Reinvestment Act examination reports.

(b) *Reading room procedures.* (1) Information available under this section is available for inspection and copying, from 9:00 a.m. to 5:00 p.m. weekdays, at the Freedom of Information Office of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (the pedestrian entrance is on C Street, N.W.).

(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.

(c) *Electronic records.* (1) Except as set forth in paragraph (c)(2) of this section, information available under this section that was created by the Board on or after November 1, 1996, shall also be available on the Board's internet site (which can be found at <http://www.bog.frb.fed.us>).

(2) *NTIS.* The publicly available portions of Reports of Condition and Income of individual banks and 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.

(3) *Privacy protection.* The Board may delete identifying details from any record to prevent a clearly unwarranted invasion of personal privacy.

#### **§ 261.12 Records available to public upon request.**

(a) *Types of records made available.* All records of the Board that are not available under §§ 261.10 and 261.11 shall be made available upon request, pursuant to the procedures and exceptions in this Subpart B.

(b) *Procedures for requesting records.* (1) A request for identifiable records shall reasonably describe the records in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations.

(2) The request shall be submitted in writing to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & C Street,

N.W., Washington, D.C. 20551; or sent by facsimile to the Freedom of Information Office, (202) 872-7562 or 7565. The request shall be clearly marked **FREEDOM OF INFORMATION ACT REQUEST**.

(3) A request may not be combined with any other request to the Board except for a request under 12 CFR 261a.3(a) (Rules Regarding Access to and Review of Personal Information under the Privacy Act of 1974) and a request made under § 261.23(b)(1)(ii).

(c) *Contents of request.* The request shall contain the following information:

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

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

(3) A statement agreeing to pay the applicable fees, or a statement identifying any desired fee limitation, or a request for a waiver or reduction of fees that satisfies § 261.17(h); and

(4) If the request is being made in connection with on-going litigation, a statement indicating whether the requester will seek discretionary release of exempt information from the General Counsel upon denial of the request by the Secretary. A requester who intends to make such a request to the General Counsel may also address the factors set forth in § 261.23(b).

(d) *Defective requests.* The Board need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this section. The Board may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(e) *Oral requests.* The Freedom of Information Office 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.

#### **§ 261.13 Processing requests.**

(a) *Receipt of requests.* Upon receipt of any request that satisfies § 261.12(b), the Freedom of Information Office shall assign the request to the appropriate processing schedule, pursuant to paragraph (b) of this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency or by a Federal Reserve Bank, is the date

the Freedom of Information Office actually receives the request.

(b) *Multitrack processing.* (1) The Board provides different levels of processing for categories of requests under this section. Requests for records that are readily identifiable by the Freedom of Information Office and that have already been cleared for public release may qualify for fast-track processing. All other requests shall be handled under normal processing procedures, unless expedited processing has been granted pursuant to paragraph (c)(2) of this section.

(2) The Freedom of Information Office will make the determination whether a request qualifies for fast-track processing. A requester may contact the Freedom of Information Office to learn whether a particular request has been assigned to fast-track processing. If the request has not qualified for fast-track processing, the requester will be given an opportunity to limit the request in order to qualify for fast-track processing. Limitations of requests must be in writing.

(c) *Expedited processing.* When a person requesting expedited access to records has demonstrated a compelling need for the records, or when the Board has determined to expedite the response, the Board shall process the request as soon as practicable.

(1) To demonstrate a compelling need for expedited processing, the requester shall provide a certified statement, a sample of which may be obtained from the Freedom of Information Office. The statement, which must be certified to be true and correct to the best of the requester's knowledge and belief, shall demonstrate that:

(i) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester is a representative of the news media, as defined in § 261.2, and there is urgency to inform the public concerning actual or alleged Board activity.

(2) In response to a request for expedited processing, the Secretary shall notify a requester of the determination within ten calendar days of receipt of the request. If the Secretary denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (i) of this section, and the Board shall respond to the appeal within ten working days after the appeal was received by the Board.

(d) *Priority of responses.* The Secretary will assign responsible staff to process particular requests. The



Freedom of Information Office will normally process requests in the order they are received in the separate processing tracks, except when expedited processing is granted. 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.

(e) *Time limits.* The time for response to requests shall be 20 working days, except:

(1) In the case of expedited treatment under paragraph (c) of this section;

(2) Where the running of such time is suspended for payment of fees pursuant to § 261.17(b)(2);

(3) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B). In such circumstances, the time limit may be extended for a period of time not to exceed:

(i) 10 working days as provided 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; or

(ii) Such alternative time period as mutually agreed to by the Freedom of Information Office and the requester when the Freedom of Information Office notifies the requester that the request cannot be processed in the specified time limit.

(f) *Response to request.* In response to a request that satisfies § 261.12(b), an appropriate search shall be conducted of records of the Board in existence on the date of receipt of the request, and a review made of any responsive information located. The Secretary shall notify the requester of:

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

(2) The reasons for the determination;

(3) The amount of information withheld;

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

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

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

(h) *Providing responsive records.* (1) Copies of requested records 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 Freedom of Information Office or makes other acceptable arrangements, or the

Board deems it appropriate to send the documents by another means.

(2) The Board shall provide a copy of the record in any form or format requested if the record is readily reproducible by the Board in that form or format, but the Board need not provide more than one copy of any record to a requester.

(i) *Appeal of denial of request.* Any person denied access to Board records requested under § 261.12 may file a written appeal with the Board, as follows:

(1) The appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & C Street, N.W., Washington, D.C. 20551; or sent by facsimile to the Freedom of Information Office, (202) 872-7562 or 7565.

(2) An initial request for records may not be combined in the same letter with an appeal.

(3) The appeal shall be filed within 10 working days of the date on which the denial was issued, or the date on which documents in partial response to the request were transmitted to the requester, whichever is later. 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 determines, in its discretion and for good and substantial cause shown, that the appeal should be considered.

(4) The Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Freedom of Information Office, and the determination letter shall notify the appealing party of the right to seek judicial review.

(5) The Secretary may reconsider a denial being appealed if intervening circumstances or additional facts not known at the time of the denial come to the attention of the Secretary while an appeal is pending.

#### § 261.14 Exemptions from disclosure.

(a) *Types of records exempt from disclosure.* Pursuant to 5 U.S.C. 552(b), the following records of the Board are exempt from disclosure under this part:

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

(2) *Internal personnel rules and practices.* Any information related solely to the internal personnel rules and practices of the Board.

(3) *Statutory exemption.* Any information 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.

(4) *Trade secrets; commercial or financial information.* Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) *Inter- or intra-agency memorandums.* Information contained in inter- or intra-agency memorandums or letters that would not be 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 (the Government in the Sunshine Act).

(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) *Information compiled for law enforcement purposes.* Any records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7); including information relating to administrative enforcement proceedings of the Board.

(8) *Examination, inspection, operating, or condition reports, and confidential supervisory information.* Any matter that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, including a state financial institution supervisory agency.

(b) *Segregation of nonexempt information.* The Board shall provide any reasonably segregable portion of a record that is requested after deleting

those portions that are exempt under this section.

(c) *Discretionary release.* (1) Except where disclosure is expressly prohibited by statute, regulation, or order, the Board may release records that are exempt from mandatory disclosure whenever the Board or designated Board members, the Secretary of the Board, the General Counsel of the Board, the Director of the Division of Banking Supervision and Regulation, or the appropriate Federal Reserve Bank, acting pursuant to this part or 12 CFR part 265, determines that such disclosure would be in the public interest.

(2) The Board may make any exempt information furnished in connection with an application for Board approval of a transaction available to the public in accordance with § 261.12, 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.

(d) *Delayed release.* Publication in the *Federal Register* or availability to the public of certain information may be delayed if immediate disclosure would likely:

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

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

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

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

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

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

(e) *Prohibition against disclosure.* Except as provided in this part, 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).

#### § 261.15 Request for confidential treatment.

(a) *Submission of request.* Any submitter of information to the Board who desires confidential treatment pursuant to 5 U.S.C. 552(b)(4) and § 261.14 (a)(4) shall file a request for confidential treatment with the Board (or in the case of documents filed with a Federal Reserve Bank, with that Federal Reserve Bank) at the time the information is submitted or a reasonable time after submission.

(b) *Form of request.* Each request for confidential treatment shall state in reasonable detail the facts supporting the request and its legal justification. Conclusory statements that release of the information would cause competitive harm 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 separated from information for which confidential treatment is not requested. Failure to segregate confidential information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(d) *Exceptions.* This section does not apply to:

(1) Data collected on forms that are approved pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and are deemed confidential by the Board. Any such form deemed confidential by the Board shall so indicate on the face of the form or in its instructions. The data may, however, be disclosed in aggregate form in such a manner that individual company data is not disclosed or derivable.

(2) Any comments submitted by a member of the public on applications and regulatory proposals being considered by the Board, unless the Board or the Secretary determines that confidential treatment is warranted.

(3) A determination by the Board to comment upon information submitted to the Board in any opinion or statement issued to the public as described in § 261.14(c).

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

#### § 261.16 Request for access to confidential commercial or financial information.

(a) *Request for confidential information.* A request by a submitter for confidential treatment of any information shall be considered in connection with a request for access to that information. At their discretion, appropriate Board or staff members (including Federal Reserve Bank staff) may act on the request for confidentiality prior to any request for access to the documents.

(b) *Notice to the submitter.* When a request for access is received pursuant to the Freedom of Information Act (5 U.S.C. 552):

(1) The Secretary shall notify a submitter of the request, if:

(i) The submitter requested confidential treatment of the information pursuant to 5 U.S.C. 552(b)(4); and

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

(2) Absent a request for confidential treatment, the Secretary may notify a submitter of a request for access to information provided by the submitter if the Secretary reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(3) The notice given to the submitter shall:

(i) Be given as soon as practicable after receipt of the request for access;

(ii) Describe the request; and

(iii) Give the submitter a reasonable opportunity, not to exceed ten working days from the date of notice, to submit written objections to disclosure of the information.

(c) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(1) The Secretary determines that the request for access should be denied;

(2) The requested information lawfully has been made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary, except that in this last instance the Secretary shall give the submitter written notice of the determination to disclose the information at least five working days prior to disclosure.

(d) *Notice to requester.* At the same time the Secretary notifies the submitter, the Secretary also shall notify

the requester that the request is subject to the provisions of this section.

(e) *Written objections by submitter.* Upon receipt of notice of a request for access to its information, the submitter may provide written objections to release of the information. Such objections shall state whether the information was provided voluntarily or involuntarily to the Board.

(1) If the information was voluntarily provided to the Board, the submitter shall provide detailed facts showing that the information is customarily withheld from the public.

(2) If the information was not provided voluntarily to the Board, the submitter shall provide detailed facts and arguments showing:

(i) The likelihood of substantial harm that would be caused to the submitter's competitive position; or

(ii) That release of the information would impair the Board's ability to obtain necessary information in the future.

(f) *Determination by Secretary.* The Secretary's determination whether or not to disclose any information 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 information and the submitter has objected to such disclosure pursuant to paragraph (e) of this section, the Secretary shall provide the submitter with the reasons for disclosure, and shall delay disclosure for ten working days from the date of the determination.

(g) *Notice of lawsuit.* (1) The Secretary shall promptly notify any submitter of information covered by this section of the filing of any suit against the Board to compel disclosure of such information.

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

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

(a) *Fee schedules.* The fees applicable to a request for records pursuant to §§ 261.11 and 261.12 are set forth in Appendix A to this section. These fees cover only the full allowable direct costs of search, duplication, and review. No fees will be charged where the average cost of collecting the fee (calculated at \$5.00) exceeds the amount of the fee.

(b) *Payment procedures.* The Secretary may assume that a person requesting records pursuant to § 261.12 will pay the applicable fees, unless the request includes a limitation on fees to be paid or seeks a waiver or reduction

of fees pursuant to paragraph (f) of this section.

(1) *Advance notification of fees.* If the estimated charges are likely to exceed \$100, the Freedom of Information Office shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Freedom of Information Office to reformulate the request to lower the costs. The time period for responding to requests under § 261.13(e), and the processing of the request will be suspended until the requester agrees to pay the applicable fees.

(2) *Advance payment.* 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. The time period for responding to requests under § 261.13(e), and the processing of the request will be suspended until the Freedom of Information Office 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 is at the rate prescribed in 31 U.S.C. 3717 and accrues from the date of the billing.

(c) *Categories of uses.* The fees assessed depend upon the intended use for the records requested. In determining which category is appropriate, the Secretary shall look to the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary may seek additional clarification before categorizing the request.

(1) *Commercial use.* The fees for search, duplication, and review apply when records are requested for commercial use.

(2) *Educational, research, or media use.* The fees for 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. The first 100 pages of duplication, however, will be provided free.

(3) *All other uses.* For all other requests, the fees for document search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(d) *Nonproductive search.* Fees for search and review may be charged even if no responsive documents are located or if the request is denied.

(e) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary reasonably believes that a requester is separating a request 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.

(f) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in § 261.13(e), shall not begin until a waiver has been granted; or if the waiver is denied, until the requester has agreed to pay the applicable fees.

(1) *Standards for determining waiver or reduction.* The Secretary shall grant a waiver or reduction of fees 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 operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

(i) Whether the subject of the records concerns the operations or activities of the government;

(ii) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(iii) Whether the requester has the intention and ability to disseminate the information to the public;

(iv) Whether the information is already in the public domain;

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

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

(2) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include:

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

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

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

(iv) A description of the method by which the information will be disseminated to the public; and

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

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

(4) *Determination by Secretary.* The Secretary shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with § 261.13(j).

(g) *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 of 1974 (5 U.S.C. 552a) are \$50 or less; but the Secretary may waive fees in excess of that amount.

(h) *Special services.* The Secretary 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 or overnight delivery.

APPENDIX A TO § 261.17.—FREEDOM OF INFORMATION FEE SCHEDULE

Duplication:	
Photocopy, per standard page ....	\$0.10
Paper copies of microfiche, per frame .....	.10
Duplicate microfiche, per microfiche .....	.35
Search and review:	
Clerical/Technical, hourly rate .....	20.00
Professional/Supervisory, hourly rate .....	38.00
Manager/Senior Professional, hourly rate .....	65.00
Computer search and production:	
Computer operator search, hourly rate .....	32.00

APPENDIX A TO § 261.17.—FREEDOM OF INFORMATION FEE SCHEDULE—Continued

Tapes (cassette) per tape .....	6.00
Tapes (cartridge), per tape .....	9.00
Tapes (reel), per tape .....	18.00
Diskettes (3½"), per diskette .....	4.00
Diskettes (5¼"), per diskette .....	5.00
Computer Output (PC), per minute .....	.10
Computer Output (mainframe) .....	(1)

<sup>1</sup> Actual cost.

By order of the Board of Governors of the Federal Reserve System, October 10, 1997.

**William W. Wiles,**

*Secretary of the Board.*

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**FEDERAL RESERVE SYSTEM**

**12 CFR Part 261**

[Docket No. R-0975]

**Rules Regarding Availability of Information; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) published in the *Federal Register* of October 20, 1997, a document which amended the Board's Rules Regarding Availability of Information (Rules). This document corrects citation errors within the Rules.

**EFFECTIVE DATE:** November 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boutilier, Senior Counsel, 202-452-2418, Legal Division. For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD), 202-452-3544, Board of

Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** The Board published a document in the *Federal Register* of October 20, 1997, (62 FR 54356). The document (FR Doc. 97-27566) amended the Board's Rules Regarding Availability of Information and contained several incorrect citations. This document also adds an amendatory instruction which will revise citations within subpart C of the Rules to reflect the new renumbering.

In final rule, FR Doc. 97-27566, published on October 20, 1997, (62 FR 54356) make the following corrections:

**PART 261—[CORRECTED]**

1. On page 54359, in the first column, in the authority citation, line 6, correct "15 U.S.C. 77uu(b)" to read "15 U.S.C. 77uuu(b)".

**§ 261.22 [Corrected]**

2. On page 54359, in the first column, add amendatory instruction 3a. to read as follows:

a. Newly designated § 261.22 is amended by:

a. In paragraphs (b)(1) introductory text and (b)(2), the reference "§§ 261.11

and 261.12" is removed and "§§ 261.20 and 261.21" is added in its place.

b. In paragraph (d), the reference "§ 261.9" is removed and "§ 261.12" is added each place it appears.

**§ 261.1 [Corrected]**

3. On page 54359, in the second column, in § 261.1, in paragraph (a)(1), line 22, correct "the Securities and Exchange Act." to read "the Securities and Exchange Commission Authorization Act."

**§ 261.12 [Corrected]**

4. On page 54362, in the second column, in § 261.12, in paragraph (b)(3), line 7, correct "§ 261.23(b)(1)(ii)" to read "§ 261.22(b)".

5. On page 54362, in the second column, in § 261.12, paragraph (c)(3), last line, correct "§ 261.17(h)" to read "§ 261.17(f)".

6. On page 54362, in the second column, in § 261.12, paragraph (c)(4), last line, correct "§ 261.23(b)" to read "§ 261.22(b)".

**§ 261.17 [Corrected]**

7. On page 54366, in the first column, in § 261.17, paragraph (f)(4), last line, correct "§ 261.13(j)" to read "§ 261.13(i)".

By order of the Board of Governors of the  
Federal Reserve System, November 18, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97-30711 Filed 11-21-97; 8:45 am]

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