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Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
E-mail: regs.comments@federalreserve.gov

Re: Rules Regarding Availability of Information, Docket No. R-1665 & RIN No. 7100–AF 51

Dear Ms. Misback:

As the leading provider of retirement and other financial services for those in academic, research, medical, and cultural fields, Teachers Insurance and Annuity Association of America (TIAA) appreciates the opportunity to submit this letter in response to the notice of proposed rulemaking and request for comment on Rules Regarding Availability of Information (NPR) issued by the Board of Governors of the Federal Reserve System (Board or Federal Reserve).¹ TIAA is a privately held, wholly owned subsidiary of the TIAA Board of Overseers, a special purpose New York not-for-profit corporation. Based on their indirect ownership of a thrift (TIAA, FSB), both TIAA and the TIAA Board of Overseers are registered as savings-and-loan holding companies (SLHCs) under the Home Owners' Loan Act and supervised by the Federal Reserve.

We appreciate the Board's efforts to update its rules governing the treatment of confidential supervisory information (CSI) and are supportive of the proposed changes. We propose several suggestions below to clarify the proposed rules and improve the procedures for handling CSI, particularly from the perspective of an insurance-focused SLHC (ISLHC) subject to supervision by state insurance regulators as well as the Federal Reserve.

I. Sharing CSI with Affiliates and Other Financial Supervisory Agencies

A. Sharing CSI with Affiliates

TIAA supports the proposed changes to 12 CFR Part 261 that would allow supervised financial institutions to share CSI with affiliates and simplify the process for sharing the Federal Reserve's CSI with other regulatory agencies. As the preamble to the NPR recognizes, supervised financial institutions have numerous legitimate business reasons to share CSI with various affiliates, including subsidiary banks, nonbank subsidiaries, and other entities in the holding company structure. The NPR appropriately recognizes that such entities may provide centralized services to the holding

¹ Rules Regarding Availability of Information, 84 Fed. Reg. 27976 (June 17, 2019), Docket No. R-1665 and RIN No. 7100 AF 51.

company, but information-sharing may be necessary for a number of other reasons as well, such as conducting risk and compliance assessments, performing comprehensive management and board reporting, implementing enterprise-wide policies and procedures, and even responding effectively to Federal Reserve supervisory requests for information directed at subsidiaries.

With respect to the language in proposed § 261.21(b)(1) that permits a supervised financial institution to share information with its directors, officers, or employees or those of its affiliates “only to the extent those individuals have a need for the information in the performance of their official duties,” we respectfully submit that such limitation may be unnecessary and should certainly be liberally construed if included in the final rule. Supervised financial institutions should be permitted to exercise their sound judgment as to what information needs to be shared with directors, officers, and employees, including those of affiliates. Sharing information about regulatory concerns, for example, throughout an enterprise is likely to promote sound risk management and broader adoption of best practices. Information-sharing should not be chilled by the specter of an after-the-fact supervisory assessment of whether the sharing was sufficiently justified by a demonstrable nexus to an individual’s “official duties.” The remaining restrictions on sharing CSI should provide sufficient controls to prevent the improper dissemination of CSI outside the enterprise.

B. Sharing CSI with Other Financial Supervisory Agencies

TIAA also strongly supports the NPR’s proposed changes that would facilitate the sharing of CSI with other financial supervisory agencies. Promoting information-sharing among financial supervisory agencies provides an effective mechanism to enhance supervisory oversight by expanding the range of information available to any individual supervisory agency while also achieving greater regulatory efficiency and minimizing duplicative supervisory activity. Regulators have legitimate interests in understanding issues identified by other supervisors, including assessments of how a supervised institution responds to and remediates identified issues and reports them to management and the board. Overly restrictive requirements and procedures for sharing CSI with other financial supervisory agencies limit the potential for and benefits from cross-agency regulatory collaboration, coordination, and efficiency, for both supervisors and supervised institutions.

As an ISLHC, TIAA is particularly supportive of proposed § 261.21(b)(2)’s recognition of a supervised financial institution’s need to share CSI with state financial supervisory agencies. State insurance regulators’ examinations of supervised financial institutions often focus on many of the same risk-management, compliance, management and board reporting, and governance and oversight objectives assessed by federal banking agencies. Enhancing state agencies’ ability to access CSI should strengthen their oversight of and broaden their knowledge base about supervised financial institutions. Improved information sharing between state and federal financial supervisory agencies should also contribute to greater overall supervisory effectiveness and efficiency by, for example, allowing state and federal regulators to develop a more coordinated overall supervisory plan.

We propose making two clarifications to § 261.21(b)(2) to reflect the nature of state financial supervisory activities. First, § 261.21(b)(2) references as a singular entity “the state financial supervisory institution that supervises that institution.” As an ISLHC with activities throughout the country, TIAA is subject to regulation and supervision by multiple state insurance regulatory bodies. Changing the language to “any state financial supervisory agency that supervises the institution” would be a more appropriate formulation in light of the nature of state insurance regulation.

Second, state financial supervisory agencies often appoint third-party firms, experts, or consultants to conduct or assist in examinations of supervised financial institutions. The regulations should also

provide for appropriate sharing of CSI with third parties appointed by a state financial supervisory agency. The language in § 261.21(b)(2) could be modified to add the proposed underlined language to clarify these issues: “~~the~~ any state financial supervisory agency that supervises the institution, including any third-parties appointed by a state financial supervisory agency to conduct or otherwise assist in the agency’s supervision of the institution, . . .” Given that an institution’s central point of contact at the Reserve Bank or equivalent team leader (CPC) would still have the ultimate ability to determine whether CSI should be shared under the circumstances, the Federal Reserve would retain sufficient controls to restrict sharing of CSI as needed.

With respect to the role of the CPC in determining whether a receiving agency has a “legitimate supervisory or regulatory interest in the information,” we propose that the presumption should be shifted such that, by default, information can be shared unless the CPC affirmatively determines within a prescribed time period that the receiving agency does not have a legitimate supervisory or regulatory interest in the information. Exam and supervisory objectives, both state and federal, can sometimes be broad and generalized. Compelling another supervisory agency to justify and detail its specific supervisory or regulatory interests as related to requested information (the exact nature of which the requesting agency may not be able to know in detail without seeing it) and then requiring a CPC to make a determination about the legitimacy of such interests may be counterproductive to achieving optimal regulatory comity and collaboration. Nor should a supervised financial institution be placed in the position of denying its state supervisory agency access to information in the institution’s possession because the Federal Reserve CPC does not find the state agency’s interest in the information to be legitimate. Shifting the presumption as we propose could reduce these potential frictions.

II. The Role of the CPC in Approving Disclosure Requests

The NPR invites comment on the proposed change to shift responsibility for approving institutions’ requests to share CSI from the Board’s General Counsel to each institution’s CPC. TIAA strongly supports this proposed change. As the NPR notes, this change would appropriately vest decision-making authority with the part of the Federal Reserve that is most knowledgeable about the institution and the need to share particular information. This proposed change is likely to facilitate faster decision-making on requests to share CSI given both that the CPC will be more knowledgeable about the context and appropriateness of the request and that the institution maintains more regular contact with its CPC than with the Board’s General Counsel.

Section 261.21(b)(5) provides that a CPC’s decisions to approve or deny an institution’s disclosure of CSI “may require concurrence of other Federal Reserve staff in accordance with internal supervisory procedures.” Any procedures developed pursuant to this provision should not be so cumbersome that they undermine the benefits of vesting decision-making with the CPC. For example, if the procedures require concurrence of Board staff that cannot reliably be obtained quickly, it would reduce or eliminate the benefits of faster decision-making.

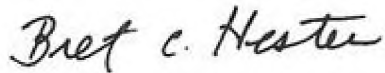
The Board should, however, provide clear procedures for institutions to appeal a CPC’s decision to deny a request to share CSI. For example, if a CPC denied an institution’s request to share CSI with one of its state financial supervisory agencies, the institution should have a mechanism for expeditious review of that decision within the Federal Reserve. Among other reasons, it would be important for the institution to be able to demonstrate to its state supervisory agency that it is diligently attempting to comply with a state supervisory agency’s request for information within the institution’s possession. While one approach, potentially reflected in § 261.21(b)(5), would be to provide for a more exhaustive review within the Federal Reserve before a CPC delivers a decision,

we respectfully submit that the initial decision would be most effectively made by a CPC without burdensome internal procedures. An appeals mechanism would be needed only in the hopefully limited circumstances when a CPC denies a request to share CSI. In this posture, a supervised institution would be able to provide additional information and justification for the need to share CSI. By contrast, if §261.21(b)(5) contemplates that all Federal Reserve review would occur before a CPC delivers a decision, an institution may feel compelled to provide, and Federal Reserve staff would have to review, more information than should be necessary in the vast majority of instances in which the CPC who is most familiar with the institution could prudently approve a request to share CSI.

Conclusion

TIAA appreciates the Board's efforts to modernize its procedures for handling CSI and the opportunity to respond to the NPR. In addition to our comments above, we would also strongly support and encourage efforts to harmonize the federal banking agencies' various requirements governing CSI. We would be happy to engage further on any aspect of the foregoing.

Sincerely,

A handwritten signature in black ink that reads "Bret C. Hester". The signature is written in a cursive, slightly slanted style.

Bret Hester