



The Cypress Group

August 16, 2019

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

Re: Notice of Proposed Rulemaking regarding Proposed Revisions to Federal Reserve Board (Board) Rules regarding Availability of Information

Docket No. R-1665 and RIN 7100-AF 51

Dear Ms. Misback:

I write on behalf of The Insurance Coalition, a group of federally supervised insurance companies and other parties with an interest in sound insurance regulation. We share a common interest in federal regulations that apply to insurance savings and loan holding companies (ISLHCs). In this case, we write because the Notice of Proposed Rulemaking (the Proposal) would apply to our ISLHC members. We appreciate the opportunity to comment.

Executive Summary

We appreciate the Board's efforts and the Proposal's focus on clarity and efficiency in the rules governing the sharing of confidential supervisory information (CSI). We particularly appreciate that the Proposal's easing of the restrictions on sharing information with financial institution affiliates and third-party service providers.

I. § 261.2(b)(1) Definition of CSI

The Proposal would expand the definition of CSI to include materials that merely "refer to" supervisory materials.¹ We believe that the terms "contain or would reveal" are sufficiently broad to achieve the Board's interests and further believe that "refer to" is vague and overly broad. Inclusion of "refer to" in the definition of CSI may have the impact of precluding ISLHCs from even indirectly referencing Board-related activity in internal documents even where appropriate. Accordingly, we respectfully recommend that the final rule delete the words "refer to."

¹ See 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.2(b)(1)).



We support a clear definition of CSI and note that the definition of CSI is not uniform across financial regulators, which can pose problems and create inefficiencies. We recommend that the Board take the lead in working with other financial regulators on consistent, follow-on rulemakings that align with the Board’s framework. Further, we believe this uniform standard should include a common definition of CSI accepted by all of the regulators, as well as provisions allowing regulators to share CSI with other financial regulators, including state insurance regulators.

II. § 261.15(b)(2) Exemptions from Disclosure

The Proposal stipulates that the Board’s prior release of CSI does not constitute a waiver with respect to later requests.² We support this provision and its inclusion in the final rule.

III. § 261.21(b)(1) Disclosure of CSI within Financial Institutions

The Proposal would amend current Board regulations by permitting supervised financial institutions to make CSI available to the directors, officers, or employees of their affiliates.³ We appreciate and support this change. As noted in the Proposal, there are legitimate business reasons that ISLHCs need to disclose CSI to affiliates to permit directors, officers, and employees of affiliates to perform their official duties, and we support the Proposal permitting this disclosure.⁴

IV. § 261.21(b)(2) Disclosure of CSI By Financial Institutions to Other Governmental Agencies

The Proposal would permit supervised financial institutions to disclose CSI directly to the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB), and the state financial supervisory agency, so long as the institution’s main point of contact (CPC) at the Board agrees.⁵ We support this change in the interest of efficiency of communication and collaboration among regulators. This is especially helpful to ISLHCs in facilitating the sharing of CSI with state insurance regulators. To that end, we suggest that the Board define state financial supervisory agency to include the term “state insurance regulatory authority” or otherwise explicitly clarify that sharing CSI with state insurance regulatory authorities is permissible subject to the conditions outlined in the proposal.

The Board states that financial institutions may, with the concurrence of their CPC, “disclose such information” to the other financial regulators.⁶ We recommend that the Board clarify that “such information” that may be disclosed to other regulators include exam reports and internal documents. Additionally, as currently written, the Proposal implies that CPCs would be required

² See 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.15(b)(2)).

³ See 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.21(b)(1)).

⁴ See 84 Fed. Reg. at 27979.

⁵ See 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.21(b)(2)).

⁶ See 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.21(b)(2)).



to treat requests to share CSI with other regulators as specific, limited requests requiring additional permission each time CSI is sought. Instead, we suggest that permission to share CSI with other regulators be approved on a general, open-ended basis, perhaps approved annually or on some other specific schedule.

V. § 261.21(b)(3) Disclosure of CSI to Legal Counsel and Auditors

The Proposal provides for the sharing of CSI by a supervised institution with auditors and legal counsel.⁷ We support permitting supervised institutions to provide access to CSI to outside service providers off-premises, subject to written agreements and controls. This provides a substantially more efficient method of accessing CSI, while ensuring the security of such information.

The Proposal states that a financial institution may disclose CSI to its legal counsel or auditors so long as it is necessary to the engagement and the legal counsel or auditor is engaged by the financial institution pursuant to a written agreement under which it agrees that, among other things, “it will strictly limit disclosure of the CSI to those of its staff who have a need to know the information for the purposes of the engagement and who are bound by written agreement to keep the information confidential.”⁸ Often, auditors and legal counsel utilize affiliates and service providers in the performance of auditing and legal services for the financial institution. These affiliates and service providers are contractually obligated to provide services at the direction of the auditor or legal counsel and are also subject to written agreements to keep client information confidential. We believe it is appropriate and necessary to share CSI with these third parties when it is pursuant to a contractual agreement in furtherance of auditing and legal services. Thus, we suggest that this provision be modified to read “it will strictly limit disclosure of the CSI to those of its staff *and of the staff of its affiliates and services providers* who have a need to know the information for the purposes of the engagement and who are bound by written agreement to keep the information confidential.”

VI. § 261.21(b)(4) Disclosure of CSI to Other Service Providers

The Proposal allows for sharing of CSI with other service providers.⁹ We support this section, particularly the provision allowing firms to seek approval for the release of CSI from their CPCs. This change will allow for a more efficient process and faster resolution of requests.

However, the Proposal also requires that the written request reference “the specific documents or materials the supervised financial institution seeks permission to disclose to the service provider.”¹⁰ We recommend that this be changed to read “a description of the documents or materials” in order to avoid having to list specific documents multiple times, which would be unnecessarily cumbersome. Additionally, financial institutions may need to seek permission in advance to disclose documents that have not yet been created, and thus would be unable to list

⁷ See 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.21(b)(3)).

⁸ See 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.21(b)(3)).

⁹ See 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.21(b)(4)).

¹⁰ See 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.21(b)(4)(C)).



them, except by category. In addition to the specific change recommended above, we would also encourage the Board to include general language in the final rule that provides CPCs with on-the-ground flexibility to achieve the purposes of this rule without being overly restrictive and formulaic.

VII. § 261.22 Nonpublic information made available by the Board to governmental agencies and entities exercising governmental authority

We support the changes that permit certain Board officials to disclose CSI to the OCC, the FDIC, the CFPB, and a state financial institution supervisory agency.¹¹ Here, too, we support a clarification to include state insurance regulatory authority, or alternatively, to include this clarification in a definition of “state financial institution supervisory agency.”

Additionally, we suggest that the final rule stipulate that in addition to the named officials, CPCs may also disclose CSI to the named financial regulators, rather than requiring Reserve Bank approval. This is consistent with the Proposal’s general framework, which rests decisions regarding CSI in the hands of CPCs, who are closest to day-to-day financial institution supervision.

Additionally, we suggest that the Board add language clarifying that CPCs may simply instruct financial institutions (pursuant to 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.21)) to provide requested information directly to another financial regulator. This additional language would be consistent with the rest of the Proposal.

VIII. § 261.23 Other Disclosure of CSI

The Proposal addresses the disclosure of CSI in situations including litigation.¹² We support the changes proposed in this section, and also suggest that the Board consider clarifying that third parties in possession of CSI may not release CSI except by following the approval procedures for securing the information articulated in § 261.21 of the Proposal.

We also support the provisions regarding the attestations required by requesters of CSI. Specifically, we support the provision requiring that requesters of CSI provide a copy of the complaint and other supporting materials, and address why the information cannot be obtained from another source. These provisions will help ensure that information is provided to parties with a legitimate interest in it, but that such requests are narrowly crafted to ensure that CSI and the bank examination privilege is adequately and appropriately protected.

Conclusion

We appreciate the opportunity to comment on the Proposal and look forward to continued engagement on this issue. We support the Board’s work to clarify and modernize rules regarding

¹¹ See 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.22).

¹² See 84 Fed. Reg. (to be codified at 12 C.F.R. § 261.23).



The Cypress Group

CSI. Please do not hesitate to contact Bridget Hagan (bridget@cypressgroupdc.com; 571-212-2036) with any questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Bridget Hagan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Bridget Hagan
Executive Director, The Insurance Coalition