

d. Under the heading **RETENTION AND DISPOSAL**, the paragraph is revised to read as follows:

Most background investigative records are maintained no later than 5 years after separation or transfer of employee or no later than 5 years after contract relationship expires, whichever is applicable in accordance with General Records Schedule 18, Item 22. Reports of background investigations that were conducted under delegated authority from the Office of Personnel Management by the Office of Inspector General are retained for 15 years after the last investigative activity, except for investigations involving potentially actionable issue(s), which are maintained for 25 years after the last investigative activity. The records are disposed of by electronic erasure or shredding.

e. Under the heading **SYSTEM MANAGER(S) AND ADDRESS**, the paragraph is revised to read as follows:

Security Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W229, Washington, DC 20202.

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Dated: March 9, 2004.

**William J. Leidinger,**

*Assistant Secretary for Management and Chief Information Officer.*

[FR Doc. 04-5674 Filed 3-12-04; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Privacy Act of 1974; System of Records—Office for Civil Rights Complaint Files and Log

**AGENCY:** Office for Civil Rights, Department of Education.

**ACTION:** Notice of an altered system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of proposed alterations to its system of records for the Complaint Files and Log (18-08-01). These alterations serve to update the system of records to reflect current administrative and related procedures, the implementation of a new computer system to maintain what formerly and exclusively were paper files, the deletion and consolidation of the Case Information System into the Complaint Files and Log system, the renumbering of the Complaint Files and Log system notice from 18-08-02 to 18-08-01, revisions to the purpose statement, and the addition of a new routine use disclosure.

**DATES:** The Department seeks comments on the altered system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before April 14, 2004.

The Department filed a report describing the altered system of records covered by this notice with the Chair of the Senate Committee on Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 9, 2004. This altered system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on April 18, 2004, or (2) April 14, 2004, unless the system of records needs to be changed as a result of public comment or OMB review.

**ADDRESSES:** Address all comments about this altered system of records to Sandra G. Battle, Director, Program Legal Group, Office for Civil Rights, room 5036, MES Building, 400 Maryland Avenue, SW., Washington, DC 20202-6132. The fax number for submitting comments is (202) 260-3040. If you prefer to send your comments through the Internet, use the following address: [comments@ed.gov](mailto:comments@ed.gov).

You must include the term “Complaint Files and Log” in the subject line of the electronic message.

During and after the comment period, you may inspect all public comments about this notice in room 5036, MES Building, 330 C Street, SW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m., eastern time,

Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Sandra G. Battle. Telephone: (202) 205-5526. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

### SUPPLEMENTARY INFORMATION:

#### Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of an altered system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a “record” and the system, whether manual or computer-based, is called a “system of records.” The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports for OMB whenever the agency publishes a new or altered system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Governmental Affairs and the Chair of the House Committee on Government Reform.

Examples of when a system of records is considered altered include an expansion of the types or categories of information or an addition of a new routine use for information maintained in the system. Since the last publication of these system of records notices in the **Federal Register** on June 4, 1999 (64 FR

30143–30146), a number of technical changes are needed to update and accurately describe the current system of records.

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Dated: March 9, 2004.

**Kenneth L. Marcus,**

*Senior Counsel for Civil Rights.*

For the reasons discussed in the preamble, the Office for Civil Rights of the U.S. Department of Education publishes a notice of an altered system of records as follows:

#### DELETED SYSTEM

The Department of Education (Department) identifies system of records 18–08–02, Complaint Files and Log, 64 FR 30145–30146 (June 9, 1999) to be deleted, because it has been merged into and consolidated with the following system of records notice.

#### ALTERED SYSTEM

**18–08–01**

##### SYSTEM NAME:

Complaint Files and Log.

##### SECURITY CLASSIFICATION:

None.

##### SYSTEM LOCATION(S):

Office for Civil Rights, U.S. Department of Education, 330 C Street, SW., Room 5000 MES, Washington, DC 20202.

See the Appendix at the end of this system notice for additional system locations.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on individuals or groups of individuals who have made civil rights complaints to the Office for Civil Rights (OCR).

#### CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

This system consists of records relating to complaints to the Office for Civil Rights including—

- (1) Names, addresses, and telephone numbers of complainants, complaint allegations, and results of investigations;
- (2) Correspondence related to the complaint, which may include copies of correspondence sent by OCR to others, correspondence received by OCR, records of telephone conversations, copies of e-mail, or other written communications;
- (3) Investigator and attorney memoranda;
- (4) Interview notes or transcriptions and witness statements;
- (5) Documents gathered during an investigation, including photographs of persons or things, portions of a recipient institution's records, and complainants' or other individuals' scholastic, medical, or employment records; and
- (6) Charts, prepared exhibits, or other analytical materials prepared by OCR staff or by consultants retained by OCR.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, *et seq.*; Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*; Title II of the Americans With Disabilities Act, 42 U.S.C. 12131, *et seq.*; and the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905.

#### PURPOSE(S):

The Office for Civil Rights uses this system for the following purposes:

- (1) To determine and to document whether there was discrimination against the complainant or others;
- (2) To record the steps taken to resolve a case;
- (3) To store materials gathered, developed, or received during the processing of a case;
- (4) To document the steps taken to resolve a case;
- (5) To report the status of individual complaints to OCR managers and staff for tracking the progress of individual cases and to provide information used to prepare summaries of case processing activities; and
- (6) To report to Congress, other agencies, and to the public to explain or document the work that has been accomplished.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in

this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Computer Matching and Privacy Protection Act of 1988, under a computer matching agreement.

(1) *Disclosure to Congress, Other Agencies, or the Public.* The Department may disclose summary information derived from this system of records to Congress, other agencies, and the public to describe the kinds of work OCR has done or to document the work OCR has accomplished.

(2) *Disclosure to Recipients of Federal Financial Assistance, Witnesses, or Consultants.* The Department will release information contained in this system of records to recipients of Federal financial assistance, witnesses, or consultants if it determines that the release would assist OCR in resolving a civil rights complaint or in obtaining additional information or expert advice relevant to the investigation.

(3) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, tribal, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulations if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(4) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulations, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulations, or order issued pursuant thereto.

(5) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the following parties is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d)

of this routine use under the conditions specified in those paragraphs:

- (i) The Department of Education, or any component of the Department; or
- (ii) Any Department employee in his or her official capacity; or
- (iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has been requested to provide or arrange for representation for the employee;
- (iv) Any Department employee in his or her individual capacity if the agency has agreed to represent the employee; or
- (v) The United States if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosures.* If the Department or one of its components determines that disclosure of certain records to an adjudicative body before which the Department or one of its components is authorized to appear or to an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, Counsels, Representatives, and Witnesses.* If the Department or one of its components determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the litigation or ADR, the Department or its component may disclose those records as a routine use to the party, counsel, representative, or witness.

(6) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the DOJ if the Department determines that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(7) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of

records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(8) *Congressional Member Disclosure.* The Department may disclose information to a Member of Congress from the record of an individual in response to an inquiry from the Member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Not applicable.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

The records in this system are contained in digital storage media and in file folders.

**RETRIEVABILITY:**

The records in this system are indexed by and retrievable by the name of the complainant, the complaint number, the name of the entity against which the complaint was filed, the basis for the alleged discrimination, and the stage of case processing.

**SAFEGUARDS:**

The system is maintained on secure computer servers located in one or more secure Department of Education network server facilities. OCR staff access information in the system through use of personal computers located in OCR offices. Data are transmitted among offices on secure servers through the Department of Education's Secure Wide Area Network. The Department of Education maintains the servers on which the records are stored in secure locations with controlled access. Access to OCR offices is controlled and available only to OCR staff and authorized visitors. Authorized OCR staff access the information system using individual user identifiers and passwords.

The system also limits data access by type of user and controls users' ability

to alter records within the system. File folders containing non-digital information in the system are kept in lockable storage rooms. Access to offices in which storage rooms are located is restricted to OCR staff and authorized visitors. Similar records made before December 1993 were stored on magnetic tape, a format that is no longer in use, in a secure location in OCR Headquarters.

**RETENTION AND DISPOSAL:**

Records are disposed pursuant to the Education Department Records Disposition Schedule (ED/RDS) Part 4, item 1, as approved by the National Archives and Records Administration (NARA). Digital records are destroyed or deleted when no longer needed for administrative, legal, or audit purposes. Records maintained at the Headquarters Office will be transferred to the Federal Records Center (FRC) after the case has been inactive for five years. Records at the regional offices are transferred to the FRC after the record has been inactive for two years. Records that are no longer needed will be destroyed 15 years after the end of the fiscal year in which the case is resolved.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Assistant Secretary for Civil Rights, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5000, MES Building, Washington, DC 20202.

**NOTIFICATION PROCEDURE:**

This system is exempted from 5 U.S.C. 552a(e)(4)(G) pursuant to 34 CFR 5b.11(c)(2)(iii).

**RECORD ACCESS PROCEDURES:**

This system is exempted from 5 U.S.C. 552a(e)(4)(H) pursuant to 34 CFR 5b.11(c)(2)(iii).

**CONTESTING RECORD PROCEDURES:**

This system is exempted from 5 U.S.C. 552a(e)(4)(H) pursuant to 34 CFR 5b.11(c)(2)(iii).

**RECORD SOURCE CATEGORIES:**

Records are derived from information in complaint investigation files.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The Secretary of Education has exempted by regulations the two record systems that are being combined into the Complaint Files and Log record system, which is thereby also exempt from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552(k)(2) (civil enforcement):

- (1) 5 U.S.C. 552a(c)(3), regarding access to an accounting of disclosures of records.

(2) 5 U.S.C. 552a(d)(1) through (4) and (f), regarding notification of and access to records and correction or amendment of records.

(3) 5 U.S.C. 552a(e)(4)(G) and (H) regarding inclusion of information in the system notice about procedures for notification, access, and correction of records.

These exemptions are stated in 34 CFR 5b.11. As indicated in 34 CFR 5b.11, individuals will be provided with information from a record in this system if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of that material, except when in accordance with the following provisions of 5 U.S.C. 552a(k)(2):

(1) Disclosure of the information would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

(2) If information was obtained prior to September 28, 1975, disclosure of the information would reveal the identity of the source under an implied promise that the identity of the source would be held in confidence.

#### **Appendix to 18-08-01**

##### **ADDITIONAL SYSTEM LOCATIONS:**

OCR, Boston Office, J.W. McCormack Post Office and Court House Building, Room 701, Boston, MA 02109.

OCR, New York Office, 75 Park Place, 14th Floor, New York, NY 10007.

OCR, Philadelphia Office, 100 Penn Square East, Suite 515, Philadelphia, PA 19107.

OCR, Chicago Office, 111 North Canal Street, Room 1053, Chicago, IL 60606.

OCR, Cleveland Office, Bank One Center, 600 Superior Avenue, East, Suite 750, Cleveland, OH 44114.

OCR, Atlanta Office, Sam Nunn Federal Office Building, 61 Forsyth Street, SW., Suite 19T70, Atlanta, GA 30303.

OCR, Dallas Office, 1999 Bryan Street, Suite 2600, Dallas, TX 75201.

OCR, Kansas City Office, 8930 Ward Parkway, Suite 2037, Kansas City, MO 64114.

OCR, Denver Office, Colonnade Building, 1244 Speer Boulevard, Suite 300, Denver, CO 80204.

OCR, San Francisco Office, Old Federal Building, 50 United Nations Plaza, Room 239, San Francisco, CA 94102.

OCR, Seattle Office, Henry M. Jackson Federal Building, 915 Second Avenue, Room 3310, Seattle, WA 98174.

OCR, District of Columbia Office, 100 Pennsylvania Ave., NW., Rm. 316, P.O. Box 14620, Washington, DC 20004.

[FR Doc. 04-5675 Filed 3-12-04; 8:45 am]

**BILLING CODE 4000-01-P**