



Privacy Impact Assessment (PIA) for the

OES -- Office of Hearings and Appeals E-Filing System

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This PIA was originally approved on 11/26/2018 and reviewed on 11/26/2018 by the system owner certifying the information contained here is current and up to date.

Contact Point

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System Owner

Name/Title: Kathleen M. Styles, Director OHA

Program Office: Office of Management (OM)

Please submit completed Privacy Impact Assessments to the Privacy Safeguards Division at privacysafeguards@ed.gov.

Please complete this **Privacy Impact Assessment (PIA)** on how personally identifiable information (PII) is collected, stored, protected, shared, and managed electronically by your system. You may wish to consult with your ISSO in completing this document. **If a question does not apply to your system, please answer with N/A.**

All text responses are limited to 1,500 characters. If you require more space, please contact the Privacy Safeguards Team.

1. Introduction

1.1 Describe the system including the system name, system acronym, and a brief description of the major functions.

OES is the online filing system for all matters before OHA (Office of Hearings and Appeals). When matters are appealed to OHA, an electronic case file is created in OES. All pleadings, exhibits and other documents filed with the court become attached to the electronic case file. The use of OES is not mandatory, but OHA opens an OES case file for all matters, regardless of whether the Respondent elects to use e-filing. As of January 1, 2019, OES will be the official file for all OES matters.

Matters before OES include, but are not limited to, disputes between the Department and financial assistance recipients (schools, school districts, a state's education department, students and etc.), certain debarment actions, and disputes between the Department and current or former employees regarding salary overpayment(s).

1.2 Describe the purpose for which the personally identifiable information (PII)¹ is collected, used, maintained or shared.

OES contains various types of PII, depending on the case. In salary overpayment cases, e.g., evidence submitted to OES can include individual financial information, payroll information, and correspondence relating to the alleged debt. For disputes with schools, school districts, a state's education department, students and etc., the PII generally comes in the form of evidence relating to students' attendance, students' academic record and financial records including payments to an institution and/or student. In all cases, any PII collected is used by OHA only for adjudicatory purposes. The documents containing PII in OES are submitted by the parties to allow the court to consider evidence in rendering a decision.

¹ The term "personally identifiable information" refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. <https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>

1.3 Is this a new system, or one that is currently in operation?

Currently Operating System

1.4 Is this PIA new, or is it updating a previous version? If this is an update, please include the publication date of the original.

New PIA

Original Publication Date:

1.5 Is the system operated by the agency or by a contractor?

Contractor

2. Legal Authorities and Other Requirements

If you are unsure of your legal authority, please contact your program attorney.

2.1 What specific legal authorities and/or agreements permit and regulate the collection and use of data by the system?

OHA's jurisdiction is limited to matters referred to the office by statute, regulation, directive, or other internal policy document. The current list of authorities is listed below:

- General Education Provisions Act, as amended by Public Law 100-297
- Sections 5(d)(2)(A) and 5(g) of the Impact Aid Act (Public Law 81-874)
- Title VI of the Civil Rights Act of 1964, as amended
- Title IX of the Education Amendments of 1972, as amended
- Section 504 of the Rehabilitation Act of 1973, as amended
- Age Discrimination Act of 1975, as amended
- Program Fraud Civil Remedies Act, as amended, Public Law 99-509, Title VI, subtitle B
- Civil penalty proceedings under section 432(g) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1082(g)
- Review proceedings under section 432(h)(2) of the HEA, 20 U.S.C. 1082(h)(2)
- Review proceedings under section 432(h)(3) of the HEA, 20 U.S.C. 1082(h)(3)
- Proceedings under section 487(b) of the HEA, 20 U.S.C. 1094(b)
- Proceedings under section 20 U.S.C. 1094(c)(1)(F) and 20 U.S.C. 1094(c)(3)(A)

SORN

2.2 Is the information in this system retrieved by an individual's name or personal identifier such as a Social Security Number or other identification? Please answer **YES** or **NO**.

No

2.2.1 N/A If the above answer is **YES** this system will need to be covered by a Privacy Act System of Records Notice(s) (SORN(s)).² Please provide the SORN name and number, or indicate that a SORN is in progress.

Records Management

If you do not know your records schedule, please consult with your records liaison or send an email to RMHelp@ed.gov.

2.3 Does a records retention schedule, approved by the National Archives and Records Administration (NARA), exist for the records contained in this system? If yes, please provide the NARA schedule number.

The information in OES is covered by Schedule 243, "Decisions Made by Hearing Officials, Administrative Law Judges, the Secretary of Education and Members of CRRA," and by Schedule 241, "Administrative Adjudication Case Files for the Office of Hearings and Appeals."

² A System of Records Notice (SORN) is a formal notice to the public that identifies the purpose for which PII is collected, from whom and what type of PII is collected, how the PII is shared externally (routine uses), and how to access and correct any PII maintained by ED. <https://connected.ed.gov/om/Documents/SORN-Process.pdf>

2.4 Is the PII contained in this system disposed of appropriately, and in accordance with the timelines in the records disposition schedule? Please answer **YES** or **NO**.

Yes

3. Characterization and Use of Information

Collection

3.1 List the specific personal information data elements (e.g., name, email, address, phone number, date of birth, Social Security Number, etc.) that the system collects, uses, disseminates, or maintains.

The specific PII varies by type of case. The below list is not inclusive, but these items are somewhat common in FSA cases. Overpayment cases generally have salary information and name.

Name (students and sometimes parents as well)

SSN (generally only last 4 digits)

Address

Email contact information

Telephone number

Student ID number (generally a number created for litigation, not the true student ID number)

Payroll information

Employee's personnel records

Taxpayer ID and tax transcripts

Banking and/or financial account records, numbers or information

Federal/state criminal/civil court records

Medical records

3.2 Does the system collect only the minimum amount required to achieve the purpose stated in Question 1.2? Please answer **YES** or **NO**.

Yes

3.3 What are the sources of information collected (e.g., individual, school, another agency, commercial sources, etc.)?

All information in OES comes from the litigants -- the Department and the non-federal party.

3.4 How is the information collected from stated sources (paper form, web page, database, etc.)?

Parties submit their information by uploading it through a restricted access site.

3.5 How is this information validated or confirmed?³

OHA generally does not validate or confirm the information, rather it relies on the opposing party to do any validation. For example, if a school submitted information that the Department challenged, an OGC attorney(s) would review the document in question, and note their objections for the record.

³ Examples include form filling, account verification, etc.

Use

3.6 Describe how and why the system uses the information to achieve the purpose stated in Question 1.2 above.

The Hearing Official reviews the information to analyze the matter and render a decision. The information becomes part of the official administrative record if the matter is appealed to the Secretary or a federal court.

3.7 Is the project using information for testing a system or for training/research purposes? Please answer YES or NO.

No

3.7.1 N/A If the above answer is **YES**, what controls are in place to minimize the risk and protect the data?

3.8 Does the system use "live" PII for the development or testing of another system? Please answer YES or NO.

No

3.8.1 N/A If the above answer is **YES**, please explain.

Social Security Numbers

It is the Department's Policy that, in order to collect Social Security Numbers, the System Owner must state the collection is: 1) authorized by law, 2) necessary for an agency purpose, and 3) there is no reasonable alternative.

3.9 Does the system collect Social Security Numbers? Please answer **YES** or **NO**.

Yes

3.9.1 N/A If the above answer is **YES**, explain the purpose for its collection, and how the SSN will be used. *Please note if the system collects SSNs, the PIA will require a signature by the Assistant Secretary or equivalent.*

While OHA answered "yes," OES does not collect SSNs in the sense mentioned above, rather OHA allows parties to submit evidence that may include SSNs. The parties sometimes submit SSNs to establish matters relevant to the case in question. For example, a school will sometime submit SSNs for students it contends attended the school, and employees will sometimes submit pay/personnel documentation to support their waiver request.

3.10 N/A Specify any alternatives considered in the collection of SSN and why the alternatives were not selected.

OHA considered redacting all SSNs, but concluded that SSNs are necessary for adjudication in many cases. Instead OHA has elected to minimize the presence SSN by directing the parties, particularly in FSA disputes, to redact all PII with the exception of name and last 4 digits of SSN. Redaction of all PII is infeasible as the documentation can be voluminous, and can be comprised of large piles of poorly-copied/hand-written documents. Additionally, PII is needed for adjudication.

4. Notice

4.1 How does the system provide individuals notice about the collection of PII prior to the collection of information (i.e. written Privacy Act notice, link to a privacy policy, etc.)? If notice is not provided, explain why not.

OHA does not have a PII Statement for OES users because OHA does not typically collect PII from individuals. Instead parties that wish to submit evidence (which may include PII), upload it into OES. Some of the information originates in other Departmental systems, such as FSA systems that process student financial assistance information. Individual users of those other systems receive privacy notice when they upload their PII. The majority of PII in OES comes from a process in which OHA is not a party and therefore OHA is unable to notify the individual/entity submitting PII to the program office of OHA's inheritance of PII.

For the salary overpayment cases, the individual seeking redress will sometimes submit PII if they believe it will help their case, but PII is not required.

4.2 N/A Provide the text of the notice, or the link to the webpage where the notice is posted.

4.3 What opportunities are available for individuals to consent to uses, decline to provide information, or opt out of the project?

Most system users are external entities, such as schools and state agencies. These entities can elect to submit or not submit PII to the program office. OHA places in OES what the entity has elected to submit to program office. Individual employees of the Department may elect to use OES for salary overpayment matters.

5. Information Sharing

Internal

5.1 Will information be shared internally with other ED organizations? Please answer **YES** or **NO**. If the answer is **NO**, please skip to Question 5.4.

Yes

5.2 N/A What information will be shared and with whom?

When cases are appealed to federal court the administrative record, including evidence, is reviewed by OGC for PII prior to submittal.

5.3 N/A What is the purpose for sharing the specified information with the specified internal organizations?
Does this purpose align with the stated purpose in Question 1.2 above?

When cases are appealed to federal court the administrative record, including evidence, is reviewed by OGC for PII prior to submittal.

External

5.4 Will the information contained in the system be shared with external entities (e.g. another agency, school district, etc.)? Please answer **YES** or **NO**. If the answer is **NO**, please skip to Question 5.8.

No

5.5 N/A What information will be shared and with whom? Note: If you are sharing Social Security Numbers, externally, please specify to whom and for what purpose.

5.6 N/A What is the purpose for sharing the specified information with the specified external organizations? Does this purpose align with the stated purpose in Question 1.2 above?

5.7 N/A How is the information shared and used by the external entity?

5.8 N/A Is the sharing pursuant to a Computer Matching Agreement (CMA), Memorandum of Understanding (MOU) or other type of approved sharing agreement with another agency? Please answer **YES** or **NO**.

5.9 N/A Does the project place limitation on re-disclosure? Please answer **YES** or **NO**.

6. Redress⁴

6.1 What are the procedures that allow individuals to access their own information?

Registered e-filers can view the documentation contained in their OES file.

⁴ If the system has a System of Records Notice (SORN), please provide a link to the SORN in Question 6.1 and proceed to Section 7 - Safeguards.

6.2 What procedures are in place to allow the subject individual to correct inaccurate or erroneous information?

The whole purpose of OES is to allow litigants (including individuals) to dispute inaccurate or erroneous information. The individual would simply note inaccuracies in a filing to OHA.

6.3 How does the project notify individuals about the procedures for correcting their information?

The Hearing Official issues an Order Governing Proceedings in each matter that informs litigants, including individuals, how to file documents with the court.

7. Safeguards

If you are unsure which safeguards will apply, please consult with your [ISSO](#).

7.1 Does the principal office work with their CSO/ISSO to build privacy & security into the system and build privacy extensions to the extent feasible? Please answer **YES** or **NO**.

Yes

7.2 What procedures or access controls are in place to determine which users may access the information and how does the project determine who has access?

OES is a limited access system, meaning litigants must register with OHA as an e-filer to be granted access to the system. An e-filer account is only granted access to a case if the requester is a party to the case. An e-filer account can only access case files in which the account has been granted access. OHA reviews access lists regularly.

7.3 What administrative, technical, and physical safeguards are in place to protect the information?

OES is run by a contractor named Micropact, using a system called "Entellitrak." Entellitrak is Fed-Ramp certified at the NIST Moderate level and has appropriate administrative, technical, and physical safeguards.

For additional physical security, it is worth noting that OHA itself is located in segregated space requiring PIV card access, which is limited to OHA personnel and escorted guests.

7.4 Is an Authority to Operate (ATO) required? Please answer **YES** or **NO**.

No

7.5 Is the system able to provide account of any disclosures made? Please answer **YES** or **NO**.

Yes

7.6 Is the information in the system appropriately secured in accordance with the IT security requirements and procedures as required by federal law and policy? Please answer YES or NO.

Yes

7.7 Has a risk assessment been conducted where appropriate security controls to protect against that risk been identified and implemented? Please answer YES or NO.

Yes

7.8 Please describe any monitoring, testing or evaluation conducted on a regular basis to ensure the controls continue to work properly at safeguarding the information.

As required to maintain its FED Ramp certification; Micropact performs monitoring, testing and evaluation of their software. Micropact is responsible for ensuring access controls are working correctly as defined in the software.

8. Auditing and Accountability

8.1 How does the system owner ensure that the information is used in accordance with stated practices in this PIA?

In OES, each case file contains a list of authorized users. The authorized user assigned list is reviewed by the hearing official and the administrator for any access discrepancies. A user that is not listed in the case assignment list cannot access that particular case. A party wishing to have access to a case must file a Notice of Appearance with OHA. That notice is reviewed by the Hearing Official assigned to the requested case. The Hearing Official will make a determination if case access is to be granted to a requesting party.

8.2 What are the privacy risks associated with this system and how are those risks mitigated?

The primary privacy risk in this system is that it contains some SSNs; which could be exposed. We mitigate this risk through minimization and generally requiring parties to redact PII except for name and last four digits. In addition case access is strictly controlled and only those with authorized access can see a case. The system enforces the security policy and access given to a user.