

Office of the Secretary, Education

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(ii) The name and address of the person or entity to whom the disclosure is made.

(3) Any subject individual may request access to an accounting of disclosures of a record. The subject individual shall make a request for access to an accounting in accordance with the procedures in § 5b.5 of this part. A subject individual will be granted access to an accounting of the disclosures of a record in accordance with the procedures of this part which govern access to the related record. Access to an accounting of a disclosure of a record made under paragraph (b)(7) of this section may be granted at the discretion of the responsible Department official.

§ 5b.10 Parents and guardians.

For the purpose of this part, a parent or guardian of any minor or the legal guardian or any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction is authorized to act on behalf of an individual or a subject individual. Except as provided in paragraph (b)(2) of § 5b.5, of this part governing procedures for verifying an individual's identity, an individual authorized to act on behalf of a minor or legal incompetent will be viewed as if he were the individual or subject individual.

§ 5b.11 Exempt systems.

(a) *General policy.* The Act permits an agency to exempt certain types of systems of records from some of the Act's requirements. It is the policy of the Department to exercise authority to exempt systems of records only in compelling cases.

(b) *Specific systems of records exempted under (j)(2).* The Department exempts the Investigative Files of the Inspector General ED/OIG (18-10-01) and the Hotline Complaint Files of the Inspector General ED/OIG (18-10-04) systems of records from the following provisions of 5 U.S.C. 552a and this part:

(1) 5 U.S.C. 552a(c)(3) and § 5b.9(a)(1) and (c)(3) of this part, regarding access to an accounting of disclosures of a record.

(2) 5 U.S.C. 552a(c)(4) and §§ 5b.7(c) and 5b.8(b) of this part, regarding notification to outside parties and agencies of

correction or notation of dispute made in accordance with 5 U.S.C. 552a(d).

(3) 5 U.S.C. 552a(d) (1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification or access to records and correction or amendment of records.

(4) 5 U.S.C. 552a(e)(1) and § 5b.4(a)(1) of this part, regarding maintaining only relevant and necessary information.

(5) 5 U.S.C. 552a(e)(2) and § 5b.4(a)(2) of this part, regarding collection of information from the subject individual.

(6) 5 U.S.C. 552a(e)(3) and § 5b.4(a)(3) of this part, regarding notice to individuals asked to provide information to the Department.

(7) 5 U.S.C. 552a(e)(4) (G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

(8) 5 U.S.C. 552a(e)(5), regarding maintaining records with requisite accuracy, relevance, timeliness, and completeness.

(9) 5 U.S.C. 552a(e)(8), regarding service of notice on subject individual if a record is made available under compulsory legal process if that process becomes a matter of public record.

(10) 5 U.S.C. 552a(g), regarding civil remedies for violation of the Privacy Act.

(c) *Specific systems of records exempted under (k)(2).* (1) The Department exempts the Investigative Files of the Inspector General ED/OIG (18-10-01) and the Hotline Complaint Files of the Inspector General ED/OIG (18-10-04) from the following provisions of 5 U.S.C. 552a and this part to the extent that these systems of records consist of investigatory material and complaints that may be included in investigatory material compiled for law enforcement purposes:

(i) 5 U.S.C. 552a(c)(3) and § 5b.9(c)(3) of this part, regarding access to an accounting of disclosures of records.

(ii) 5 U.S.C. 552a(d) (1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification of and access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(1) and § 5b.4(a)(1) of this part, regarding the requirement to maintain only relevant and necessary information.

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

(2) The Department exempts the Complaint Files and Log, Office for Civil Rights (18-08-01) from the following provisions of 5 U.S.C. 552a and this part:

(i) 5 U.S.C. 552a(c)(3) and §5b.9(c)(3) of this part, regarding access to an accounting of disclosures of records.

(ii) 5 U.S.C. 552a(d) (1) through (4) and (f) and §§5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification of and access to records and correction or amendment of records.

(iii) 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.

(d) *Specific systems of records exempted under (k)(5)*. The Department exempts the Investigatory Material Compiled for Personnel Security and Suitability Purposes (18-05-17) system of records from the following provisions of 5 U.S.C. 552a and this part:

(1) 5 U.S.C. 552a(c)(3) and §5b.9(c)(3) of this part, regarding access to an accounting of disclosures of records.

(2) 5 U.S.C. 552a(d) (1) through (4) and (f) and §§5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, 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.

(e) *Basis for exemptions taken under (j)(2), (k)(2), and (k)(5)*. The reason the Department took each exemption described in this section is stated in the preamble for the final rulemaking document under which the exemption was promulgated. These final rulemaking documents were published in the FEDERAL REGISTER and may be obtained from the Department of Education by mailing a request to the following address: U.S. Department of Education, Privacy Act Officer, Office of the Chief Information Officer, Regulatory Information Management Group, Washington, DC 20202-4651.

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(f) *Notification of or access to records in exempt systems of records*. (1) If a system of records is exempt under this section, an individual may nonetheless request notification of or access to a record in that system. An individual shall make requests for notification of or access to a record in an exempt system or records in accordance with the procedures of §5b.5 of this part.

(2) An individual will be granted notification of or access to a record in an exempt system but only to the extent that notification or access would not reveal the identity of a source who furnished the record to the Department under an express promise, and, prior to September 27, 1975, an implied promise, that his identity would be held in confidence if—

(i) The record is in a system of records or that portion of a system of records that is exempt under subsection (k)(2), but not under subsection (j)(2), of the Act and the individual has been, as a result of the maintenance of the record, denied a right, privilege, or benefit to which he or she would otherwise be eligible; or

(ii) The record is in a system of records that is exempt under subsection (k)(5) of the Act.

(3) If an individual is not granted notification of or access to a record in a system of records exempt under subsections (k)(2) (but not under subsection (j)(2)) and (k)(5) of the Act in accordance with this paragraph, he or she will be informed that the identity of a confidential source would be revealed if notification of or access to the record were granted to the individual.

(g) *Discretionary actions by the responsible Department official*. Unless disclosure of a record to the general public is otherwise prohibited by law, the responsible Department official may, in his or her discretion, grant notification of or access to a record in a system of records that is exempt under this section. Discretionary notification of or access to a record in accordance with this paragraph will not be a precedent for discretionary notification of or access to a similar or related record and will not obligate the responsible Department official to exercise his or her discretion to grant notification of or

access to any other record in a system of records that is exempt under this section.

[58 FR 44424, Aug. 20, 1993, as amended at 64 FR 31066, June 9, 1999; 69 FR 12246, Mar. 15, 2004]

§ 5b.12 Contractors.

(a) All contracts entered into on or after September 27, 1975 which require a contractor to maintain or on behalf of the Department to maintain, a system of records to accomplish a Department function must contain a provision requiring the contractor to comply with the Act and this part.

(b) All unexpired contracts entered into prior to September 27, 1975 which require the contractor to maintain or on behalf of the Department to maintain, a system of records to accomplish a Department function will be amended as soon as practicable to include a provision requiring the contractor to comply with the Act and this part. All such contracts must be so amended by July 1, 1976 unless for good cause the appeal authority identified in § 5b.8 of this part authorizes the continuation of the contract without amendment beyond that date.

(c) A contractor and any employee of such contractor shall be considered employees of the Department only for the purposes of the criminal penalties of the Act, 5 U.S.C. 552a(i), and the employee standards of conduct listed in appendix A of this part where the contract contains a provision requiring the contractor to comply with the Act and this part.

(d) This section does not apply to systems of records maintained by a contractor as a result of his management discretion, *e.g.*, the contractor's personnel records.

§ 5b.13 Fees.

(a) *Policy.* Where applicable, fees for copying records will be charged in accordance with the schedule set forth in this section. Fees may only be charged where an individual requests that a copy be made of the record to which he is granted access. No fee may be charged for making a search of the system of records whether the search is manual, mechanical, or electronic. Where a copy of the record must be

made in order to provide access to the record (*e.g.*, computer printout where no screen reading is available), the copy will be made available to the individual without cost.

(b) *Fee schedule.* The fee schedule for the Department is as follows:

(1) Copying of records susceptible to photocopying—\$.10 per page.

(2) Copying records not susceptible to photocopying (*e.g.*, punch cards or magnetic tapes)—at actual cost to be determined on a case-by-case basis.

(3) No charge will be made if the total amount of copying does not exceed \$25.

APPENDIX A TO PART 5B—EMPLOYEE STANDARDS OF CONDUCT

(a) *General.* All employees are required to be aware of their responsibilities under the Privacy Act of 1974, 5 U.S.C. 552a. Regulations implementing the Act are set forth in 34 CFR 5b. Instruction on the requirements of the Act and regulation shall be provided to all new employees of the Department. In addition, supervisors shall be responsible for assuring that employees who are working with systems of records or who undertake new duties which require the use of systems of records are informed of their responsibilities. Supervisors shall also be responsible for assuring that all employees who work with such systems of records are periodically reminded of the requirements of the Act and are advised of any new provisions or interpretations of the Act.

(b) *Penalties.* (1) All employees must guard against improper disclosure of records which are governed by the Act. Because of the serious consequences of improper invasions of personal privacy, employees may be subject to disciplinary action and criminal prosecution for knowing and willful violations of the Act and regulation. In addition, employees may also be subject to disciplinary action for unknowing or unwillful violations, where the employee had notice of the provisions of the Act and regulations and failed to inform himself sufficiently or to conduct himself in accordance with the requirements to avoid violations.

(2) The Department may be subjected to civil liability for the following actions undertaken by its employees:

(a) Making a determination under the Act and §§ 5b.7 and 5b.8 of the regulation not to amend an individual's record in accordance with his request, or failing to make such review in conformity with those provisions;

(b) Refusing to comply with an individual's request for notification of or access to a record pertaining to him;