

DEPARTMENT OF EDUCATION**Privacy Act of 1974; System of Records**

AGENCY: Office of Inspector General, 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 proposing to revise the system of records for the Investigative Files of the Inspector General ED/OIG (18-10-01), 64 FR 30151-30153 (June 4, 1999), as amended, 67 FR 4415 (January 30, 2002). This notice expands the categories of information maintained in the system and changes the equipment configuration used to store the information. This notice also proposes two new routine uses for the information contained in the system. This system of records provides essential support for investigative activities of the Office of Inspector General (OIG) relating to the Department's programs and operations, enabling the OIG to secure and maintain the necessary information and to coordinate with other law enforcement agencies as appropriate.

DATES: The Department seeks comments on the proposed new routine use disclosures described in this system of records notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before July 28, 2003.

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 June 20, 2003. 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 July 30, 2003, or (2) July 28, 2003, 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 the Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW., room 4132, Mary E. Switzer Building, Washington, DC 20202-1510. If you prefer to send your comments through

the Internet, use the following address: comments@ed.gov

You must include the term "OIG Investigative Files" in the subject line of your electronic message.

During and after the comment period, you may inspect all public comments about this notice in room 4022, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8 a.m. and 4:30 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: Shelley Shepherd, Assistant Counsel to the Inspector General, 400 Maryland Avenue, SW., MES Building, room 4020, Washington, DC 20202-1510. Telephone: (202) 205-5606. 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 requires the Department to publish in the **Federal Register** this notice of an altered system of records (5 U.S.C. 552a(e)(4) and (11)). 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 to OMB whenever the agency publishes a new or altered system of records.

A system of records is considered "altered" whenever an agency expands the types or categories of information maintained, significantly expands the types or categories of individuals about whom records are maintained, changes the purpose for which the information is used, changes the equipment configuration in a way that creates substantially greater access to the records, adds an exemption pursuant to subsections (j) or (k) of the Privacy Act, or adds a routine use disclosure to the system. Since the last amendment to this system of records, which was published in the **Federal Register** on January 30, 2002, (67 FR 4415), a number of technical changes are needed to update and accurately describe the current system of records. This notice expands the type of information maintained in the system, clarifies the categories of individuals, adds two new routine use disclosures, and changes the equipment configuration used to store the information in order to create greater access to the records by OIG employees through the use of a Web-based computer system.

Under the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix, Inspectors General, including the Department's Inspector General, are responsible for conducting, supervising, and coordinating investigations relating to programs and operations of the Federal agency for which their office is established. This system of records facilitates the OIG's performance of this statutory duty. The changes proposed in the attached notice are intended to expand the information maintained in the system, change the equipment configuration used to store the information in order to create greater access to the records by OIG staff, and add routine uses to make statutorily required disclosures of information contained in the system. Collectively, these revisions will enhance the ability of the OIG to combat fraud, waste, and abuse in the Department's programs and operations, as required by the Inspector General Act.

This system includes records on individuals who are the subject of open or closed OIG investigations. The records contain evidence compiled by OIG investigators, investigative reports, referrals to the Department and to other investigative or prosecutorial authorities, and records of disposition of cases. These records include, but are not limited to, electronic information including names, addresses, social security numbers, dates of birth, and

aliases for subjects, targets, witnesses, and victims associated with investigations; reports of interviews; investigative memoranda; requests and approvals for case openings and closings and for the use of special investigative techniques requiring approval by management; and electronic copies of photographs, scanned documents, and electronic media such as audio and video. The system will store investigative work products, as well as all investigation results and other tracking information needed to identify trends, patterns, and other indicators of fraud and abuse within the Department's programs and operations.

The information in this system of records will be used for purposes of—

- (1) conducting and documenting investigations by the OIG or other investigative agencies regarding the Department's programs and operations and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations that have the authority to bring criminal prosecutions or civil or administrative actions, or to impose other disciplinary sanctions;
- (2) documenting the outcome of OIG investigations;
- (3) maintaining a record of the activities that were the subject of investigations;
- (4) reporting investigative findings to other Department components for their use in operating and evaluating their programs or operations, and in the imposition of civil or administrative sanctions;
- (5) maintaining a record of complaints and allegations received relative to Department programs and operations and documenting the outcome of OIG reviews of those complaints and allegations;
- (6) coordinating relationships with other Federal agencies, State and local governmental agencies, and nongovernmental entities in matters relating to the statutory responsibilities of the OIG;
- (7) acting as a repository and source for information necessary to fulfill the reporting requirements of the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix;
- (8) reporting on the activities of the Inspector General to the President's Council on Integrity and Efficiency; and
- (9) participating in the investigative qualitative assessment review process requirements of the Homeland Security Act of 2002 (Pub. L. 107-296.)

Electronic Access To This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet

at the following site: <http://www.ed.gov/legislation/FedRegister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Due to the extensive revisions in this notice, it is being published in its entirety.

Dated: June 9, 2003.

John P. Higgins, Jr.,
Inspector General.

For the reasons discussed in the preamble, the Inspector General of the U.S. Department of Education publishes a notice of an altered system of records to read as follows:

18-10-01

SYSTEM NAME:

Investigative Files of the Inspector General.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

Office of the Inspector General, Investigation Services (AIGI), U.S. Department of Education, 330 C Street, SW., Mary E. Switzer Building, Room 4132, Washington, DC 20202. See the Appendix at the end of this notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories include subjects, targets, witnesses, victims, current and former employees of the U.S. Department of Education (Department), and individuals who have any relationship to financial assistance or other educational programs administered by the Department, or to management concerns of the Department, including but not limited to—grantees, subgrantees, contractors, subcontractors, program participants, recipients of Federal funds or federally insured funds, and officers, employees, or agents of institutional recipients or program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories include investigation files pertaining to violations of criminal laws, fraud, waste, and abuse with

respect to the administration of Department of Education programs and operations, and violations of employee Standards of Conduct in 34 CFR part 73. These investigation files will contain, but will not be limited to, electronic information including names, addresses, social security numbers, dates of birth, and aliases for subjects, targets, witnesses, and victims associated with investigations; reports of interview; investigative memoranda; requests and approvals for case openings and closings and for the use of special investigative techniques requiring approval by management; and electronic copies of photographs, scanned documents, and electronic media such as audio and video. The system will store investigation work products, as well as all investigation results and other tracking information needed to identify trends, patterns, and other indicators of fraud and abuse within the Department of Education programs and operations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, (5 U.S.C. Appendix).

PURPOSE(S):

Pursuant to the Inspector General Act of 1978, as amended, the system is maintained for the purposes of—(1) conducting and documenting investigations by the Office of Inspector General (OIG) or other investigative agencies regarding Department of Education programs and operations and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations that have the authority to bring criminal prosecutions or civil or administrative actions, or to impose other disciplinary sanctions; (2) documenting the outcome of OIG investigations; (3) maintaining a record of the activities that were the subject of investigations; (4) reporting investigative findings to other Department of Education components for their use in operating and evaluating their programs or operations and in the imposition of civil or administrative sanctions; (5) maintaining a record of complaints and allegations received relative to Department of Education programs and operations and documenting the outcome of OIG reviews of those complaints and allegations; (6) coordinating relationships with other Federal agencies, State and local governmental agencies, and nongovernmental entities in matters relating to the statutory responsibilities of the OIG; (7) acting as a repository and source for information necessary to fulfill the reporting

requirements of the Inspector General Act, 5 U.S.C. Appendix; (8) reporting on the activities of the Inspectors General to the President's Council on Integrity and Efficiency (PCIE); and (9) participating in the investigative qualitative assessment review process requirements of the Homeland Security Act of 2002 (Pub. L. 107-296.)

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

The OIG 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 OIG may make these disclosures on a case-by-case basis or, if the OIG has met the requirements of the Computer Matching and Privacy Protection Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The OIG may disclose information from this system of records as a routine use to any Federal, State, 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 of the receiving entity.

(2) *Disclosure to Public and Private Entities to Obtain Information Relevant to Department of Education Functions and Duties.* The OIG may disclose information from this system of records as a routine use to public or private sources to the extent necessary to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry.

(3) *Disclosure for Use in Employment, Employee Benefit, Security Clearance, and Contracting Decisions.*

(a) *For Decisions by the Department.* The OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency, other public authority, or professional organization in connection with the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit.

(4) *Disclosure to Public and Private Sources in Connection with the Higher Education Act of 1965, as Amended (HEA).* The OIG may disclose information from this system of records as a routine use to any accrediting agency that is or was recognized by the Secretary of Education pursuant to the HEA; to any guaranty agency that is or was a party to an agreement with the Secretary of Education pursuant to the HEA; or to any agency that is or was charged with licensing or legally authorizing the operation of any educational institution or school that was eligible, is currently eligible, or may become eligible to participate in any program of Federal student assistance authorized by the HEA.

(5) *Litigation Disclosure.*

(a) *Disclosure to the Department of Justice.* If the disclosure of certain records to the Department of Justice (DOJ) is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the OIG may disclose those records as a routine use to the Department of Justice. The OIG may make such a disclosure in the event that one of the following parties is involved in the litigation or has an interest in the litigation:

(i) The Department or any component of the Department;

(ii) Any employee of the Department in his or her official capacity;

(iii) Any employee of the Department in his or her individual capacity if the DOJ has agreed to represent the employee or in connection with a request for that representation; or

(iv) The United States, if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Other Litigation Disclosure.* If disclosure of certain records to a court, adjudicative body before which the Department is authorized to appear, individual or entity designated by the Department or otherwise empowered to resolve disputes, counsel or other representative, party, or potential witness is relevant and necessary to

litigation and is compatible with the purpose for which the records were collected, the OIG may disclose those records as a routine use to the court, adjudicative body, individual or entity, counsel or other representative, party, or potential witness. The OIG may make such a disclosure in the event that one of the following parties is involved in the litigation or has an interest in the litigation:

(i) The Department or any component of the Department;

(ii) Any employee of the Department in his or her official capacity;

(iii) Any employee of the Department in his or her individual capacity if the Department has agreed to represent the employee; or

(iv) The United States, if the Department determines that the litigation is likely to affect the Department or any of its components.

(6) *Disclosure to Contractors and Consultants.* The OIG may disclose information from this system of records as a routine use to the employees of any entity or individual with whom or with which the Department contracts for the purpose of performing any functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection, or other inquiry. 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.

(7) *Debarment and Suspension Disclosure.* The OIG may disclose information from this system of records as a routine use to another Federal agency considering suspension or debarment action if the information is relevant to the suspension or debarment action. The OIG also may disclose information to another agency to gain information in support of the Department's own debarment and suspension actions.

(8) *Disclosure to the Department of Justice.* The OIG may disclose information from this system of records as a routine use to the DOJ to the extent necessary for obtaining the DOJ's advice on any matter relevant to Department of Education programs or operations.

(9) *Congressional Member Disclosure.* The OIG may disclose information from this system of records 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.

(10) *Benefit Program Disclosure.* The OIG may disclose records as a routine

use to any Federal, State, local, or foreign agency, or other public authority, if relevant to the prevention or detection of fraud and abuse in benefit programs administered by any agency or public authority.

(11) *Overpayment Disclosure*. The OIG may disclose records as a routine use to any Federal, State, local, or foreign agency, or other public authority, if relevant to the collection of debts and overpayments owed to any agency or public authority.

(12) *Disclosure to the President's Council on Integrity and Efficiency*. The OIG may disclose records as a routine use to members and employees of the PCIE for the preparation of reports to the President and Congress on the activities of the Inspectors General.

(13) *Disclosure for Qualitative Assessment Reviews*. The OIG may disclose records as a routine use to members of the PCIE, the DOJ, the U.S. Marshals Service, or any Federal agency for the purpose of conducting qualitative assessment reviews of the investigative operations of the Department of Education, Office of Inspector General to ensure that adequate internal safeguards and management procedures are maintained.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Electronic records are stored on a Web-based computer system. Hard-copy records are stored in bar-lock file cabinets.

RETRIEVABILITY:

The records are retrieved by manual or computer search of alphabetical indices or cross-indices. Indices list names, social security numbers, dates of birth, and other personal information of individuals. Indices also list names of companies and organizations.

SAFEGUARDS:

Electronic records are maintained on computer databases that are kept on a secured server in combination-locked rooms. Authorized log-on codes and passwords prevent unauthorized users from gaining access to data and system resources. Hard copy records are maintained in secure rooms, in security-type safes or in bar-lock file cabinets with manipulation-proof combination locks.

RETENTION AND DISPOSAL:

Investigative files are retained and disposed of in accordance with the Department's Records Disposition Schedules (ED/RDS), as approved by the National Archives and Records Administration. You may obtain a copy of the ED/RDS by writing to the System Manager at the following address.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4200, Mary E. Switzer Building, Washington, DC 20202-1510.

NOTIFICATION PROCEDURE:

See "SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT." As provided in 34 CFR 5b.11(b)(3) and (c)(1), the notification procedure is not applicable to criminal investigative files except at the discretion of the Inspector General. To the extent that this procedure may apply to criminal investigative files, it is governed by 34 CFR 5b.11(b). The notification procedure is applicable to non-criminal investigative files under the conditions defined by 34 CFR 5b.11(c) and (f). Under these conditions, it is governed by 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

See "SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT." As provided in 34 CFR 5b.11(b)(3) and (c)(1), the record access procedure is not applicable to criminal investigative files except at the discretion of the Inspector General. To the extent that this procedure may apply to criminal investigative files, it is governed by 34 CFR 5b.11(b). The record access procedure is applicable to non-criminal investigative files under the conditions defined by 34 CFR 5b.11(c) and (f). Under these conditions, it is governed by 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

See "SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT." As provided in 34 CFR 5b.11(b)(3) and (c)(1), the procedure for correction or amendment of records is not applicable to criminal and non-criminal investigative files.

RECORD SOURCE CATEGORIES:

Departmental and other Federal, State, and local government records; interviews of witnesses; and documents and other material furnished by non-governmental sources. Sources may include confidential sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to the general authority in the Privacy Act in 5 U.S.C. 552a(j)(2) (criminal investigative/enforcement files), the Secretary of Education has by regulations exempted the Investigative Files of the Inspector General from the following subsections of the Privacy Act:

5 U.S.C. 552a(c)(3)—access to accounting of disclosure.

5 U.S.C. 552a(c)(4)—notification to outside parties and agencies of correction or notation of dispute made in accordance with 5 U.S.C. 552a(d).

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

5 U.S.C. 552a(e)(1)—maintenance of only relevant and necessary information.

5 U.S.C. 552a(e)(2)—collection of information from the subject individual to the greatest extent practicable.

5 U.S.C. 552a(e)(3)—notice to an individual who is asked to provide information to the Department.

5 U.S.C. 552a(e)(4)(G) and (H)—inclusion of information in the system of records notice regarding Department procedures on notification of, access to, correction of, or amendment of records.

5 U.S.C. 552a(e)(5)—maintenance of records with requisite accuracy, relevance, timeliness, and completeness.

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

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

Pursuant to the general authority in the Privacy Act in 5 U.S.C. 552a(k)(2) (civil investigative files), the Secretary of Education has by regulations exempted the Investigative Files of the Inspector General from the following subsections of the Privacy Act:

5 U.S.C. 552a(c)(3)—access to accounting of disclosure.

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

5 U.S.C. 552a(e)(1)—maintenance of only relevant and necessary information.

5 U.S.C. 552a(e)(4)(G) and (H)—inclusion of information in the system of records notice regarding Department procedures on notification of, access to, correction of, or amendment of records.

These exemptions are stated in 34 CFR 5b.11.

Appendix to 18-10-01**Additional System Locations**

Office of Inspector General, U.S.
Department of Education, J.W. McCormack,
P.O. and Courthouse Building, Devonshire
Street, Room 504, Boston, MA 02109.
Office of Inspector General, U.S.
Department of Education, 75 Park Place, 12th
Floor, New York, NY 10007.
Office of Inspector General, U.S.
Department of Education, The Wanamaker
Building, 100 Penn Square East, Suite 502,
Philadelphia, PA 19107.
Office of Inspector General, U.S.
Department of Education, Atlanta Federal

Center, 61 Forsyth Street, Room 18T71,
Atlanta, GA 30303.

Office of Inspector General, U.S.
Department of Education, 111 N. Canal
Street, Suite 940, Chicago, IL 60606-7204.

Office of Inspector General, U.S.
Department of Education, 1999 Bryan Street,
Suite 2630, Dallas, TX 75201-6817.

Office of Inspector General, U.S.
Department of Education, 8930 Ward
Parkway, Suite 2401, Kansas City, MO
64114-3302.

Office of Inspector General, U.S.
Department of Education, 501 W. Ocean
Boulevard, Suite 1200, Long Beach, CA
90802.

Office of Inspector General, U.S.
Department of Education, 501 I Street, Suite
9-200, Sacramento, CA 95814.

Office of Inspector General, U.S.
Department of Education, Jacaranda
Executive Court, 7890 Peters Road, Suite G-
100, Plantation, FL 33324.

Office of Inspector General, U.S.
Department of Education, Federal Building
and Courthouse, 150 Carlos Chardon Avenue,
Room 747, Box 772, Hato Rey, PR 00918-
1721.

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