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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[DHS–2005–0048]

Privacy Act of 1974; Systems of Records

AGENCY: Privacy Office; Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to exempt two Privacy Act systems of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). These systems are the Freedom of Information Act and Privacy Act System of Records and the Civil Rights and Civil Liberties Matters System of Records.

DATES: This final rule is effective April 21, 2006.

FOR FURTHER INFORMATION CONTACT: Maureen Cooney, Acting Chief Privacy Officer, Department of Homeland Security, Washington, DC, by telephone (571) 227–3813 or by facsimile (571) 227–4171.

SUPPLEMENTARY INFORMATION: On December 4, 2004, the Department of Homeland Security (DHS) published a notice of proposed rulemaking (69 FR 70402) to exempt two Privacy Act systems of records from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The first system of records, DHS/ALL 001, DHS Freedom of Information Act (FOIA) and Privacy Act Records Systems, allows the Department and its components to maintain and retrieve FOIA and Privacy Act files by the personal identifiers of the individuals who have submitted requests for records under either statute. The second system of records, DHS–CRCL–001, Civil Rights and Civil Liberties Matters, covers records alleging abuses of civil rights and civil liberties that are submitted to the Office for Civil Rights and Civil Liberties.

Two comments from one individual were received on this notice of proposed rulemaking. The comments discussed the importance of the transparency that comes from compliance with the FOIA and appeared to take issue generally with DHS's proposal to exempt the two record systems covered by the proposed rule, DHS/ALL 001 and CRCL–001, Civil Rights and Civil Liberties Matters, from certain provisions of the Privacy Act.

While DHS agrees that the FOIA serves important transparency purposes, it nevertheless believes that the exemptions it has sought for these two record systems are narrowly tailored to protect agency interests. Because it is possible that either system of records will contain information that comes from law enforcement or national security files, which are themselves exempt from the Privacy Act, allowing access to that information derived from such files could result in harm to the government. In appropriate circumstances, however, the applicable exemptions may be waived if no harm to the law enforcement or national security interests of DHS would result.

Accordingly, with the exception of two non-substantive edits to correct an error, DHS is implementing the rule as proposed.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, DHS certifies that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities. Further, in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, DHS has determined that this final rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

■ For the reasons stated in the preamble, DHS is amending Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add Appendix C to part 5 to read as follows:

Appendix C—DHS Systems of Records Exempt From the Privacy Act

This Appendix implements provisions of the Privacy Act of 1974 that permit the Department of Homeland Security (DHS) to exempt its systems of records from provisions of the Act. During the course of normal agency operations, exempt materials from other systems of records may become part of the records in these and other DHS systems. To the extent that copies of records from other exempt systems of records are entered into any DHS system, DHS hereby claims the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule.

Portions of the following DHS systems of records are exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552(j) and (k):

1. DHS/ALL 001, Department of Homeland Security (DHS) Freedom of Information Act (FOIA) and Privacy Act (PA) Record System allows the DHS and its components to maintain and retrieve FOIA and Privacy Act files by personal identifiers associated with the persons submitting requests for information under each statute. Pursuant to exemptions (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H) and (I) and (f). Exemptions from the particular subsections are justified, on a case by case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension, which undermines the entire system.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS or another agency. Access to the records would permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. The information contained in the system may also include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information also could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced, occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of federal laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because portions of this system are exempt from the access provisions of subsection (d).

2. DHS–CRCL–001, Civil Rights and Civil Liberties Matters, which will cover allegations of abuses of civil rights and civil liberties that are submitted to the Office of CRCL. Pursuant to exemptions (k)(1), (k)(2) and (k)(5) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H) and (I) and (f). Exemptions from the particular subsections are justified, on a case by case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS or another agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension, which undermines the entire system.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Access to the records would permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. The information contained in the system may also include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information also could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced, occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of federal laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsection (d).

Dated: April 13, 2006.

Maureen Cooney,

Acting Chief Privacy Officer.

[FR Doc. 06–3791 Filed 4–20–06; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 308, 312, 336, 347, 348, 357, 362, 363, 364, 366 and 367

RIN 3064—AD04

Revisions To Reflect the Merger of the Bank Insurance Fund and the Savings Association Insurance Fund

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations to reflect the recent merger of the Bank Insurance Fund and the Savings Association Insurance Fund, forming the Deposit Insurance Fund. The merger of the two deposit insurance funds was required by the Federal Deposit Insurance Reform Act of 2005 and was effectuated by the FDIC as of March 31, 2006. All revisions to the FDIC's regulations made by the final rule are conforming changes necessitated by the funds merger.

DATES: Effective Date: The final rule is effective on April 21, 2006.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, (202) 898–7349, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2102 of the Federal Deposit Insurance Reform Act of 2005 (''Reform Act'') (Pub. L. 109–171, 120 Stat. 9) required that the FDIC merge the Bank Insurance Fund (''BIF'') and Savings Association Insurance Fund (''SAIF'') into the Deposit Insurance Fund (''DIF'') effective no later than July 1, 2006. The FDIC effectuated the funds merger as of March 31, 2006. As a result of the funds merger, the BIF and SAIF were abolished. Section 8 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Pub. L. 109–173, 119 Stat. 3601) (''Amendments Act'') made numerous technical and conforming amendments to the FDI Act relating to the merger of BIF and SAIF into the DIF.

The final rule revises the FDIC's regulations to reflect the funds merger and the elimination of BIF and SAIF. The majority of revisions are comprised of replacing references to BIF and SAIF with DIF. Other changes eliminate provisions dealing with fund conversions and entrance and exit fees previously required when an institution converted from one fund to the other.

Neither the recent legislation nor the funds merger will affect the authority of the Financing Corporation (''FICO'') to impose and collect, with approval of the FDIC, assessments for anticipated payments, issuance costs and custodial fees on obligations issued by the FICO.[1]

II. The Final Rule

The following is a section-by-section discussion of the final rule revisions to the FDIC's regulations.

Part 303—Filing Procedures

The final rule: (1) Eliminates the defined term ''optional conversion (Oakar transaction)'' in section 303.61(d) because, with the elimination of BIF and SAIF and the formation of the DIF, fund conversions are now obsolete; (2) excludes ''deposit insurance fund conversions'' from the transactions listed in section 303.62

[1] FICO is a mixed-ownership government corporation created in 1987 to recapitalize the Federal Savings and Loan Insurance Corporation (''FSLIC'') by issuing bonds to purchase capital stock or capital certificates issued by the FSLIC. FICO issued 30-year non-callable bonds of approximately $8.2 billion that mature in 2017 through 2019. Competitive Equality Banking Act, Public Law 100–86, Title III, amending section 21 of the Federal Home Loan Bank Act, 12 U.S.C. 1441.