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not grant standing fee waivers but considers each fee waiver request independently on its merits.

(Authority: 5 U.S.C. 552(a), 5 U.S.C. 552(a)(4)(A), 20 U.S.C. 3474)

Subpart E—Administrative Review

§ 5.40 Appeals of adverse determinations.

(a) *In general.* A requester may seek an administrative review of an adverse determination on the FOIA request made by the requester by submitting an appeal of the determination to the Department. Adverse determinations include denials of access to agency records, in whole or in part; “no agency records” responses; and adverse fee decisions, including denials of requests for fee waivers, and all aspects of fee assessments.

(b) *Appeal requirements.* A requester must submit an appeal within 90 calendar days of the date on the adverse determination letter issued by the Department or, where the requester has received no determination, at any time after the due date for such determination. An appeal must be in writing and must include a detailed statement of all legal and factual bases for the appeal.

(c) *Determination on appeal.* (1) The Department makes a written determination on an administrative appeal within 20 working days after receiving the appeal. The time limit may be extended in accordance with § 5.21(c) through (e). The Department’s failure to comply with time limits set forth in this section constitutes exhaustion of the requester’s administrative remedies for the purposes of initiating judicial action to compel disclosure.

(2) The Department’s determination on an appeal constitutes the Department’s final action on the FOIA request. Any Department determination denying an appeal in whole or in part includes the reasons for the denial, including any exemptions asserted under the Act, and notice of the requester’s right to seek judicial review of the determination in accordance with 5 U.S.C. 552(a)(4). Where the Department makes a determination to grant an appeal in whole or in part, it processes the FOIA request subject to the appeal

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in accordance with the determination on appeal.

(Authority: 5 U.S.C. 552(a), 5 U.S.C. 552(a)(6), 20 U.S.C. 3474)

[75 FR 33510, June 14, 2010, as amended at 84 FR 67868, Dec. 12, 2019; 89 FR 5098, Jan. 26, 2024; 89 FR 12244, Feb. 16, 2024]

PART 5b—PRIVACY ACT REGULATIONS

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APPENDIX B TO PART 5b—ROUTINE USES APPLICABLE TO MORE THAN ONE SYSTEM OF RECORDS MAINTAINED BY ED

AUTHORITY: 5 U.S.C. 301, 5 U.S.C. 552a.

SOURCE: 45 FR 30808, May 9, 1980, unless otherwise noted.

§ 5b.1 Definitions.

As used in this part:

(a) *Access* means availability of a record to a subject individual.

(b) *Agency* means the Department of Education.

(c) *Department* means the Department of Education.

(d) *Disclosure* means the availability or release of a record to anyone other than the subject individual.

(e) *Individual* means a living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. It does not include persons such as sole proprietorships, partnerships, or corporations. A business firm which is identified by the name of one or more persons is not an individual within the meaning of this part.

(f) *Maintain* means to maintain, collect, use, or disseminate when used in connection with the term “record”; and, to have control over or responsibility for a system of records when

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used in connection with the term “system of records.”

(g) *Notification* means communication to an individual whether he is a subject individual.

(h) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Department, including but not limited to the individual’s education, financial transactions, medical history, and criminal or employment history and that contains his name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. When used in this part, record means only a record which is in a system of records.

(i) *Responsible Department official* means that officer who is listed in a notice of a system of records as the system manager for a given system of records or another individual listed in the notice of a system of records to whom requests may be made, or the designee of either such officer or individual.

(j) *Routine use* means the disclosure of a record outside the Department, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the Freedom of Information Act, 5 U.S.C. 552. It does not include disclosures which are permitted to be made without the consent of the subject individual which are not compatible with the purpose for which it was collected such as disclosures to the Bureau of the Census, the General Accounting Office, or to Congress.

(k) *Secretary* means the Secretary of Education.

(l) *Statistical record* means a record maintained for statistical research or reporting purposes only and not maintained to make determinations about a particular subject individual.

(m) *Subject individual* means that individual to whom a record pertains.

(n) *System of records* means any group of records under the control of the Department from which a record is retrieved by personal identifier such as the name of the individual, number, symbol or other unique retriever as-

signed to the individual. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records. Papers maintained by individual employees of the Department which are prepared, maintained, or discarded at the discretion of the employee and which are not subject to the Federal Records Act, 44 U.S.C. 2901, are not part of a system of records; *Provided*, That such personal papers are not used by the employee or the Department to determine any rights, benefits, or privileges of individuals.

[45 FR 30808, May 9, 1980; 45 FR 37426, June 3, 1980]

§5b.2 Purpose and scope.

(a) This part implements section 3 of the Privacy Act of 1974, 5 U.S.C. 552a (hereinafter referred to as the Act), by establishing agency policies and procedures for the maintenance of records. This part also establishes agency policies and procedures under which a subject individual may be given notification of or access to a record pertaining to him and policies and procedures under which a subject individual may have his record corrected or amended if he believes that his record is not accurate, timely, complete, or relevant or necessary to accomplish a Department function.

(b) All components of the Department are governed by the provisions of this part. Also governed by the provisions of this part are advisory committees and councils within the meaning of the Federal Advisory Committee Act which provide advice to (1) any official or component of the Department or (2) the President and for which the Department has been delegated responsibility for providing services.

(c) Employees of the Department governed by this part include all regular and special government employees of the Department; experts and consultants whose temporary (not in excess of 1 year) or intermittent services have been procured by the Department by contract pursuant to 3109 of title 5, United States Code; volunteers where acceptance of their services are authorized by law; those individuals performing gratuitous services as permitted under conditions prescribed by