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OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 200

Uniform Administrative Requirements, Cost Principles, and Audit Requirements

AGENCY: Office of Management and Budget (OMB).

ACTION: Guidance.

SUMMARY: This document announces the availability of the 2021 Compliance Supplement (2021 Supplement) for the Office of Management and Budget's uniform administrative requirements, cost principles, and audit requirements regulations. This document also offers interested parties an opportunity to comment on the 2021 Supplement.

DATES: The 2021 Supplement replaces the 2020 Supplement (issued in August 2020) and its Addendum (issued in December 2020). The Supplement applies to fiscal year audits beginning after June 30, 2020.

ADDRESSES: All comments to the 2021 Supplement must be in writing and received by August 30, 2021. Late comments will be considered to the extent practicable. Comments will be reviewed and addressed, when appropriate, in the 2022 Compliance Supplement. Electronic mail comments may be submitted to: <http://www.regulations.gov>. Please include "2 CFR Part 200 Subpart F—Audit Requirements, Appendix XI—Compliance Supplement—2021" in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message. Comments may also be sent to: GrantsTeam@omb.eop.gov.

Please note that all public comments received are subject to the Freedom of Information Act and will be posted in their entirety, including any personal

and/or business confidential information provided. Do not include any information you would not like to be made publically available.

The 2021 Supplement is available online on the OMB home page at <https://www.whitehouse.gov/omb/office-federal-financial-management/>.

FOR FURTHER INFORMATION CONTACT:

Recipients and auditors should contact their cognizant or oversight agency for audit, or Federal awarding agency, as appropriate. The Federal agency contacts are listed in appendix III of the Supplement. Subrecipients should contact their pass-through entity. Federal agencies should contact Gil Tran at Hai.M.Tran@omb.eop.gov or (202) 395–3052 or the OMB Grants team at GrantsTeam@omb.eop.gov.

SUPPLEMENTARY INFORMATION: The 2021 Supplement (2 CFR part 200, subpart F, appendix XI) adds five new programs, deletes four programs and provides updates on many other programs (including the 14 programs previously included in the 2020 Addendum to the Single Audit Compliance Supplement), where necessary. The 2021 Supplement is a continuation of efforts to maximize the value of grant funding by applying a risk-based, data-driven framework that balances compliance requirements with demonstrating successful results. Consistent with the reduction in compliance areas in the 2019 Supplement, the 2021 Compliance Supplement allows for a maximum of six compliance areas and requires a review for performance reporting for 57 programs. OMB is continuing to work with Federal awarding agencies to further emphasize performance reviews and will make updates accordingly in future Supplements. The 2021 Supplement also includes guidance related to the administrative flexibilities included in Appendix 3 of OMB memorandum M–21–20 (March 19, 2021) and the revisions to 2 CFR—Grants and Agreements (published in August 12, 2020) in Part 8, Appendix VII of the Supplement. As part of the development of the audit guidance contained in the Supplement, OMB shared the draft language developed by the agencies with recipient and audit stakeholders, including the American Institute of Certified Public Accountants (AICPA), the National Association of State Auditors, Controllers and Treasurers (NASACT), the US

Government Accountability Office (GAO), and agency Inspector General offices for comments. The comments were reviewed, adjudicated, and addressed by the relevant agencies and OMB. All necessary changes are reflected in the final published version. A summary of comments and OMB responses is shown below.

Audit Extension—Commenters suggested clarifications on the Single Audit extension allowed in OMB M–21–20 to be included in the Supplement Part 8, Appendix VII. OMB concurred and added information related the audit extension.

Performance Reporting Review—Commenters highlighted that there was a significant increase in the number of programs in the Supplement that require auditors to review the recipients' performance reporting requirements. Commenters suggested agencies add the key line items in the performance reports that the agencies request the auditors verify, in order to focus the auditors on the important areas for review. OMB concurred and worked with the relevant agencies to add the key line items on the performance reports in the "Suggested Audit Procedures" section.

2 CFR Revisions (effective November 12, 2020)—Commenters requested that the Supplement contain two separate parts B for the Allowable Costs/Cost Principles—one for the applicable cost principles prior to 2 CFR updates on November 12, 2020 and one for applicable cost principles after November 12, 2020. OMB disagreed but provided clear indication of the cost principles and areas that were revised in November 12, 2020. Additionally, the Supplement provides the link to CFO.gov Uniform Guidance (cfo.gov) which contains the relevant information related to the 2 CFR and its revisions, including the redlined version of the guidance, a crosswalk document, and the latest set of Frequently Asked Questions (FAQs)—[2CRF-FrequentlyAskedQuestions_2021050321.pdf](https://www.fda.gov/oc/2021050321.pdf) (cfo.gov).

Assistance Listing (CFDA)—Commenters noted that the term "Assistance Listing" is now used on the Federal Government website Sam.gov instead of the previous term of "CFDA" to describe a Federal program. OMB concurred and replaced "CFDA" with "Assistance Listing" for consistency.

American Rescue Plan Act (ARP) Programs—The audit community, including GAO, requested that the agencies provide audit guidance expeditiously for the programs created under the ARP, since funds are material and many have complex compliance and reporting requirements. OMB is working with Federal awarding agencies to identify the new ARP programs with special compliance and reporting requirements. When completed by the agencies and reviewed by OMB, these audit guides will be published on the *CFO.gov* website.

Deidre A. Harrison,
Deputy Controller.

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2021–0028]

Privacy Act of 1974: Implementation of Exemptions; U.S. Department of Homeland Security/ALL–046 Counterintelligence Program System of Records

AGENCY: U.S. Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The U.S. Department of Homeland Security (DHS) is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, “DHS/ALL–046 Counterintelligence Program System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective August 13, 2021.

FOR FURTHER INFORMATION CONTACT: For privacy questions please contact: Lynn Parker Dupree, (202) 343–1756, *Privacy@hq.dhs.gov*, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal**

Register, 85 FR 80667 (December 14, 2020), proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. In concert with that rulemaking, DHS issued a new system of records notice, “DHS/ALL–046 Counterintelligence Program System of Records” in the **Federal Register**, 85 FR 80800 (December 14, 2020), outlining that DHS will collect and maintain records as part of the unified Counterintelligence Program across the Department.

DHS invited comments on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

II. Public Comments

DHS received no comments on the NPRM and comments from one organization on the SORN.

SORN

DHS received comments suggesting that (1) the scope of the proposed records system is broad and DHS components’ access to records covered by the Counterintelligence Program System of Records create the risk that components would use the records system in ways that exceed their stated missions; (2) the proposed routine use exemptions are not narrowly tailored to the defined purpose of the SORN for which the records are collected, would be used to disclose records to foreign and private entities that are not subject to the Privacy Act, and would create substantial risks for potential data breaches; (3) the Counterintelligence Program System of Records creates a substantial risk of data breach since the Federal Government has demonstrated it is incapable of handling and safeguarding sensitive information; and (4) the proposed exemptions are unnecessary and limit individuals’ ability to correct harmful errors, thwart DHS’s public notice obligations, and permit unlimited data collection, even if unnecessary and irrelevant. After full consideration of public comments, the Department will implement the rulemaking as proposed for the reasons described in the NPRM and as described here in the final rule.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends 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: 6 U.S.C. 101 *et seq.*; Pub. L. 107–296, 116 Stat. 2135; 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. Amend Appendix C to Part 5 by adding paragraph 83 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

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83. The Department of Homeland Security (DHS)/ALL–046 Counterintelligence Program System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL–046 Counterintelligence Program System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The system of records covers information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act, 5 U.S.C. secs. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (e)(12); (f); and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. secs. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Exemptions from these 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) and (4) (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 that 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, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of