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PART VI



DEPARTMENT OF LABOR

Office of the Secretary



PROTECTION OF INDIVIDUAL PRIVACY IN RECORDS

Adoption of Regulations

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 70a—PROTECTION OF INDIVIDUAL PRIVACY IN RECORDS

Adoption of Regulations

On August 29, 1975, the Department of Labor published, pursuant to section 3 (f) of the Privacy Act of 1974, proposed regulations which, if adopted, would be used to govern the manner by which the requirements of the Act would be carried out by the Department of Labor. The public was invited to participate in the rulemaking proceeding by submitting written data, views and arguments on the proposed regulations. Approximately 15 comments were received, only two of which were submitted by persons or organizations outside the Department. While the comments generally supported the proposed regulations, some comments reflected an uncertainty as to the scope and implementation of specific requirements.

One commenter questioned how the Department of Labor's regulations would interface with the regulations of other agencies when the records at issue are contained within a government-wide system of records under DOL's control. It was suggested that the regulations of the agency in possession of the record at issue should govern the procedure for requesting access to, or amendment of a record, including an initial determination on such a request, while the Department of Labor's regulations would govern all other aspects of safeguarding such records established by the Privacy Act. This suggestion is meritorious and has been incorporated in the final regulation as paragraph (b) (3) of § 70a.1.

Section 70a.5 of the proposed regulations contained a provision which permitted disclosure officers to waive certain identification requirements when an individual requested his own record. While not included in the proposal, it would appear to be appropriate to extend this waiver authority to the case of third-party requesters as well, since the waiver "per se" is based upon the premise that there are other adequate means to verify the identity of the individual. It is recognized that there are instances where third-party requesters may identify themselves and the capacity in which they are acting by means other than notarized signatures, etc. Accordingly, the final regulation in § 70a.5 (d) extends the waiver authority to third-party requesters.

Another area of concern raised in the comments dealt with the treatment of medical records. The proposed regulations provided that when the disclosure officer determined that the disclosure of certain medical records to the subject of the record may be detrimental to that person's health, then he or she may withhold such records. Although not stated in the proposal, the Department's past practice in such situations has been to make the records available to a physician designated by the subject of the record. It is the Department's belief that

the physician would be in a better position to determine what information should or should not be disclosed to the individual. This practice has worked well in the past and it is the Department's intention to continue this procedure. Accordingly, the final regulation, in § 70a.6 (d), provides that where, in the disclosure officer's judgment, the release of medical records to the subject of the record may be detrimental to that person's health, the records shall be made available to a physician designated by the subject person who may make available to the subject those records or parts of records he or she deems to be appropriate.

While section 3 (f) of the Act (i.e., that section of the Act which requires the Department to publish regulations) does not require regulations to be published concerning the solicitation of an individual's social security number, due to the numerous questions which have been received concerning this issue, it has been decided that regulations should also be published which set forth the Act's requirements restricting the solicitation of this number from individuals. Section 70a.10 of the final regulation includes these requirements. Basically, this restatement of the statute (section 7 of the Act) provides that subsequent to January 1, 1975, no individual may be denied any right, benefit or privilege provided by law because of that individual's refusal to disclose his social security number unless: (1) Such disclosure is required by Federal statute; (2) the system of records within which the solicited number is to be included was in existence prior to January 1, 1975, and the authority to solicit the number is provided by a statute, Executive Order or regulation adopted prior to January 1, 1975, the purpose of such solicitation being to verify the identity of an individual. However, whenever an individual is requested to disclose his social security number, the individual shall be informed as to whether the disclosure is mandatory or voluntary, under what authority the number is being solicited, what uses will be made of it, and the consequences, if any, to an individual who refuses to disclose his or her number.

Section 70a.4 of the proposed regulations indicated, by reference to regulations issued under FOIA, those officials of the Department responsible for the disclosure or nondisclosure of requested information. While in most instances, the same official is responsible for this function under both the Privacy Act and FOIA, there are some instances when different officials have been assigned this responsibility for each Act. Consequently, the reference to the FOIA disclosure officers is inadequate for purposes of Privacy requests. Accordingly, § 70a.4(a) of the final regulation includes the list of Departmental officials responsible for responding to requests made under the Privacy Act.

Section 70a.6 of the proposed regulations provided that disclosure officers must make a determination on a request

within 30 days from receipt thereof unless, because of unusual circumstances, a determination could not be made within such time limits, in which case a determination would have to be made within 40 days from receipt thereof. Under the Department's regulations issued pursuant to the Freedom of Information Act (29 CFR Part 70), only the Solicitor of Labor has the authority to grant such an extension. Inadvertently, this requirement was omitted from the Department's proposed regulations on Privacy. Accordingly, a provision has been included in § 70a.6 of the final regulation which vests the Solicitor of Labor with the sole authority to grant an extension of time to respond to a request made under the Privacy Act.

One amendment incorporated into the final regulation deals with the assessment of fees. Section 70a.11(e) (2) (1) of the proposal provided that when a record is requested for the first time, and in order for the person to review the record a copy of would have to be produced, then no fee would be assessed for such a copy. This view is consistent with OMB's position as published in its guidelines (40 FR 28948, 28968; July 9, 1975). It has been brought to the Department's attention, however, that the intent of the OMB provision was to provide the first copy of a record without charge to the person who is the subject to the record. Accordingly, § 70a.11(e) (2) (i) has been modified to reflect this intent.

The last significant amendment incorporated in the final regulations is the inclusion in § 70a.13(d) of those systems of records over which the Department of Labor has exerted exemptions from disclosure. These exemptions have been published in the FEDERAL REGISTER as a part of the Department's annual publication of its systems of records.

The remainder of the revisions incorporated into the final regulation are of a clarifying nature. The question was raised with regard to § 70a.5(a) (2) of the proposal as to what constitutes an official photograph. That paragraph in the final regulation contains examples of what are considered to be official photographs. In § 70a.11(c) (1) (ii), the final regulation substitutes the words "printed out" for the word "created" in setting forth the responsibility of the disclosure officer to make available information stored in computers. The remaining amendment concerns the procedures for exempting systems of records from certain of the Act's requirements. Section 70a.13(a) (2) and (b) (2) of the proposal referred to "systems of records" which may be exempt. These provisions were actually intended to refer to types of system of records which may be exempt. The final regulation reflects this intent.

Therefore, pursuant to section 3 (f) of the Privacy Act of 1974 (5 U.S.C. 552a (f), 88 Stat. 1896, 1900), and 5 U.S.C. 553, Title 29, Code of Federal Regulations, is amended by adding a new part, Part 70a, to read as follows:

- Sec.
70a.1 Purpose and scope.
70a.2 Definitions.

- Sec.
- 70a.3 Conditions of disclosure of information.
- 70a.4 Required procedure with regard to a request by an individual for a record contained within a system of records.
- 70a.5 Requirements for identification of individuals making requests.
- 70a.6 Disclosure of requested information to individuals.
- 70a.7 Request for correction or amendment to a record.
- 70a.8 Agency review of request for correction or amendment to a record.
- 70a.9 Procedures for appeal from initial adverse determination.
- 70a.10 Social security number.
- 70a.11 Fees.
- 70a.12 Penalties.
- 70a.13 Exemptions.

AUTHORITY: Sec. 3(f), Privacy of 1974 (5 U.S.C. 552a(f), 88 Stat. 1896, 1900); 5 U.S.C. 553.

§ 70a.1 Purpose and scope.

(a) *Purpose.* This Part sets forth the basic criteria which are to be used for implementing the provisions of the Privacy Act of 1974 (Pub. L. 93-579) as it applies to the Department of Labor.

(b) *Scope.* (1) Except as noted in paragraphs (b) (2) and (b) (3) of this section, the regulations set forth in this Part apply whenever a record containing personal information is maintained within a system of records which is under the control of the Department and such records are retrieved by reference to a personal identifier.

(2) Requests for notification, access or amendment to personnel records maintained by the Department are governed by Parts 293 and 297 of the Civil Service Commission's regulations, Title 5, Code of Federal Regulations, and internal Department directives established pursuant to the Commission's regulations.

(3) For systems of records contained within government-wide systems of records under the control of the Department of Labor, the regulations of the agency in possession of such records shall govern the procedure for requesting access to, or amendment of the records, including initial determinations on such requests, while the Department of Labor regulations shall govern all other aspects of safeguarding these records established by the Privacy Act.

§ 70a.2 Definitions.

For purposes of this Part: (a) "Agency" means an agency as that term is defined in 5 U.S.C. 552(e). It means "each authority of the Government of the United States, whether or not it is within or subject to review by another agency * * *" (5 U.S.C. 551(1)), but it does not include an advisory committee.

(b) The term "individual" means a citizen of the United States (as defined in 8 U.S.C. 1401) or an alien lawfully admitted for permanent residence. This definition distinguishes between the rights which are given to a citizen as an individual under this Act and the rights of proprietorships, including sole proprietors, businesses, and corporations, which are not covered by the Act. Records relating solely to nonresident aliens

are excluded from the requirements of this Part. However, where a system of records relates to both citizens and nonresident aliens, those portions of the system which relate to citizens or resident aliens must comply with the provisions set forth in these regulations.

(c) The term "maintain" includes the maintenance, collection, use, or dissemination of records, or any combination of these recordkeeping functions. The term "maintain" also connotes control over and responsibility and accountability for a system of records. Effective control of a system of records does not necessarily require physical control of the system (e.g., the Civil Service Commission has control over personnel records not physically within its possession). Furthermore, records on loan from one agency to another may not necessarily be under the control of the latter depending upon the circumstances attendant to, and the conditions of the transfer. Systems of records operated under contract, or in some instances, operated by State or local governments under Federal mandates "by or on behalf of the agency * * * to accomplish an agency function" are, for purposes of this Part, under the control of the agency for which the services are being performed, and consequently subject to the requirements set forth in this Part. The qualifying phrase "to accomplish an agency function" limits the applicability of the Act to those systems directly related to the performance of Federal agency functions by excluding from its coverage systems which are financed, in whole or in part, with Federal funds, but which are managed by State or local governments for the benefit of State or local governments.

(d) The term "record" means a tangible or documentary record, as opposed to an intangible record, such as information contained in a person's memory. It is any item of information, or any grouping of such items of information, about an individual that includes an identifying particular (i.e., an individual identifier). An "identifying particular" is any element of data (name, number, etc.) or other descriptor (finger print, voice print, photograph) which can be used to identify an individual.

(e) The term "system of records" means a group of any records under the control of an agency from which information is retrieved by reference to the name of an individual or by some identifying particular assigned to an individual. A "system of records" for purposes of this Part is a group of records which:

- (1) Consists of records as that term is defined in this section,
- (2) Are "under the control of" an agency, and
- (3) Are retrieved by reference to an individual name or some other personal individual identifier.

(d) "Under the control of" means those official records for which the agency is officially responsible and either has in its possession or exercises dominion over. This excludes those records which, although in the physical possession of agency employees and used by them in performing official functions, are

not, in fact, agency records. Uncirculated personal notes, papers and records which are retained or discarded at the author's discretion and over which the agency exercises no dominion or control (e.g., personal telephone lists) are not "agency records" for purposes of this Part.

(e) The criteria "are retrieved by" covers those records under the control of an agency which are, in fact, accessed by use of a personal identifier, not merely that a capability or potential capability exists for retrieving personal information in some manner. For example, files on firms which contain personal information about officers of the firms are not records for purposes of this part unless the agency actually retrieves this information by reference to a personal identifier.

(f) The term "statistical record" means a record contained within a system of records which is maintained for statistical research or reporting purposes only, and not used, in whole or in part, in making any determination about an identifiable individual. For a record to qualify as a "statistical record," it must be maintained as a system of records separately from other systems of records where such other systems contain records that are used to make determinations about the rights, benefits, or entitlements of an identifiable individual. The term "identifiable individual" distinguishes determinations about specific individuals from determinations about aggregates of individuals. An example of the latter is the use of census data for the apportionment of funds based upon population. Records frequently referred to as "research records" which are only used for analytic purposes, qualify as "statistical records" for purposes of this Part, provided such records are not used in making any determination about the rights, benefits or entitlements of an identifiable individual.

(g) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. The Privacy Act restricts the use of information to such purposes, but also recognizes that there are corollary purposes "compatible with the purpose for which the information was collected" that are appropriate and necessary for the efficient conduct of government, and are in the best interest of both the individual and the public. Thus, the term "routine use" includes the common and ordinary applications for which such records are generally collected and all proper and necessary applications of records without regard to the frequency of such applications.

(h) "Disclosure officer," "responsible official" and "officer authorized to disclose information from Department records" are those officials in this Department, whose titles and addresses are listed in § 70a.4(ii) of this chapter, who must pass on requests to inspect or copy record information in their custody. The Solicitor of Labor, in the case of appeals and with respect to withdrawal of originals is the disclosure officer for such

purposes, as is the Secretary of Labor with respect to the withdrawal of originals. As the head of the Department, the Secretary may invest any officer or employee of the Department with the authority to disclose information from particular records.

§ 70a.3 Conditions of disclosure of information.

(a) Nothing in this Part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) Exempt as provided in paragraphs (d) through (f) of this section, neither the Department, nor its component units, shall disclose any record which is contained within a system of records subject to the requirements of this Part, to any person or agency other than to the individual who is the subject of the record, unless the disclosure is to such person's parent or guardian as provided in § 70a.5 (c) of this Part, or to the representative designated by such individual in accordance with the requirements contained in § 70a.5 (b) of this Part.

(c) If a requester satisfies the requirements set forth in §§ 70a.4 and 70a.5 of this Part, and the record described in paragraph (b) of this section does in fact exist, and is not otherwise exempt from disclosure by any other provision contained in this Part, the record shall be made available to the requester in accordance with § 70a.6 of this Part.

(d) Upon the notarized written consent of an individual to whom a record described in paragraph (b) of this section pertains, the Department, or any of its component units, may disclose the record to an agency or a person other than the individual to whom the record pertains has so consented.

(e) (1) In the absence of written consent from the individual to whom a record described in paragraph (b) of this section pertains, the Department may disclose any such record provided such disclosure is:

(i) To those officers and employees of the Department of Labor who have a need for the information in the performance of their duties;

(ii) Required under the Freedom of Information Act (5 U.S.C. 552);

(iii) For a "routine use" as published in the annual notice in the FEDERAL REGISTER;

(iv) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13 of the United States Code;

(v) To a recipient who has provided the Department with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for eval-

uation by the Administrator of General Services or his designee to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Department, or a unit component thereof, specifying the particular record and the law enforcement activity for which it is sought;

(viii) To either House of Congress, or, to the extent that a matter is within its jurisdiction, any committee or subcommittee thereof; or to any joint committee of Congress or a subcommittee of any such joint committee;

(ix) To the Comptroller General, or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(x) Under an order of a court of competent jurisdiction, in which case the Department shall make reasonable efforts to notify the subject individual of the subpoenaed record when the subpoena of such material becomes a matter of public record; or

(xi) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual (not necessarily the individual to whom the record pertains), if upon such disclosure notification is transmitted to the last known address of the individual to whom the record pertains.

(2) The authority to disclose information without the written consent of the individual does not imply mandatory disclosure. The Department shall continue to consider all relevant factors before authorizing the disclosure of information, including the effect that disclosure would have upon the individual who is the subject of the record.

(f) When a record has been amended or a requested amendment thereto has been denied, and the requester has submitted a memorandum of disagreement, the amended information, or the memorandum of disagreement, must be transmitted to prior recipients as provided in 5 U.S.C. 552a(d)(4) and § 70a.9(f) of this Part.

(g) Except as prescribed in paragraphs (d) and (f) of this section, and other provisions of this Part related thereto, the regulations contained in this Part do not require the disclosure of a record to anyone other than the individual to whom the record pertains.

§ 70a.4 Required procedure with regard to a request by an individual for a record contained within a system of records.

(a) (1) (i) Any individual, regardless of age, desiring to examine or copy records of the Department of Labor which are retrieved in the name of that individual or other identifier personal to that individual shall direct a request to the appropriate official as prescribed in (d) of this section. Any individual desiring to ascertain whether, and to whom, the

Department has disclosed his or her record or part thereof, or desiring to request an amendment to such record, shall direct a request to the same official.

(i) When a person is uncertain as to whom the request should be directed, it should be sent to: Deputy Assistant Secretary, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(2) Requests made in person shall be presented during the Department's normal working hours. When the request is made by mail, a notation should be made on the envelope and conspicuously on the letter indicating that the communication involves a request under the Privacy Act (i.e., "Privacy Act Request").

(b) Each request shall be in writing. It shall state the nature of the action desired and shall be reasonably detailed to permit identification and location of the record in question. So far as practicable, the request should specify the subject matter of the record, the date or approximate date when made, the place where made, the person or office that made it, and any other pertinent identifying details. The requester should also indicate whether he or she wishes to review the record in person or obtain a copy by mail.

(c) (1) The disclosure officer who is responsible for acting upon a request shall, upon receipt thereof, have the date and time the request was received immediately inscribed thereon, and within 10 working days thereafter, acknowledge such receipt to the requester. In addition, the acknowledgement shall indicate the time within which it is anticipated that a determination of the request will be made. Such an acknowledgement, however, is not required when a determination can be made within the 10-day period.

(2) If the description contained in the request is insufficient so that a professional employee who is familiar with the subject area of the request cannot locate the record with a reasonable amount of effort, the officer processing the request shall notify the applicant and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist an applicant in the identification and location of the record or records sought.

(d) (1) The titles of the responsible officials of the various independent agencies in the Department of Labor are listed below. Unless otherwise specified, the mailing address of these officials shall be:

U.S. DEPARTMENT OF LABOR, 200 CONSTITUTION AVENUE, N.W., WASHINGTON, D.C. 20210

Chief, Administrative Law Judge.

Chairperson, Employees Compensation Appeals Board.

Benefits Review Board, Julius Miller, Member.

Executive Assistant to the Secretary.

Executive Assistant to the Under Secretary.
Deputy Under Secretary for International Labor Affairs.

Associate Deputy Under Secretary for International Labor Affairs.
 Associate Deputy Under Secretary for Trade and Adjustment Policy.
 Director, Office of Information, Publication and Reports.
 Executive Assistant to the Assistant Secretary for Policy, Evaluation and Research. Deputy Solicitor, Office of the Solicitor.
 Assistant Secretary for Administration and Management.
 Administrative Information Chief, Division of Management Systems, Bureau of Labor Statistics.
 Staff Utilization Chief, Division of Operation, Bureau of Labor Statistics.
 Executive Assistant to Deputy Commissioner for Statistical Operations and Processing, Office of Statistical Operations and Processing, Bureau of Labor Statistics.
 Assistant Secretary for Labor-Management Relations.
 Assistant Administrator for Field Operations, LMSA.
 Director, Office of Labor-Management Relations Services.
 Director, Office of Labor-Management Policy Development.
 Director, Office of Labor-Management Standards Enforcement.
 Director, Office of Veterans' Reemployment Rights.
 Director, Office of Federal Labor-Management Relations.
 Deputy Administrator of Pension and Welfare Benefit Program, Office of Employee Benefits Security.
 Director, Office of Administration and Management, LMSA.
 Director, Office of Planning, Evaluation and Systems, LMSA.
 Director, Office of Personnel Management.
 Assistant Director, Office of Personnel Management.
 Assistant Regional Director for Labor-Management Services.
 Assistant Secretary for Employment Standards, Employment Standards Administration.
 Director, Office of Workers' Compensation Programs.
 Associate Director for Federal Employees' Compensation.
 Associate Director for Longshore and Harbor Workers' Compensation.
 Administrator, Wage and Hour Division.
 Director, Office of Federal Contract Compliance Programs.
 Associate Director, OFCCP, Agency Compliance Divisions I-IV.
 Associate Director, OFCCP, Policies, Plans and Programs.
 Associate Director, OFCCP, Construction Compliance Division.
 Associate Director, OFCCP, Management Support Staff.
 Associate Director, OFCCP, Veterans and Handicapped Workers Program Operations Division.
 Director, Women's Bureau.
 Director, Office of Administrative Management, ESA.
 Director, Office of Program Development and Accountability, ESA.
 Director, Office of Information for ESA.
 Executive Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
 Special Assistant for Public Affairs, OSHA.
 Director, Office of Federal Agency Safety Programs, OSHA.
 Director, Office of Training and Education, OSHA.
 Director, Office of Standards Development, OSHA.
 Director, Office of Compliance Programming, OSHA.

Director, Office of State Programs, OSHA.
 Director, Office of Field Performance Analysis, OSHA.
 Director, Office of Employee Self-Inspection and Consultational Programs, OSHA.
 Director, Office of Management Data Systems, OSHA.
 Director, Office of Planning, Evaluation, and Research, OSHA.
 Equal Employment Opportunity Officer, OSHA.
 Director, Office of Personnel Management, OSHA.
 Director, Office of Administrative Management, OSHA.
 Director, Office of Financial Management, OSHA.
 Director, Office of Publications and Visual Aids, OSHA.
 Committee Management Officer, OSHA.
 Associate Assistant Secretary for Regional Programs, OSHA.
 Associate Assistant Secretary for National Programs, OSHA.
 Associate Assistant Secretary for Administrative Programs, OSHA.
 (2) The mailing address for the responsible officials in the Employment and Training Administration is the Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213.
 Director, Office of Program and Management Service, USES, Room 8430.
 Administrative Officer, USES, Room 8001.
 Director, Program and Management Services Staff, Office of Comprehensive Employment Development, Room 6000.
 Executive Assistant to the Administrator, Office of Comprehensive Employment Development, Room 6000.
 Deputy Director, Office of Community Employment Programs, Room 5402.
 Special Assistant to the Director, Office of Community Employment Programs, Room 5402.
 Program Analyst, Office of Work Incentive Programs, Room 5200.
 Manpower Development Specialist, Office of Work Incentive Programs, Room 5118.
 Chief, Corpsmember Support, Job Corps, Room 6122.
 Manpower Development Specialist, Job Corps, Room 6022.
 Deputy Director, Office of National Programs, Room 6402.
 Chief, Migrant Workers Service, Office of National Programs, Room 7122.
 Chief, Division of Indian and Native American Programs, Office of National Programs, Room 6402.
 Chief, Division of National Training Programs, Office of National Programs, Room 6308.
 Chief, Division of Contracting Service, Office of National Programs, Room 6406.
 Administrator, Office of Policy, Evaluation and Research, Room 9000.
 Manpower Analyst, Office of Policy, Evaluation and Research, Room 9424.
 Administrator, Bureau of Apprenticeship and Training, Room 5000.
 Management Officer, Bureau of Apprenticeship and Training, Room 5434.
 Chief, Division of Directives Control, Office of Field Operation, Room 10020.
 Program Analyst, Office of Field Operation, Room 10014.
 Director, Office of Management Information Systems, Office of Administration and Management, Room 4400.
 Supervisory Program Analyst, Office of Administration and Management, Room 4000.
 Program Specialist, Unemployment Insurance Service, Room 7326.
 Special Assistant to the Director, Unemployment Insurance Service, Room 7000.

(3) The titles of the responsible officials in the field offices of the various independent agencies are listed below. Unless otherwise specified, the mailing addresses for these officials, by regions, shall be:
 Region I: J.F.K. Building, Government Center, Boston, Massachusetts 02203.
 Region II: 1515 Broadway, New York, New York 10036.
 Region III: 3535 Market Street, Philadelphia, Pennsylvania 19104.
 Region IV: 1371 Peachtree Street, N.E., Atlanta, Georgia 30309.
 Region V: 230 South Dearborn Street, Chicago, Illinois 60604.
 Region VI: 555 Griffin Square Building, Griffin and Young Streets, Dallas, Texas 75202.
 Region VII: Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.
 Region VIII: Federal Office Building, 1961 Stout Street, Denver, Colorado 80202.
 Regional IX: Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.
 Region X: 909 First Avenue, Seattle, Washington 98174.
 OFFICE OF THE UNDER SECRETARY, REGIONAL DIRECTORS
 OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION AND MANAGEMENT, ASSISTANT REGIONAL DIRECTORS
 Assistant Regional Director for Audit. (All Regions.)
 OFFICE OF INFORMATION, PUBLICATIONS AND REPORTS
 Assistant Regional Director for Regions I-IX.
 Region X: Assistant Regional Director for Information, 1321 Second Avenue, Arcade Plaza, Seattle, Washington.
 Associate Assistant Regional Director, Federal Building, 300 North Los Angeles Street, Los Angeles, California.
 EMPLOYMENT AND TRAINING ADMINISTRATION
 Region I: Acting Regional Administrator for Employment and Training, Room 1707.
 Region I: Deputy Regional Administrator for Employment and Training, Room 1707.
 Region I: Associate Regional Administrator for Administration and Management Services, Room 1712.
 Region II: Program Analyst, Room 3724.
 Region III: Chief, Division of Administrative Support, Room 13464, Gateway Building, P.O. Box 8796, Philadelphia, Pennsylvania 19101.
 Region III: Alien Employment Certifying Officer, Room 13180, Gateway Building.
 Region IV: Chief, Manpower Data Systems and Analysis, Room 405.
 Region V: Regional Economist, Room 405.
 Region V: Chief, Contract Specialist, 6th Floor.
 Region VI: Supervisory Contract Specialist, Room 316.
 Region VII: Supervisory Contract Specialist, Room 800.
 Region VII: Contract Specialist, Room 800.
 Region VIII: Executive Assistant to the Regional Administrator for Employment and Training, Room 16018.
 Region IX: Executive Assistant to the Regional Administrator for Administration and Management Services, Room 9062.
 Region IX: Contract Specialist, Room 9057A.
 Region X: Executive Assistant to the Regional Administrator for Administration and Management Services, Room 1136.
 Region X: Associate Regional Administrator for Program and Technical Services, Room 1094.

LABOR-MANAGEMENT SERVICES

Assistant Regional Directors for Labor-Management Services.
Regions II, III, IV, V, VII and IX.

AREA DIRECTORS FOR LABOR-MANAGEMENT SERVICES

1371 Peachtree Street, N.E., Room 303, Atlanta, Georgia 30309.
111 North Calvert Street, Room 203, Baltimore, Maryland 21202.
100 Tremont Street, Room 211, New Studio Building, Boston, Massachusetts 02108.
111 West Huron Street, Room 616, Federal Building, Buffalo, New York 14202.
230 South Dearborn Street, Room 700, Federal Office Building, Chicago, Illinois 60604.
1240 East 9th Street, Room 821, Federal Office Building, Cleveland, Ohio 44199.
P.O. Box 239, Bryan and Ervay Streets, Room 301, Post Office Building, Dallas, Texas 75221.
1961 Stout Street, 2320 Federal Office Building, Denver, Colorado 80202.
234 State Street, Room 1906, Washington Boulevard Building, Detroit, Michigan 48226.
1833 Kalakaua Avenue, Room 601, Honolulu Hawaii 96815.
911 Walnut Street, Room 2200, Federal Office Building, Kansas City, Missouri 64106.
300 North Los Angeles Street, Room 7731, Federal Building, Los Angeles, California.
18350 Northwest Second Avenue, P.O. Box 3750, Norland Branch, Miami, Florida 33169.
110 South Fourth Street, Room 110, Federal Courts Building, Minneapolis, Minnesota 55401.
1808 West End Building, Room 825, Nashville, Tennessee 37203.
9 Clinton Street, Room 305, Newark, New Jersey 07102.
600 South Street, Room 940, Federal Office Building, New Orleans, Louisiana 70130.
26 Federal Plaza, Room 1751, New York, New York 10007.
600 Arch Street, Room 4256, Federal Office Building, Philadelphia, Pennsylvania 19106.
1000 Liberty Avenue, Room 1436, Federal Office Building, Pittsburgh, Pennsylvania 15222.
210 North Twelfth Boulevard, Room 570, St. Louis, Missouri 63101.
100 McAllister Street, Room 1604, San Francisco, California 94102.
605 Conado Avenue, Room 704, Condominio San Alberto, Santurce, Puerto Rico 00907.
506 Second Avenue, Room 3301, Smith Tower Building, Seattle, Washington 98104.
1111 20th Street, N.W., P.O. Box 19257, Room 509, Vanguard Building, Washington, D.C. 20036.

THE EMPLOYMENT STANDARDS ADMINISTRATION

Assistant Regional Administrator for Wage and Hour Division: All Regions.
Assistant Regional Administrator for Office of Federal Contract Compliance Programs: All Regions.
Assistant Regional Administrator for Women's Bureau: All Regions.
Assistant Regional Administrator for Program Development and Accountability: All Regions.

OFFICE OF WORKERS' COMPENSATION PROGRAMS—DEPUTY COMMISSIONER

147 Milk Street, Boston, Massachusetts 02109.
1515 Broadway, New York, New York 10036.
3535 Market Street, Philadelphia, Pennsylvania 19104.
Charles Center South, 31 Hopkins Plaza, Baltimore, Maryland 21201.

Stanwick Building, 3661 Virginia Beach Boulevard, East Norfolk, Virginia 23502.
400 West Bay Street, Box 35049, Jacksonville, Florida 32202.

Federal Office Building, 600 South Street, New Orleans, Louisiana 70130.
2320 LaBranch Street, Houston, Texas 77004.
1240 East Ninth Street, Room 879, Cleveland, Ohio 44199.
230 South Dearborn Street, Chicago, Illinois 60604.
1910 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.
1531 Stout Street, Room 303, Denver, Colorado 80202.
450 Golden Gate Avenue, Box 36022, San Francisco, California 94102.
Federal Office Building, 909 First Street, Seattle, Washington 98174.
1833 Kalakaua Avenue, Room 610, Honolulu, Hawaii 96815.
McLachien Building, Room 405, 616 11th Street, N.W., Washington, D.C. 20211 (FECA).
812 Connecticut Avenue, N.W., Washington, D.C. 20211 (DCCA).
Director, Condominio San Alberto Building, 7th Floor, 1200 Ponce de Leon Avenue, Santurce, Puerto Rico 00907.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Director, OSHA Training Institute, 10600 West Higgins Road, Rosemont, Illinois 60018.

ASSISTANT REGIONAL DIRECTORS

Region I, 18 Oliver Street, Boston, Massachusetts 02110.
Regions II, III, IV, V, VI, VII, VIII and IX.
Region X, 1808 Smith Tower Building, 506 Second Avenue, Seattle, Washington 98104.

AREA DIRECTORS

Custom House Building, Room 703, State Street, Boston, Massachusetts 02109.
Federal Building, Room 426, 55 Pleasant Street, Concord, New Hampshire 03301.
Federal Building, Room 617B, 450 Main Street, Hartford, Connecticut 06103.
U.S. Post Office and Courthouse Building, 436 Dwight Street, Room 501, Springfield, Massachusetts 01103.
370 Old Country Road, Garden City, L.I., New York 11530.
90 Church Street, Room 1405, New York, New York 10007.
970 Broad Street, Room 1435C, Newark, New Jersey 07102.
605 Conado Avenue, Room 328, Santurce, Puerto Rico 00907.
Midtown Plaza, Room 203, 700 East Water Street, Syracuse, New York 13210.
Railway Labor Building, Room 411, 400 1st Street, N.W., Washington, D.C. 20210.
Federal Building, Room 1110A, Charles Center, 31 Hopkins Plaza, Baltimore, Maryland 21201.
Charleston National Plaza, 700 Virginia Avenue, Room 1726, Charleston, West Virginia 25301.
Jonnet Building, Room 802, 4099 William Penn Highway, Monroeville, Pennsylvania 15146.
William J. Green, Jr., Federal Building, Room 4456, 600 Arch Street, Philadelphia, Pennsylvania 19106.
Federal Building, Room 8015, P.O. Box 10186, 400 North 8th Street, Richmond, Virginia 23240.
Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216.
1710 Gervais Street, Room 205, Columbia, South Carolina 29201.
Bridge Building, Room 204, 3200 East Oakland Park Boulevard, Fort Lauderdale, Florida 33308.

57601-55 North Frontage Road East, Jackson, Mississippi 39211.
Art Museum Plaza, Suite 4, 2809 Art Museum Drive, Jacksonville, Florida 32207.
600 Federal Place, Suite 554-E, Louisville, Kentucky 40202.
Riverside Plaza Shopping Center, 2720 Riverside Drive, Macon, Georgia 31204.
Commerce Building, Room 600, 118 North Royal Street, Mobile, Alabama 36602.
1600 Hayes Street, Suite 302, Nashville, Tennessee 37203.
Federal Office Building, Room 406, 310 New Bern Avenue, Raleigh, North Carolina 27601.
Enterprise Building, Suite 204, 6605 Abercon Street, Savannah, Georgia 31405.
650 Cleveland Street, Room 44, Clearwater, Florida 33515.
Building 10, Suite 33, La Vista Perimeter Office Park, Tucker, Georgia 30084.
230 South Dearborn Street, 10th Floor, Chicago, Illinois 60604.
Federal Office Building, Room 4028, 550 Main Street, Cincinnati, Ohio 45202.
Federal Office Building, Room 847, 1240 East 9th Street, Cleveland, Ohio 44199.
360 South 3rd Street, Room 109, Columbus, Ohio 43215.
Michigan Theatre Building, Room 626, 220 Bagley Avenue, Detroit, Michigan 48226.
U.S. Post Office and Courthouse, 46 East Ohio Street, Room 423, Indianapolis, Indiana 46202.
Clark Building, Room 400, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.
110 South 4th Street, Room 437, Minneapolis, Minnesota 55401.
Federal Building, Room 302, 421 Gold Avenue SW., P.O. Box 1428, Albuquerque, New Mexico 87103.
Adolphus Tower, Suite 1820, 1412 Main Street, Dallas, Texas 75202.
2320 La Branch Street, Room 2118, Houston, Texas 77004.
Federal Building, Room 421, 1205 Texas Avenue, Lubbock, Texas 79401.
Donaghey Building, Room 526, 103 East 7th Street, Little Rock, Arkansas 72201.
546 Carondelet Street, Room 202, New Orleans, Louisiana 70130.
Petroleum Building, Room 512, 420 South Boulder, Tulsa, Oklahoma 74103.
1015 Jackson Keller Road, Room 122, San Antonio, Texas 78213.
210 Walnut Street, Room 643, Des Moines, Iowa 50309.
1627 Main Street, Room 1100, Kansas City, Missouri 64108.
113 West Sixth Street, North Platte, Nebraska 69101.
Harney & 16th Street, Room 803, City National Bank Building, Omaha, Nebraska 68102.
210 North 12th Boulevard, Room 554, St. Louis, Missouri 63101.
Petroleum Building, Suite 312, 221 South Broadway Street, Wichita, Kansas 67202.
Petroleum Building, Suite 525, 2812 First Avenue North, Billings, Montana 59101.
Squire Plaza Building, 8527 West Colfax Avenue, Lakewood, Colorado 80215.
U.S. Post Office Building, Room 452, 3501 South Main Street, Salt Lake City, Utah 84101.
Courthouse Plaza Building, Room 408, 300 North Dakota Avenue, Sioux Falls, South Dakota 57102.
1100 East William Street, Carson City, Nevada 89701.
333 Queen Street, Suite 505, Honolulu, Hawaii 96813.
Hartwell Building, Room 401, 19 Pine Avenue, Long Beach, California 90802.
Amerco Towers, Suite 318, 2721 North Central Avenue, Phoenix, Arizona 85004.
100 McAllister Street, Room 1706, San Francisco, California 94102.

Federal Building, Room 227, 605 West Fourth Avenue, Anchorage, Alaska 99501.
 121 107th Street, N.E., Bellevue, Washington 98004.
 228 Idaho Building, 216 North Eighth Street, Boise, Idaho 83702.
 Pittcock Block, Room 526, 9218 West Washington Street, Portland, Oregon 97205.

DISTRICT SUPERVISORS

Federal Building, Room 503A, U.S. Courthouse, Providence, Rhode Island 02903.
 Stanwick Building, Room 111, 3661 Virginia Beach Boulevard, Norfolk, Virginia 23502.
 600 Leopard Street, Suite 1322, Corpus Christi, Texas 78401.

§ 70a.5 Requirements for identification of individuals making requests.

(a) To avoid disclosure of information to unauthorized individuals, where an individual requests personal information about himself or herself, and such information is retrieved from a system of records by means of a personal identifier, and the record(s) requested are excluded from mandatory disclosure under the Freedom of Information Act, the following requirements must be met before the disclosure officer releases the relevant information:

(1) When a request is submitted by mail, the signature of the requester shall be notarized;

(2) When a request is made in person, an official photograph accurately depicting the requester, and indicating the requester's name (e.g., government ID, driver's license, college ID, etc.), shall be presented to the disclosure officer or his authorized representative, or if an official photograph is not available, a photograph accompanied by a notarization certifying the name of the individual in the photograph.

(b) When a person, other than an officer or employee of the Department with a need to know, requests access to a record about an individual other than himself or herself, then in addition to meeting the requirements set forth in paragraphs (a)(1) and (a)(2) of this section, as applicable, the requester must also provide a notarized letter of consent signed by the individual to whom the record pertains which explicitly authorizes the requester to receive the record. A notarized letter of consent is not required where the requester is a parent or legal guardian, and such person satisfies the requirements set forth in paragraph (c) of this section.

(c) An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains shall establish his or her personal identity in the same manner prescribed in either paragraph (a)(1) or (2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or

authenticated copy of the court's order. A parent or legal guardian may act only for a living individual, not for a decedent.

(d) The disclosure officer may waive the requirements set forth in paragraphs (a), (b) and (c) of this section when he deems such action to be appropriate, and may substitute in lieu thereof, other reasonable means of identification.

§ 70a.6 Disclosure of requested information to individuals.

(a) *Period within which action on request shall be taken.* (1) (i) As soon as possible, and within a period not to exceed 30 working days after receipt of a request made in accordance with §§ 70a.4 and 70a.5 of this Part, the officer responsible for acting on the request shall determine that such request is to be granted or denied in whole or in part, and shall thereupon immediately notify the requester of his or her determination and, in the case of a denial, the reasons therefor. The provisions of paragraphs (a)(2) and (3) of this section are applicable when a final determination to grant or deny the request cannot be made within the 30-day period.

(2) (i) When, because of unusual circumstances it appears that a determination may not be feasible within the 30-day period, the disclosure officer shall submit in writing to the Solicitor a request for an extension of time. The request for extension shall set forth the reasons why the disclosure officer believes it is not possible to make a determination within the 30-day period. The Solicitor shall determine within 5 working days after receipt of such request whether to grant the extension. "Unusual circumstances" shall include circumstances where a search for a collection of requested records from inactive storage, field facilities or other establishments are required, cases where a voluminous amount of data is involved, instances where information on other individuals must be separated or expunged from the particular record, and cases where consultation with other agencies having a substantial interest in the determination of the request is necessary.

(ii) When the Solicitor agrees that an extension is necessary because of unusual circumstances and grants an extension of time, the officer responsible for acting on the request shall notify the requester in writing within the 30-day period of the extension, the reasons therefor, and the date on which the determination to grant or deny the request is expected to be dispatched. No extension is to exceed 10 working days.

(iii) If the disclosure officer is unable to make a determination with respect to all or part of a request within the 30-day period specified in paragraph (a)(1)(i) of this section, or such extended period as may be permitted, because some or all of the records have not been located or made available for examination and consideration in time to make an informed determination, the officer may, within such period, respond

to the request by denying the request as to those records which are not available, with notification to the requester of the reasons therefor, and of the right to appeal the denial pursuant to § 70a.9 of this Part. However, the disclosure officer shall make a determination at that time as to those records or portions of records which are available. In such an event, the officer shall advise the requester that the search or examination will be continued and that the denial will be subject to withdrawal, modification, or confirmation by a supplementary determination to be made as soon as processing of the request can be completed. If an appeal is filed from the initial denial, the Solicitor shall act thereon as provided in § 70a.9 of this Part.

(b) *Procedure for disclosure of information.* (1) When a determination has been made to grant a request, the requested information shall be made available to the individual within the time period prescribed in paragraph (a) of this section. The record shall be made available to the individual in the manner requested, that is, either by forwarding a copy of the information to him or her, or by making it available for review, unless: (i) It is impracticable to provide the requester with a copy of a record, in which case the requester shall be so notified, and, in addition, be informed of the procedures set forth in paragraph (b)(2) of this section, or (ii) the responsible official has reason to believe that the cost of a copy of a record is considerably more expensive than anticipated by the requester, in which case he or she shall notify the requester of the estimated cost, and ascertain whether the requester still wishes to be provided with a copy of the information.

(2) Where a record is to be reviewed by the requester in person, the disclosure officer shall inform the requester in writing of: (i) The date on which the record will become available for review, the location at which it may be reviewed, and the hours for inspection; (ii) the type of identification that will be required in order for him or her to review the record; (iii) such person's right to have a person of his or her own choosing accompany him or her to review the record; and (iv) such person's right to have a person other than himself or herself review the record.

(3) The record shall be made available for review for as long as the disclosure officer deems appropriate, but in no event for less than 30 days.

(4) Inspection of original records shall be made in the presence of the disclosure officer or such officer's designee.

(c) *Denial of request.* Where it has been determined to deny a request in whole or in part, the individual shall be notified in writing of such a determination. Such notification shall specify the reasons therefore, the name and title or position of the person(s) responsible for the denial, and shall advise the requester of the procedure for appealing such an adverse determination to the Solicitor of Labor.

(d) *Medical records.* When an individual requests medical records concerning

himself, which are not otherwise exempt from disclosure, the disclosure officer shall, if deemed necessary, because of possible harm to the individual, advise the individual that records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the disclosure officer will permit the physician to review the records or to receive copies of the records by mail, upon proper verification of identity. The determination of which records should be made available directly to the individual and which records should not be disclosed because of possible harm to the individual shall be made by the physician.

(e) *Computerized records.* Where information is stored within one of the Department's computer systems, and it can only be retrieved by creating a new computer program, or modifying an existing program in a manner in which it would not otherwise be modified, thus producing a record not currently in existence, the record is not required to be furnished under the Act.

(f) *Alternative Method for transmitting information.* Whenever a record containing personal information about an individual is to be mailed in response to a request under this Part, and the information is of such a nature that the disclosure officer has reasonable grounds for believing that the unauthorized dissemination of such information may be of significant harm to the subject of the record, then such a record shall be sent "Certified Mail, Return Receipt Requested."

§ 70a.7 Request for correction or amendment to a record.

An individual, without regard to his or her age, may request the correction or amendment of any record pertaining to him or her, which is contained within a system of records subject to the requirements set forth in this Part, by mailing or delivering a written request in conformity with the requirements set forth in §§ 70a.4 and 70a.5 of this Part. In addition, the request must state the information in the record which the requester believes to be unnecessary, inaccurate, irrelevant, untimely, or incomplete, the nature of the amendment desired, and a concise statement of the reasons therefor. All available supporting documents and materials which substantiate the requester's position should be included with the request.

§ 70a.8 Agency review of request for correction or amendment to a record.

(a) Upon receipt of a request to correct or amend a record, which is contained within a system of records subject to the requirements set forth in this Part, a determination whether to grant the request shall be made by the proper authority charged with the responsibility of acting upon such requests within the time limits prescribed in § 70a.6 of this Part.

(b) Where it is determined that the request shall be granted in whole or in part, (1) the record shall be amended within the time limits prescribed in

§ 70a.6 of this Part, and, in no event, is the record to be disclosed to any party until the amendments are so incorporated; (2) the requester shall be informed that the record has been so amended, and the record shall be made available for his or her review within the time limits prescribed in § 70a.6 of this Part, and (3) all prior recipients of the record, of which an accounting is required to be kept, shall be notified as soon as possible of the amendments made to the record.

(c) Where it is determined that the request is to be denied, in whole or in part, the requester shall be so notified in accordance with § 70a.6(c) of this Part.

§ 70a.9 Procedures for appeal from initial adverse determination.

(a) *Time within which appeal must be filed.* An applicant whose request for access, copying, amendment or correction of a record has been denied pursuant to this Part may file an appeal within 90 days from the date of the denial to the Solicitor of Labor. The appeal shall state, in writing, the grounds for appeal and shall include any supporting statements or arguments. The appeal shall be addressed to the Solicitor of Labor, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. To expedite the processing of the appeal, each such appeal should clearly indicate on the envelope and on the appeal the following: "Privacy Act: Appeal."

(b) *Receipt by Solicitor of appeal; acknowledgement.* Each appeal when received by the Solicitor, shall have the date and time of such receipt inscribed thereon. The Solicitor shall acknowledge the receipt of such appeal in writing.

(c) *Action on appeal.* (1) Action on an appeal shall be taken promptly subsequent to receipt by the Solicitor, and a determination shall be made within 30 working days from receipt thereof. Where the Solicitor determines that a decision cannot be made within the 30-day period, the appellant shall be so notified, however, a decision shall be rendered within 40 days of the initial receipt of the appeal.

(2) On appeal, the Solicitor is authorized to determine de novo, whether the denial of appellant's initial request was proper and in accord with the applicable provisions of the statute and the pertinent regulations. In the event that the denial appealed from is one made by reason of the inability of the responsible official to make an informed determination within the specified time limits, the Solicitor's decision shall take into consideration any supplementary determination made by that official.

(3) In the event that a requester seeks review by a court of the denial of a request without first filing an appeal to the Solicitor as provided in this Part, the Solicitor may, unless otherwise ordered by the court, consider such action as the filing of an appeal and issue a decision thereon in accordance with the provisions of this paragraph.

(4) If a decision on an appeal is not made by the Solicitor within the normal or extended period, as applicable under

paragraph (c) of this section, the requester shall be deemed to have exhausted his or her administrative remedies and may seek relief as provided in 5 U.S.C. 552a(g). Processing of the appeal shall continue however, until a decision is made thereon, irrespective of whether the requester has invoked such judicial relief.

(d) *Procedure upon determination on appeal.* The Solicitor shall issue a decision in writing granting or denying the appeal, in whole or in part.

(1) *Decision to grant request.* (i) When the Solicitor determines that any portion of a prior request, which has been previously denied, should be granted, he shall indicate to the requester the extent to which he has decided to grant the previously denied request, and shall order the responsible official(s) to take the necessary action consistent with his decision.

(ii) If the Solicitor's decision provides for making available information which had been previously withheld, and the Solicitor has within his possession such information, he shall forward a copy of it to the requester together with his decision, unless the requester has indicated that he or she prefers to review the record in person, in which case the Solicitor shall forward the record to the appropriate official who shall make the record available to the requester within 10 working days.

(iii) If the action required by the Solicitor's decision must necessarily be carried out by a responsible official other than the Solicitor, such action shall be carried out within the following time limits:

(A) If the Solicitor's decision requires a record to be made available for review without amendments thereto, such record shall be made available in the manner initially requested, except as provided in § 70a.6(b)(1) (i) and (ii), within 10 working days of the Solicitor's decision.

(B) If the Solicitor's action requires the amendment of a record, the requester shall be given an opportunity to review the amended record within 15 working days of the Solicitor's decision. All previous recipients of the record, for which an accounting is required, shall be informed of the amendments immediately after the review by the requester.

(iv) Whenever a record is to be made available to an appellant at the direction of the Solicitor, the responsible agency official shall notify the appellant when the record is available for review.

(2) *Decision to uphold denial.* Where the Solicitor determines that the denial of a request, or a portion thereof, should be upheld, the requester shall be notified: (i) Of the extent to which the denial has been upheld and the reasons therefor; (ii) of his right to file with the agency in possession of the relevant record, a memorandum setting forth the fact that such person believes the record to be erroneous and the reasons therefor; and (iii) that the decision of the Solicitor constitutes the final action by the Department of Labor for purposes of judicial review, and that the Solicitor's decision may be appealed to the

District Court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the U.S. District Court for the District of Columbia.

(3) *Disclosure of record where request to amend has been denied on appeal.* Where a request to amend a record has been denied by the Solicitor, and the requester has filed a memorandum pursuant to paragraph (d)(2)(ii) of this section taking exception to the Solicitor's decision, upon receipt of such memorandum the responsible agency official shall include the memorandum with the relevant record and, in addition, may also include with such record a memorandum indicating that a request to amend the particular record has been denied both by the agency and by the Solicitor, and the reasons therefor.

(i) In addition, previous recipients of a record, where a request to amend has been denied by the Solicitor, and of which an accounting is required by 5 U.S.C. 552a(c), shall be provided with a copy of the requester's memorandum taking exception to the Solicitor's determination, and a copy of the agency memorandum in support of the determination, if such a memorandum has been prepared.

(ii) Any subsequent disclosure of the subject record shall also be accompanied by the requester's excepting memorandum, and the Government's supportive memorandum, if one has been filed.

§ 70a.10 Solicitation of social security numbers.

(a) Neither the Department nor its component units shall deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security number.

(b) The requirement set forth in paragraph (a) of this section shall not apply with respect to the disclosure of a social security number to the Department, or a component unit thereof, for inclusion in systems of records which were in existence prior to January 1, 1975, and such disclosure was required by statute, Executive Order or regulation adopted prior to January 1, 1975, to verify the identity of an individual.

(c) Each component unit of the Department that requests an individual to disclose his social security number shall provide the individual, in writing, with the following information:

(1) The use or uses that may be made of the social security number;

(2) The statute or authority under which the social security number is solicited;

(3) Whether the disclosure of the social security number is mandatory or voluntary; and

(4) The consequences, if any, to an individual should he or she refuse to disclose the number.

§ 70a.11 Fees.

(a) *General.* (1) Pursuant to authority granted by the Privacy Act, the payment of standard charges as set forth in

paragraph (b) of this section will, except as otherwise provided in this section, be required of the requester to cover the direct costs of duplicating records requested under this Part. No fee shall be assessed to any requester for any cost attributed to the search for and the review of any record.

(2) Circumstances under which copying facilities or services may be made available to a requester without charge, or at a reduced charge, are delineated in paragraph (e) of this section. Where a requester desires the agency to provide such services as certification, authentication, or other special services not required under the Privacy Act, with respect to requested records, fees in addition to those required for copying will be assessed as set forth in § 70.68 of this Chapter, and as authorized by the general user-charge statute, section 483a of Title 31, United States Code.

(b) *Copying charges.* (1) *Fee schedule for copying of records.* The fees payable pursuant to this section for obtaining requested copies of records which have been made available under this Part will be computed on the following basis and subject to the following conditions:

(i) *Standard copying fee.* The standard copying fee is \$0.10 for each 8½ by 11 inch page of record furnished. The standard fee is applicable both where the copies are reproduced by the person desiring them, using Government-furnished reproduction equipment, such as coin-operated machines, or where, in the absence of availability of such facilities, the copies are reproduced by agency personnel. This standard fee is also applicable to the furnishing of copies of computer printouts as stated in paragraph (c) of this section.

(ii) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of \$200, the person desiring reproduction may request a special rate quotation from the Office of the Assistant Secretary for Administration and Management.

(iii) *Limit of service.* Not more than 10 copies of any document will be furnished, unless the requester has received the prior written approval of the Assistant Secretary for Administration and Management.

(iv) *Manual copying by requester.* The Department shall provide facilities for manual copying, without charge, during normal working hours.

(c) *Computerized records.* (1) Information maintained, in whole or in part, in computerized form which is required to be made available under this Part, shall be made available as follows:

(i) When there is an existing computer printout, the material shall be made available at the per page rate stated in paragraph (b) of this section for each 8½ by 11 inch page.

(ii) When there is no existing printout of information required to be made available under this Part, then the information shall be printed out and made

available to the requester in accordance with paragraph (b) of this section.

(d) *Payment of fees.* (1) *Medium of payment.* Payment of the applicable fees as set forth in paragraph (b) of this section shall be made in cash, by U.S. postal money order, or by check payable to the Department of Labor. Postage stamps will not be accepted. Cash should not be sent by mail.

(2) *Advance payment or assurance.* Payment of the known and officially estimated copying fees shall be made or assured to the satisfaction of the disclosure officer prior to the performance of substantial copying services. Where the requester does not know and has no official estimate of the copying costs at the time the request is made, the request should specifically state that whatever costs will be involved pursuant to paragraph (b) of this section will be acceptable, or will be acceptable up to an amount not exceeding a named figure. When it becomes apparent that the duplication cost is going to exceed such named figure, the disclosure officer shall notify the requester as required by § 70a.6(b) of this Part.

(3) *Adjustment of fees.* Where an estimated fee, paid by the requester in advance, exceeds the fee chargeable under the applicable schedule for the copying services actually performed, the balance will be refunded by the Department. Where the actual fees due for the services are in excess of the estimate, the requester will be required to remit the difference. In cases where the estimated costs required under the fee schedule for responding to a request are such that an advance deposit is deemed necessary, the disclosure officer shall advise the requester of the estimated costs and the need for an advance deposit. In addition, where it appears that the information sought by the requester might be made available at less cost by revision of the request, the disclosure officer shall indicate to the requester that he or she may confer with knowledgeable Department personnel, if he or she so desires, in order to reformulate the request in a manner which will reduce the fees and meet the needs of the requester.

(4) *Post-copying costs.* The scheduled fees for furnishing copies of records made available pursuant to the Act cover the costs of furnishing the copies at the place of duplication. Where the volume of page copy, or the method of transmittal requested, is such that transmittal charges incurred by the Department are in excess of \$1, then the transmittal costs will be added to the copying fees set forth in paragraph (b) of this section, unless, appropriate stamps or stamped envelopes are furnished with the request, or authorization is given for collection of shipping charges on delivery.

(e) *Waiver or reduction of fees.* (1) When the disclosure officer or the appellate officer granting a request for a record determines that the waiver or reduction of the standard charge would be in the public interest, he or she may make the requested record available at

no charge or at a reduced charge, whichever he or she deems to be appropriate.

(2) (i) Where a copy of a record is made available for the first time to the subject of the record or an individual designated by the subject person, then the disclosure officer shall assess no fee.

(ii) In addition, where it is determined that a person, because of special circumstances, is unable to pay the fees prescribed in paragraph (b) of this section, and it is clear that the public interest would be served by providing the requested information free of charge, then no fee shall be charged for such information.

(f) *Authentication of copies.* Requirements pertaining to the certification or attestation under seal of copies of records required to be made available under this Part are the same as the requirements for authentication of copies of records under the Freedom of Information Act as set forth in § 70.68 of this Chapter.

§ 70a.12 Penalties.

(a) *General.* (1) This section sets forth criminal sanctions for three violations of the Act:

- (i) Unauthorized disclosure,
- (ii) Failure to publish a public notice of a system of records subject to the requirements of this Part and the Act, and
- (iii) Obtaining access to information under false pretenses.

(2) Paragraphs (a) (1) (i) and (ii) of this section apply to employees of the Department, and pursuant to 5 U.S.C. 552a(m), certain contractor personnel for contracts agreed to on or after September 27, 1975.

(b) *Unauthorized disclosure.* Any officer or employee of the Department, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information, the disclosure of which is prohibited by this Part, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any matter to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(c) *Failure to give public notice of a system of records.* Any officer or employee of the Department who willfully maintains a system of records without meeting the notice requirements of section (3) (4) of the Act shall be guilty of a misdemeanor and fined not more than \$5,000.

(d) *Obtaining access to information under false pretenses.* Any person who knowingly and willfully requests or obtains any record concerning an individual from the Department of Labor under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

§ 70a.13 Exemptions.

(a) *General exemption.* (1) *General.* Section (i) of 5 U.S.C. 552a permits certain agencies within the Department to promulgate rules in accordance with the

requirements of sections 553(b) (1), (2), and (3) (c) and (e) of Title 5, United States Code, to exempt certain systems of records from all the requirements of the Privacy Act except those set forth in paragraph (a) (3) of this section.

(2) *Systems of records which may be exempt pursuant to the general exemption.* Those types of systems of records which may be exempt from certain provisions of the Privacy Act by virtue of section (j) of 5 U.S.C. 552a are those systems which:

(i) Are maintained by an agency, or a component thereof, which performs as its principal function any activity pertaining to the enforcement of criminal laws, and

(ii) Contain information compiled for the purpose of: (A) A criminal investigation, including reports of informants and investigators associated with an identifiable individual, or (B) identifying individual criminal offenders and alleged offenders, and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status.

(3) *Requirements from which systems are exempt under the general exemption.* Those systems of records which qualify for the general exemption are not subject to any provisions of the Privacy Act, nor any of the provisions set forth in this Part, except for the following:

(i) The conditions of disclosure required under paragraph (b) of 5 U.S.C. 552a and § 70a.3 of this Part;

(ii) The requirements to account for the disclosure of records and maintain an accounting of such disclosures as set forth in sections (c) (1) and (c) (2) of 5 U.S.C. 552a;

(iii) The requirements prescribed in section (e) (4) of 5 U.S.C. 552a to publish annually in the FEDERAL REGISTER notice of the existence and character of systems of records, except that the procedures for: (A) Identifying a record, (B) gaining access to it, (C) contesting its accuracy, and (D) identifying the source of a record, need not be included in such notice;

(iv) The obligation set forth in section (e) (6) of 5 U.S.C. 552a to check for the accuracy, relevance, timeliness, and completeness of records before disclosing such records to any person other than an agency, or to the public pursuant to the Freedom of Information Act;

(v) The requirement restricting the maintenance of records pertaining to an individual's exercise of his First Amendment rights (See section (e) (7) of 5 U.S.C. 552a);

(vi) The requirement to establish rules governing the development, maintenance and safeguarding of systems of records as prescribed in sections (e) (9) and (e) (10) of 5 U.S.C. 552a;

(vii) The requirement to give notice of any new use or intended use of the information contained within a system of records prior to publication pursuant to section (e) (4) (D) of 5 U.S.C. 552a

(See section (e) (11) of 5 U.S.C. 552a); and

(viii) The criminal penalties set forth in section (i) of 5 U.S.C. 552a.

(4) *Procedure required to exempt system of records under general exemption.* In order to include a system of records described in paragraph (a) (2) of this section from all of the provisions of the Privacy Act, excluding those provisions set forth in paragraph (a) (3) of this section, a notice must be published in the FEDERAL REGISTER in accordance with the rulemaking provisions set forth in paragraph (a) (1) of this section. Such notice shall include at least the following:

(i) The name of the system of records (i.e., the same name used in the annual notice published pursuant to section (e) (4) of 5 U.S.C. 552a, and

(ii) The specific provisions of the Act, and the regulations, from which it is proposed to exempt the system, and the reasons therefor.

(b) *Special exemption.* (1) *General.* The Department, or its component units, may promulgate rules in accordance with sections 553(b) (1), (2) and (3) (c) and (e) of Title 5, United States Code, to exempt those types of systems of records described in paragraph (b) (2) of this section from the requirements of the Privacy Act, and the regulations of this Part, set forth in paragraph (b) (3) of this section.

(2) *Systems of records which may be exempt under special exemption.* The following types of systems of records may be exempt from those provisions of the Privacy Act, and the corresponding provisions of this Part, set forth in paragraph (b) (3) of this section.

(i) *Investigatory material compiled for law enforcement purposes.*

(A) Systems of records containing solely investigatory material compiled for law enforcement purposes, other than systems within the scope of paragraph (a) (2) of this section, may be exempt to the extent indicated in paragraph (b) (1). However, if any individual is denied any right, privilege, or benefit, that he would otherwise be entitled to by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(B) The phrase "investigatory material compiled for law enforcement purposes" is the same as that used in exemption (b) (7) of the Freedom of Information Act.

(C) (1) The phrase "to the extent that the disclosure of such material would reveal the identity of a source * * *" means that if a record can be disclosed in such a way as to conceal its source, a promise of confidentiality to the

source is not sufficient grounds for withholding such a record. In certain cases the contents of records may be such that the identity of the source would be revealed even if the name of the source of other identifying particulars were removed (e.g., where a record contains information that could only have been furnished by one individual known to the subject). In such a case the substance of the record may be withheld to protect the identity of a source and but only to the extent necessary to do so. When any reasonable doubt exists as to whether the disclosure of a record, or a portion thereof, would reveal the identity of a confidential source then such record, or the applicable portions thereof, may be withheld.

(2) In no instance is paragraph (b) (2) (i) (C) (1) of this section to be applied in a manner which deprives an individual from learning of the existence of information maintained in a record about him, even though the information may have been received from a "confidential source". The fact of the record's existence and, to the maximum extent feasible, a general characterization of that record must be made known to the individual in every case. Furthermore, this section in no way precludes an individual from ascertaining the substance and source of confidential information, should that information be used to deny him a promotion in a Government job, access to classified information, or some other right, benefit or privilege for which he is entitled to bring legal action, when the Government chooses to base any part of its legal case on that information.

(ii) *Records maintained to provide protective services.* Systems of records maintained in connection with providing protective services to the President of the United States, or to other individuals pursuant to section 3056 of Title 18, United States Code, may be exempt as indicated in paragraph (b) (1) of this section. This exemption pertains to systems, the compilation of which are necessary for assuring the safety of individuals protected pursuant to 18 U.S.C. 3056, but are not within the scope of the law enforcement records exemption set forth in paragraph (b) (2) (i) of this section.

(iii) *Statistical records.* Systems of records consisting of statistical records which are required by statute to be maintained and used solely for statistical research or reporting purposes, and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 18, United States Code, may be exempt as indicated in paragraph (b) (1) of this section. The language, "required by statute to be maintained * * * solely", means that systems of records which qualify for this exemption are those composed exclusively of records, that by statute, are prohibited from being used in any manner associated with the making of a determination about an individual to whom a particu-

lar record pertains, not merely that the agency does not use the information for such purposes.

(iv) *Investigatory material compiled for determining suitability for Federal employment.* (A) Systems of records containing only investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information may be exempt as indicated in paragraph (b) (1) of this section, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(B) Paragraph (b) (2) (iv) (A) of this section permits, among other things, the exemption of systems of records from the individual access provisions of the Act, and the corresponding provisions of this Part, §§ 70a.4 through 70a.9, when disclosure of the records contained therein would cause the identity of a confidential source to be revealed, but only under the following conditions:

(1) The material must be maintained only for purposes of determining an individual's qualifications, eligibility or suitability for employment in the Federal civilian service, or on a Federal contract, or for access to classified material. By implication, employment would include appointments to Federal advisory committees or to membership agencies, whether or not salaried;

(2) The material must be relevant and necessary for making a judicious determination as to qualifications, eligibility or suitability of an individual for a particular position, and the information must be of such a nature that it can only be obtained by providing assurance to the source that his, or her identity will not be revealed to the subject of the record (e.g., for "critically sensitive positions"); and

(3) The contents of the record, even with the removal of individual identifiers, would reveal the identity of the source.

(C) Regulations issued by the Civil Service Commission establishing procedures for when a pledge of confidentiality is to be made in order to obtain the information described in paragraph (b) (2) (iv) (A) of this section shall be complied with before this exemption is to be employed.

(D) The compilation of investigatory material with regard to Federal contracts pertains not only to investigatory material collected about individuals being considered for employment on an existing Federal contract, but also to investigatory material compiled to evaluate the capabilities of firms competing for Federal contracts.

(c) *Requirements from which systems of records may be exempt under special exemption.* A system of records which

meets the requirements of paragraph (b) (2) of this section need not comply with the following provisions of the Privacy Act and the corresponding requirements set forth in this Part:

(1) The requirement to make an accounting of a record available to the individual to whom it pertains at his or her request. (See section (c) (3) of 5 U.S.C. 552a);

(2) The requirement for access to records as set forth in section (d) of 5 U.S.C. 552a and §§ 70a.3 through 70a.9 of this Part;

(3) The provisions of section (e) (1) of 5 U.S.C. 552a which restricts the contents of records to only such information about an individual as is relevant and necessary to accomplish the purpose of the agency; and

(4) The provisions of section (e) (4) (G), (H) and (I) of 5 U.S.C. 552a, which require the annual notice of system of records published in the FEDERAL REGISTER to set forth:

(i) The procedures whereby an individual can be notified at his request;

(A) If a system of records contains a record pertaining to him, and

(B) How that person can gain access to any record pertaining to him contained in a system of records, and how he can contest its contents; and

(ii) The categories of sources of records in the system.

(d) *Procedure required to exempt a system of records under special exemption.* In order to exempt a system of records described in paragraph (b) (2) of this section from the provisions of the Privacy Act set forth in paragraph (b) (3) of this section, and the corresponding provisions of this Part, notice of intention to exempt must be published in the FEDERAL REGISTER, and such notice shall meet the requirements prescribed in paragraph (a) (4) of this section. The Department of Labor has published notice of intention to exempt the following record systems:

(1) ESA-18, Farm Labor Contractor Employee Records File is exempt under paragraph 3(k) (2) from paragraphs (c) (3), (d), (e) (4), (6), (h) and (f) of 5 U.S.C. 552a. Disclosure of information would enable subjects of the file to take action to prevent detection of illegal activities and could lead to the intimidation of informants, witnesses or their families. Except for information which would reveal the identity of a confidential source, relevant records will be made available only after a determination has been made based upon the information contained therein.

(2) OASA-3, General Investigation File is exempt under paragraphs (3) (j) (2) and 3(k) (2), (3) and (5) of 5 U.S.C. 552a. Information related to criminal investigations [3(j) (2)] is exempt from the provisions of the Act except for the requirements of paragraphs (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10) and (11), and (i). Disclosure of information could enable the subject of the record to take action to escape prosecution and, in addition, might lead to the intimidation of wit-

nesses, informants or their families. Other material which is exempted under 3(k) (2), (3) and (5) of the Act relates to civil law enforcement investigations, including shared information, files maintained in connection with assisting the U.S. Secret Service to provide protective services to government officials, and investigatory material compiled to determine the suitability, eligibility and qualification of DOL contractors. In the first two instances, the material is exempted from the requirements of paragraphs (c) (3), (d), (e) (4) (G), (H) and (I), and (f) of 5 U.S.C. 552a. Contract investigations are exempt from the provision of (c) (3), (d) and (f). Civil law enforcement material is exempted until such time as a determination is made based upon the information except that information which would reveal the identity of a confidential source will continue to be exempted. Contract information is exempt to the extent that disclosure would reveal the identity of a source when an express pledge of confidentiality has been given or the circumstances indicate that confidentiality has been im-

plied. These exemptions are necessary to preserve the integrity of the investigations and to prevent the intimidation or harassment of informants, witnesses or their families.

(3) LMSA-1, Index Cards, Division of Enforcement relates to investigations under the Labor-Management Reporting and Disclosure Act and E.O. 11441. This system is exempt and paragraphs 3(5) (2) and 3(k) (2) of 5 U.S.C. 552a. Material relating to criminal law enforcement [3(5) (2)] is exempted under paragraphs, (b), (c) (1) and (2), (e) (4) (A) through (F); (e) (6), 7, (9), (10) and (11), and (i) of the Act. Disclosure of this material could enable the subject of the record to evade prosecution and could, in addition, jeopardize the safety and welfare of investigators, witnesses, informants and their respective families. Material related to civil law enforcement [3(k) (2)] is exempt from the provisions of paragraphs (c) (3), (d), (e) (4), (6), (H), and (I), and (f) of 5 U.S.C. 552a. Disclosure would enable the subject to take action to prevent detection of illegal

activities or avoid the consequences of violation of the law and, further, could lead to the intimidation or harassment of witnesses, informants, or their families.

(e) *Segregation of systems of records.* System of records which may be exempt under paragraphs (a) or (b) of this section shall, to the extent practicable: (1) Be separated from systems of records which are not so exempt, and (2) when it is practicable to exempt only a portion of a system of records, rather than the entire system, then only such portion shall be exempted.

Inflationary impact. The Department has concluded the inflationary impact associated with these proposed regulations is inconsequential.

These regulations are effective March 33, 1977.

Signed at Washington, D.C. this 19th day of January, 1977.

W. J. USERY, Jr.,
Secretary of Labor.

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