



**BILLING**

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## **DEPARTMENT OF THE TREASURY**

### **Office of the Secretary**

#### **31 CFR Part 1**

#### **RIN 1505-AC73**

#### **Special Inspector General for Pandemic Recovery Committee – Systems:**

SIGPR .420 – Audit and Evaluations Records;

SIGPR .421 – Case Management System and Investigative Records; and

SIGPR .423 – Legal Records

#### **Privacy Act of 1974; Proposed Implementation**

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury, Departmental Offices (DO), gives notice of a proposed exemption for the following new systems of records maintained by the Special Inspector General for Pandemic Recovery (SIGPR) from certain provisions of the Privacy Act:

SIGPR .420 – Audit and Evaluations Records

SIGPR .421 – Case Management System and Investigative Records

SIGPR .423 – Legal Records

The exemption is intended to comply with the legal prohibitions against the disclosure of certain kinds of information and to protect certain information maintained in this system of records.

**DATES:** Written comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Written comments on this notice may be submitted electronically through the federal government eRulemaking portal at <http://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department of the Treasury (Treasury) to make the comments available to the public. Please note that comments submitted through <https://www.regulations.gov> will be public and can be viewed by members of the public. Due to COVID-19-related restrictions, Treasury has temporarily suspended its ability to receive public comments by mail.

In general, Treasury will post all comments to <https://www.regulations.gov> without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice and privacy issues, contact: Deputy Assistant Secretary for Privacy, Transparency, and Records at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622-5710.

**SUPPLEMENTARY INFORMATION:** SIGPR was established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. SIGPR has the duty to conduct, supervise, and coordinate audits, evaluations, and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under programs established by the Secretary, as authorized by Section 4018(c) of the CARES Act, and the management by the Secretary of programs, as authorized by Section 4018(c) of the CARES Act. SIGPR's duties and responsibilities are set forth in Section 4018 of the CARES Act, and in the Inspector

General Act of 1978, 5 U.S.C. app. 3. SIGPR plans to create these systems of records to facilitate SIGPR's audits, evaluations, investigations, and other operations to (1) promote economy, efficiency, and effectiveness in the administration of such programs; (2) prevent and detect fraud and abuse in the programs and operations within its jurisdiction; and (3) keep the head of the establishment and the Congress fully informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action. Treasury is publishing separately the notice of the new system of records to be maintained by SIGPR.

Under 5 U.S.C. 552a(j)(2) and (k)(2), the head of a federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records contains investigatory materials compiled for law enforcement purposes. Pursuant to these provisions, Treasury proposes to exempt the following system of records from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act:

SIGPR .420 – Audit and Evaluations Records

SIGPR .421 – Case Management System and Investigative Records

SIGPR .423 – Legal Records

The following are the reasons the investigatory materials contained in the above-referenced systems of records maintained by SIGPR may be exempted from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2):

(1) Exempted from 5 U.S.C. 552a(e)(4)(G) and (f)(1) (Agency Requirements and Rules) because release would give individuals an opportunity to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge may impair the ability of the Department of the Treasury and SIGPR (the Department/SIGPR) to carry out its respective missions, since individuals could:

- (i) Take steps to avoid detection;
- (ii) Inform associates that an investigation is in progress;
- (iii) Learn the nature of the investigation;
- (iv) Learn whether they are suspects or, instead, have been identified as alleged law violators;
- (v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or
- (vi) Destroy evidence needed to prove the violation.

(2) Exempted from 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) (Access to Records and Agency Requirements and Rules) because release might compromise the Department's/SIGPR's ability to provide useful tactical and strategic information to law enforcement agencies by:

(i) Permitting access to records contained in the systems of records such that it might provide information concerning the nature of current investigations and enable possible violators to avoid detection or apprehension by:

(A) Allowing the discovery of facts that could form the basis for violators' arrests;

(B) Enabling violators to destroy or alter evidence of alleged criminal conduct that could form the basis for arrest; and

(C) Using knowledge of the status of criminal investigations to delay the commission of a crime, or commit a crime at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files might also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations to avoid detection or apprehension.

(iii) Permitting access to investigative files and records also could disclose the identity of confidential sources and informants and the nature of the information supplied, and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. In addition, confidential sources and informants might refuse to provide criminal investigators with valuable information if they fear their identities may be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's/SIGPR's ability to carry out its respective mandate.

(iv) Furthermore, providing access to information contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's alleged criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraph (2), subsections (i) through (iv), permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department/SIGPR and thus would restrict the Department's/SIGPR's access to information necessary to accomplish its respective mission most effectively.

(vi) Finally, the dissemination of certain information that the Department/SIGPR maintains in the systems of records is restricted by law.

(3) Exempted from 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) (Access to Records) because these provisions pertain to requesting an amendment or noting a dispute to records that are exempt from access for the reasons set forth in paragraph (2) above.

(4) Exempted from 5 U.S.C. 552a(c)(3) (Accounting for Disclosures) because release of the accounting of disclosures of the records in this system could impair the ability of law enforcement agencies outside the Department/SIGPR from making effective use of information provided by the Department/SIGPR. Making accountings of disclosures available to the subjects of an investigation could alert them to the fact that another agency is conducting an investigation into their alleged criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Individuals possessing such knowledge could take measures to avoid detection or apprehension by altering their operations, transferring their alleged criminal activities to other geographical areas, or destroying or concealing evidence that would form the basis for arrest. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Moreover, providing accountings to the subjects of investigations would alert them to the fact that the Department/SIGPR has information regarding their alleged criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operations of the Department/SIGPR's information-gathering and analysis systems and permit individuals to take steps to avoid detection or apprehension.

(5) Exempted from 5 U.S.C. 552a(c)(4) (Accounting of Disclosures/Notice of Record Correction or Dispute) because this provision depends on an individual's having access to and an opportunity to request amendment of records that are exempt from access for the reasons set out above, this provision should not apply to the systems of records.

(6) Exempted from 5 U.S.C. 552a(e)(4)(I) (Agency Requirements/Publication of the Categories of Records) because it could compromise the Department/SIGPR's ability

to provide useful information to law enforcement agencies, since revealing sources for the information could:

- (i) Disclose investigative techniques and procedures;
- (ii) Result in threats or reprisals against informants by the subjects of investigations; and
- (iii) Cause informants to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) Exempted from 5 U.S.C. 552a(e)(1) (Agency Requirements/Maintaining Records) because the term “maintain” includes “collect” and “disseminate,” and application of this provision to the systems of records could impair the Department/SIGPR's ability to collect and disseminate valuable law enforcement information in the following ways:

(i) In many cases, especially in the early stages of an investigation, it may be impossible to immediately determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(ii) Not all violations of law discovered by the Department/SIGPR fall within the investigative jurisdiction of the Department or SIGPR. To promote effective law enforcement, the Department/SIGPR may disclose such violations to other law enforcement agencies, including state, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, the Department/SIGPR might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department or SIGPR when that information comes to the Department/SIGPR's attention during the collation and analysis of information in its respective records.

(8) Exempted from 5 U.S.C. 552a(e)(2) (Agency Requirements/Collection from an Individual) because it could impair the Department's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information. In addition:

(i) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his or her alleged criminal activities.

(ii) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his or her alleged criminal activities and thus avoid apprehension.

(iii) In certain instances, the subject of a criminal investigation may assert his or her constitutional right to remain silent and refuse to supply information to criminal investigators upon request.

(iv) During criminal investigations, it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained from the subject of a criminal investigation or other sources.

(9) Exempted from 5 U.S.C. 552a(e)(3) (Agency Requirements/Informing Individuals) because it could impair the Department/SIGPR's ability to collect and collate investigative, intelligence, and enforcement data. In addition:

(i) Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation, or his or her associates, know that a criminal investigation is in progress.



(ii) If it became known that the undercover officer was assisting in a criminal investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(iii) Individuals often feel inhibited talking to a person representing a criminal law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe is not involved in law enforcement activities.

(iv) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(v) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision could impede or compromise subsequent investigations.

(10) Exempted from 5 U.S.C. 552a(e)(5) (Agency Requirements/Record Maintenance). Because the definition of “maintain” includes “collect” and “disseminate,” this provision could hinder the initial collection of any information that might not be determined or determinable, at the moment of collection, to be accurate, relevant, timely, and complete. Similarly, application of this provision could seriously restrict the Department/SIGPR's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination because the Department/SIGPR may not have the expertise with which to

make such determinations. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) Exempted from 5 U.S.C. 552a(e)(8) (Agency Requirements/Notice) because it could reveal investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) Exempted from 5 U.S.C. 552a(g) (Civil Remedies) because, if the civil remedies relate to provisions of 5 U.S.C. 552a from which these rules exempt the systems of records, there should be no civil remedies for failure to comply with provisions from which the Department/SIGPR is exempted. Exemption from this provision will also protect the Department/SIGPR from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, and law enforcement data.

Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j)(2) or 5 U.S.C. 552a(k)(2), which is also included in another system of records, retains the same exempt status such information has in the system of records for which such exemption is claimed.

This proposed rule is not a “significant regulatory action” under Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, it is hereby certified that this rulemaking will not have significant economic impact on a substantial number of small entities. The term “small entity” is defined to

have the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction” as defined in the RFA.

The proposed regulation, issued under sections (j)(2) and (k)(2) of the Privacy Act, is to exempt certain information maintained by the Department/SIGPR in the above-referenced systems of records from certain Privacy Act requirements in this system of records by individuals who are United States citizens or aliens lawfully admitted for permanent residence. In as much as the Privacy Act rights are personal and apply only to U.S. citizens or an alien lawfully admitted for permanent residence, small entities, as defined in the RFA, are not provided rights under the Privacy Act and are outside the scope of this regulation.

#### **List of Subjects in 31 CFR Part 1**

Courts, Freedom of information, Government employees, Privacy.

Part 1, Subpart C of Title 31 of the Code of Federal Regulations is proposed to be amended as follows:

#### **PART 1--[AMENDED]**

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

**Authority:** 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a, as amended.

2. In § 1.36, amend the tables in paragraphs (c)(1)(ii) and (g)(1)(ii) by adding in alphanumeric order the entries for “SIGPR .420 – Audit and Evaluations Records”, “SIGPR .421 – Case Management System and Investigative Records” and “SIGPR .423 – Legal Records” to read as follows:

**§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.**

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(c) \* \* \*

(1) \* \* \*

(ii) \* \* \*

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Number System name

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SIGPR .420 – Audit and Evaluations Records

SIGPR .421 – Case Management System and Investigative Records

SIGPR .423 – Legal Records

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(g) \* \* \*

(1) \* \* \*

(ii) \* \* \*

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Number System name

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SIGPR .420 – Audit and Evaluations Records

SIGPR .421 – Case Management System and Investigative Records

SIGPR .423 – Legal Records

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*Ryan Law,*  
*Deputy Assistant Secretary Privacy, Transparency, and Records.*

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