



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 5b

RIN 0970-AC92

Privacy Act; Implementation

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS or the Department).

ACTION: Final rule.

SUMMARY: HHS exempts certain records in an existing system of records maintained by OCSE within ACF from the accounting, access, and amendment requirements of the Privacy Act. The affected system of records is *OCSE Federal Case Registry of Child Support Orders, HHS/ACF/OCSE*, System No. 09-80-0385. Only case files marked with the Family Violence Indicator (FVI) will be exempted, to align with a restriction in section 453(b)(2) of the Social Security Act which prohibits disclosure of case files marked with the FVI to anyone other than a court or agent of a court, to avoid harm to the custodial parent or the child of such parent.

DATES: This rule is effective on July 28, 2023.

FOR FURTHER INFORMATION CONTACT: Tricia John, Policy Specialist, OCSE Division of Policy and Training, at ocse.dpt@acf.hhs.gov. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority:

This rule is published under the authority granted to the Secretary of Health and Human Services by the Privacy Act (5 U.S.C. 552a(k)(2)), to allow the head of any agency to exempt a system of records from the access, amendment, or accountings of disclosures provisions of the Privacy Act (5 U.S.C. 552a(c)(3) and (d)(1) through (4)) “if the system of records is – investigatory material compiled for law enforcement purposes.” 5 U.S.C. 552a(k)(2)

II. Background

The Privacy Act of 1974, as amended, 5 U.S.C. 552a (hereafter abbreviated “Privacy Act” or “Act”), governs how the U.S. Government collects, maintains, uses, and disseminates records about individuals that are maintained in a “system of records.” A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

Under the Privacy Act, individuals have access and amendment rights with respect to records about them in a federal agency system of records, and the right to seek an accounting of certain disclosures made of the records about them, but the Act permits certain types of systems of records (identified in subsections (j) and (k) of the Act) to be exempted from those, and other, requirements of the Act. Subsection (k)(2) permits the head of an agency to promulgate rules to exempt investigatory material compiled for law enforcement purposes from requirements including those listed in 5 U.S.C. 552a(c)(3) and (d)(1) through (4)--subject to a limitation stated in 5 U.S.C. 552a(k)(2). The limitation is that if, as a result of the agency’s maintenance of the material, the subject individual is denied any right, privilege, or benefit that the individual would otherwise be

entitled by federal law or for which the individual would otherwise be eligible, the exemptions will apply only to confidential source identifying material (i.e., material that 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).

The exempted system, *OCSE Federal Case Registry of Child Support Orders*, HHS/ACF/OCSE, System No. 09-80-0385 (hereafter abbreviated “FCR”), is a Privacy Act system containing investigatory material compiled for law enforcement purposes. The system of records was established August 24, 1998 (see 63 FR 45080) and was last modified in full on September 13, 2022 (see 87 FR 56055). FCR records are compiled to assist states in administering programs under 42 U.S.C. 651 to 669b (title IV-D of the Social Security Act) to improve states’ abilities to locate parents and collect child support. OCSE is required to compare records transmitted to or maintained within the FCR to records maintained within HHS/ACF’s National Directory of New Hires and other federal agencies’ databases and to disclose information about the individuals within the records to state child support agencies or other authorized persons. The information in the FCR assists state child support agencies or other authorized persons to locate individuals who are involved in child support cases and their employment and asset information. The FCR also conducts FCR-to-FCR comparisons to locate information about individuals who are involved in child support cases in more than one state and provides the information to those states. Additional purposes of the FCR are specified in sections 453 and 463 of the Social Security Act (42 U.S.C. 653, 663) and include assisting states in administering programs under 42 U.S.C. 601 to 619 (title IV-A of the Social Security Act); assisting states in carrying out their responsibilities under child and family services programs operated under 42 U.S.C. 621 through 629m (title IV-B of the Social Security Act); assisting Foster Care and Adoption Assistance programs operated under 42 U.S.C. 670 through 679c (title IV-E of the Social Security Act); providing

individuals' states of residence sought pursuant to the Convention on the Civil Aspects of International Child Abduction to authorized persons in a Central Authority; assisting the Attorney General of the United States in locating any parent or child for the purpose of enforcing state or federal law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody or visitation determination; and assisting the Secretary of the Treasury in administering the sections of the Internal Revenue Code that grant tax benefits based on support or residence of children. FCR records, without personal identifiers, are also available for research purposes likely to contribute to achieving the purposes of the Temporary Assistance for Needy Families (TANF) or the federal/state child support program.

A disclosure prohibition in section 453(b)(2) of the Social Security Act (42 U.S.C. 653(b)(2)) applies to FCR case files marked with the FVI; it prohibits the disclosure of information from the FCR if a state has notified OCSE that the state has reasonable evidence of domestic violence or child abuse and that disclosure of such information could be harmful to the custodial parent or child. *See also* 45 CFR 303.21(e) (describing safeguarding requirements for files marked with the FVI). The exemptions from the Privacy Act's accounting, access, and amendment requirements will apply only to FCR case files marked with the FVI. The exemptions will apply to the entire contents of such files. The FVI indicates there is reasonable evidence of domestic violence or child abuse.

III. Summary Description of the Regulatory Provision

The notice of proposed rulemaking (NPRM) was published in the *Federal Register* on September 13, 2022 (87 FR 55977 through 55979). The comment period ended November 14, 2022.

OCSE received five sets of comments from interested individuals, which were posted on www.regulations.gov.

Section 5b.11: Exempt Systems.

In the NPRM, we proposed to add a new paragraph to 45 CFR 5b.11(b)(3)(ii) to provide an exemption to the system of records, *OCSE Federal Case Registry of Child Support Orders (FCR)*, HHS/ACF/OCSE, 09-80-0385. Specifically, we proposed exempting only FCR records marked with the Family Violence Indicator, based on the requirements of 42 U.S.C. 653(b)(2).

The majority of commenters supported the proposed exemption. We received one comment from an individual opposed to the regulation altogether and a comment supporting the relief but expressing concern about the possible unintended consequences of protecting abusive parents. In drafting the final rule, the following are OCSE's Response to Comments including the rationale for any changes made to the proposed rule and a final summary of regulatory changes.

IV. Response to Comments

Comment 1: A majority of the individuals who submitted comments were unequivocal in their support of the exemption and rationale described in the NPRM.

One commenter agreed that promulgating this new regulation would help courts and families reach a more expeditious resolution and reduce stress on those families.

Two commenters agreed that the rule was necessary to comply with the disclosure restrictions contained in section 453(b)(2) of the Social Security Act, and that it was important to the protection of domestic violence victims.

Response 1: Based on the overwhelming support for the proposed Privacy Act exemption for FCR records marked FVI, and for the reasons described in the NPRM and by the majority of commenters, OCSE agrees that this regulation is needed and should be provided.

Comment 2: One individual opposed the proposed rule, stating that the proposed rule is insufficient to prevent unintended prejudice in setting the FVI in child support cases. The

commenter stated that while they agreed that ACF had the authority to promulgate the rule, that “the rule grants [the] states an excessive amount of discretion in how states choose to apply or remove the [FVI].” Finally, the commenter stated that the possible mistaken application of the FVI would not allow individuals to obtain the contents of their file, making it difficult to certify information about arrears owed, or to verify that information in the file is correct. The commenter believes the agency needs to establish a more detailed rule regarding the placement of the FVI.

Another individual stated that while they appreciated regulations that help protect the privacy of custodial parents and their children, they were concerned about the unintended consequences of protecting abusive parents.

Response 2: While we appreciate the commenters’ concerns about parents who may be impacted by the improper placement of the FVI, this rule only sets out to meet the requirements of the Privacy Act to ensure that the Department’s Privacy Act regulations include the disclosure exemption already existing in federal law. This rule does not apply to any policies and procedures regarding the placement of the FVI; it is necessary to bring the agency into compliance with the Privacy Act, which requires an agency to promulgate a disclosure exemption rule whenever an exemption is necessary and permissible under the Act.

Summary of Regulatory Changes: For the reasons described above and in careful consideration of the comments, we finalize 45 CFR 5b.11(b)(3)(ii) by exempting the disclosure of records marked with the Family Violence Indicator maintained in the OCSE Federal Case Registry of Child Support Orders, as required under 42 U.S.C. 653(b)(2).

V. Regulatory Review

Paperwork Reduction Act

No new information collection requirements are imposed by these regulations.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on state governments. State governments are not considered small entities under the Regulatory Flexibility Act.

Regulatory Impact Analysis

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule meets the standards of Executive Order 13563 because it creates a short-term public benefit, at minimal cost to the Federal Government, by not imposing penalties against a state's TANF grant, during a time when public assistance funds are critically needed.

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this final rule is significant and was accordingly reviewed by OMB.

ACF determined that the costs to title IV–D agencies as a result of this rule will not be “economically significant” as defined in Executive Order 12866 (have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities). Accordingly, OIRA has determined that this rulemaking is “not major” under Subtitle E

of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act).

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). That threshold level is currently approximately \$164 million. This rule does not impose any mandates on state, local, or tribal governments, or the private sector, that will result in an annual expenditure of \$164 million or more.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation does not impose requirements on states or families. This regulation will not have an adverse impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order.

January Contreras, Assistant Secretary of the Administration for Children & Families, approved this document on February 15, 2023.

List of Subjects in 45 CFR Part 5b
Privacy.

Dated: July 24, 2023.

Xavier Becerra,
Secretary,
Department of Health and Human Services.

For the reasons discussed in the preamble, the Department of Health and Human Services amends 45 CFR part 5b as set forth below:

PART 5b— PRIVACY ACT REGULATIONS

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

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

2. Amend § 5b.11 by adding paragraph (b)(3)(ii) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(3) * * *

(ii) Pursuant to subsection (k)(2) of the Privacy Act:

(A) OCSE Federal Case Registry of Child Support Orders (FCR), HHS/ACF/OCSE, 09-80-0385; only records marked with the Family Violence Indicator are exempt, based on the requirements of 42 U.S.C. 653(b)(2).

(B) [Reserved]

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