



MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; System of Records

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), the U.S. Merit Systems Protection Board (MSPB) proposes to establish a modified system of records titled “MSPB – 3, Reasonable Accommodations.” This system of records includes information that MSPB collects, maintains, and uses on applicants for employment, MSPB employees, and participants in MSPB programs who request and/or receive reasonable accommodations from MSPB for disability, medical, pregnancy-related, or religious reasons.

DATES: Please submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. This modified system is effective upon publication in today’s *Federal Register*.

ADDRESSES: You may submit written comments to the Office of the Clerk of the Board by email to privacy@mspb.gov or by mail to Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419. All comments must reference “MSPB – 3, Reasonable Accommodations SORN.” Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to MSPB’s website (<https://www.mspb.gov>) and will include any personal information you provide, such as your name, address, phone number, email address, or any other personally identifying information in your comment or materials. Therefore, any submissions will be made public and without change.

FOR FURTHER INFORMATION CONTACT: For general questions or privacy issues, please contact: D. Fon Muttamara, Chief Privacy Officer, Office of the Clerk of the Board, 1615 M Street NW, Washington, DC 20419 at (202) 653-7200 or privacy@mspb.gov. Please include “Reasonable Accommodations SORN” with your question(s).

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act, 5 U.S.C. 552a, the MSPB proposes to modify an existing system of records titled “MSPB – 3, Reasonable Accommodations.” This system of records covers MSPB’s collection, maintenance, and use of records on applicants for employment, employees, and participants in MSPB programs who request or receive reasonable accommodations or other appropriate modifications from MSPB for medical or religious reasons. MSPB is modifying this system of records to include a new category of individuals covered by the system – participants in official MSPB functions (parties and/or participants in MSPB appeals, respondents to surveys, and all other individuals engaged in activity conducted by the MSPB), who seek a reasonable accommodation; MSPB is updating the categories of individuals covered and records in the system to include pregnant and recently pregnant employees; and MSPB is updating the system location and system manager to include the Office of Information Resources Management and the Accessibility Program Manager.

Title V of the Rehabilitation Act of 1973, as amended, prohibits discrimination in services and employment on the basis of disability, Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of religion; and Title VII, as amended by the Pregnancy Discrimination Act, prohibits discrimination on the basis of pregnancy.¹ The Pregnancy Workers Fairness Act, which went into effect on June 27, 2023, requires the agency to provide reasonable accommodations for qualified employees and job applicants with temporary physical or mental limitations due to pregnancy, childbirth, or related conditions. These statutes on discrimination and accommodations require Federal agencies to provide reasonable accommodations to individuals with disabilities, are pregnant or have been pregnant, and those with sincerely held religious beliefs; unless

¹ Pregnancy includes current pregnancy; past pregnancy; potential pregnancy; medical condition(s) related to pregnancy or childbirth including breastfeeding/lactation; having or choosing not to have an abortion; and birth control (contraception).

doing so would impose an undue hardship. In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.

Disability Accommodations. Reasonable accommodations on the basis of disability typically fall into the following categories: 1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for a position; 2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; and 3) modifications or adjustments that enable a qualified employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly-situated employees without disabilities; and 4) modifications to agency operating procedures to enable a qualified individual with a disability, full access to agency functions. In some instances, individuals may request modifications to their workspace, schedule, duties, or other requirements for documented medical reasons that may not qualify as a disability but may necessitate an appropriate modification to workplace policies and practices.

Pregnancy-Related Accommodations. Reasonable accommodations on the basis of pregnancy, childbirth, or related medical conditions, may include but are not limited to: providing the ability to sit or drink water; receiving parking at that is closer to the work site; having flexible hours; receiving additional break time to use the bathroom, eat, and rest; and taking leave or time off to recover from childbirth.

Religious Accommodations. Applicants and employees may obtain exceptions to rules or policies in order to follow their sincerely held religious beliefs or practices, and employers may grant certain accommodations for religious reasons but still refuse to grant them for secular reasons. Religious Accommodations may include but are not

limited to: having flexible hours to observe religious holidays; having flexible hours to observe religious practices, such as not working after sundown, or taking breaks for prayer throughout the day; and receiving an exemption from a Federal Government-mandated vaccine that conflicts with a sincerely held religious belief.

MSPB's Office of Equal Employment Opportunity is responsible for processing requests for reasonable accommodations from applicants for employment and employees who seek an accommodation due to a medical, pregnancy-related, or religious reasons, as well as processing requests based on documented medical reasons that may not qualify as a disability but that may necessitate an appropriate modification to workplace policies and practices. For participants in MSPB programs who are not applicants for employment or MSPB employees, MSPB's Accessibility Program Manager, within the Office of Information Resources Management, is responsible for processing these requests.

Pursuant to the Privacy Act, the system of records will include the following documentation: the request; any related records provided to support the request; any evaluation conducted internally, or by a third party under contract with MSPB; the decision regarding whether to grant or deny a request; and the details and conditions of the reasonable accommodation.

The Privacy Act embodies fair information practice principles in a statutory framework governing how Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to 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 is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of MSPB by complying with MSPB

Privacy Act regulations at 5 CFR part 1205, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice. The Privacy Act requires each agency to publish in the *Federal Register* a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The modified Reasonable Accommodations System of Records Notice is published in its entirety below. In accordance with the Privacy Act, 5 U.S.C. 552a(r), and OMB Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act" (Dec. 2016), MSPB has submitted a report of a modified system of records to the Office of Management and Budget and Congress.

Gina K. Grippando,

Clerk of the Board,

U.S. Merit Systems Protection Board

SYSTEM NAME AND NUMBER: MSPB – 3, Reasonable Accommodations.

SECURITY CLASSIFICATION: Unclassified.

SYSTEM LOCATION: Records are maintained by the Office of Equal Employment Opportunity and the Office of Information Resources Management, U.S. Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419. Records may be located in locked cabinets and offices, on MSPB's local area network, or in designated U.S. data centers for cloud service providers certified by the Federal Risk and Authorization Management Program or FedRAMP.

SYSTEM MANAGER(S): Director of the Office of Equal Employment Opportunity and Accessibility Program Manager, U.S. Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419, accommodation@mspb.gov.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: The Rehabilitation Act of 1973, 29 U.S.C. 701, 791, 794; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e; 29 CFR part

1605 (Guidelines on Discrimination Because of Religion); 29 CFR part 1614 (Federal Sector Equal Employment Opportunity); 29 CFR part 1630 (Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act); Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000); and Executive Order 13548, Increasing Federal Employment of Individuals with Disabilities (July 26, 2010); The Pregnant Workers Fairness Act (effective June 27, 2023), Pub. L. 117-328, 42 U.S.C. 2000gg; Providing Urgent Maternal Protections for Nursing Mothers Act (effective December 29, 2022), Pub. L. 117-328, 29 U.S.C. 218d.

PURPOSE(S) OF THE SYSTEM: The purpose of this system of records is to allow MSPB to collect and maintain records on applicants for employment, MSPB employees, and participants in MSPB programs who request or receive reasonable accommodations or other appropriate modifications from MSPB for medical, pregnancy, or religious reasons; to process, evaluate, and make decisions on individual requests; and to track and report the processing of such requests MSPB-wide to comply with applicable requirements in law, regulation, and policy, and to maintain the confidentiality of the information provided in support of the accommodation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: Applicants for MSPB employment, former and current MSPB employees, and participants in MSPB programs who requested and/or received reasonable accommodations or other appropriate modifications from MSPB for medical, pregnancy, or religious reasons.

CATEGORIES OF RECORDS IN THE SYSTEM: Records include information concerning the requester and/or recipient as part of the request, review, and decision-making process. These records may include demographic information, information regarding the health condition or sincerely held religious belief, and other related information required to document and make a determination on the request.

RECORD SOURCE CATEGORIES: Information is obtained from applicants for employment,

MSPB employees, and participants in MSPB programs who request and/or receive a reasonable accommodation or other appropriate modification from MSPB, directly or indirectly from an individual's medical provider or another medical professional who evaluates the request, directly or indirectly from an individual's religious or spiritual advisors or institutions, and from management officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING

CATEGORIES OF USERS AND PURPOSES OF SUCH USES: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside MSPB as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

- a. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys; or another Federal agency conducting litigation or in actual or reasonably anticipated proceedings before any court, adjudicative, or administrative body; another party or potential party or the party's or potential party's authorized representative in litigation before a court, adjudicative, or administrative body; or to a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant or necessary to the litigation or proceeding, and one of the following is a party to the litigation or has an interest in such litigation:
 - (1) MSPB, or any component thereof;
 - (2) Any employee or former employee of MSPB in his or her official capacity;
 - (3) Any employee or former employee of MSPB in his or her individual capacity where DOJ or MSPB has agreed to represent the employee; or
 - (4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the MSPB General Counsel's approval, pursuant to 5 CFR part 1216 or otherwise.
- b. To the appropriate Federal, State, or local agency responsible for investigating,

prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates or is relevant to a violation or potential violation of civil or criminal law or regulation.

- c. To a member of Congress or the White House from the record of an individual in response to an inquiry made at the request of the individual to whom the record pertains.
- d. To the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.
- e. To appropriate agencies, entities, and persons when (1) MSPB suspects or has confirmed that there has been a breach of the system of records; (2) MSPB has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, MSPB (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with MSPB's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
- f. To another Federal agency or Federal entity, when MSPB determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.
- g. To contractors, grantees, experts, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, or other assignment for MSPB when MSPB determines that it is necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to MSPB employees.

- h. To another Federal agency or commission with responsibility for labor or employment relations or other issues, including equal employment opportunity and reasonable accommodation issues, when that agency or commission has authority relating to reasonable accommodation.
- i. To an authorized appeal grievance examiner, formal complaints examiner, administrative judge or administrative law judge, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an individual who requested a reasonable accommodation or other appropriate modification.
- j. To another Federal agency, including but not limited to the Equal Employment Opportunity Commission and the Office of Special Counsel, to obtain advice regarding statutory, regulatory, policy, and other requirements related to requests for reasonable accommodation, and to evaluate and report on the agency's performance responding to requests for reasonable accommodation.
- k. To a Federal agency or entity authorized to procure assistive technologies and services in response to a request for reasonable accommodation.
- l. To first aid, medical, and safety personnel if the individual's medical condition requires emergency treatment.
- m. To another Federal agency or oversight body charged with evaluating MSPB's compliance with the laws, regulations, and policies governing reasonable accommodation requests.
- n. To another Federal agency pursuant to a written agreement with MSPB to provide services (such as medical evaluations), when necessary, in support of reasonable accommodation decisions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS: The records in this system are stored electronically on MSPB's local area network or with FedRAMP-authorized cloud

service providers. Access is limited to a small number of authorized personnel at MSPB. In addition, if paper records exist, they are stored in locked file cabinets and/or access-restricted offices.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS: Records are retrieved by name or another unique personal identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS: The records maintained in this system of records are subject to NARA General Records Schedule (GRS) 2.3 (Employee Relations Records), Item 20 (Reasonable accommodation case files).

NARA GRS 2.3 instructs disposition three years after employee separation from the agency or all appeals are concluded, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS: Records in the system are protected from unauthorized access and misuse through various administrative, technical, and physical security measures, such as access controls, mandatory security and privacy training, encryption, multi-factor authentication, security guards, and locked offices.

RECORD ACCESS PROCEDURES: Individuals seeking notification of and access to their records in this system of records may submit a request in writing to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419. Individuals requesting access must comply with MSPB's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 1205).

CONTESTING RECORD PROCEDURES: Individuals may request that records about them be amended by writing to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419. Individuals requesting amendment must follow MSPB's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 1205).

NOTIFICATION PROCEDURES: See Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM: None.

HISTORY: MSPB – 3, Reasonable Accommodations, 86 FR 73001 (Dec. 23, 2021).

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