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DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 014-2026]

Privacy Act of 1974; Implementation

AGENCY: Executive Office for Immigration Review, United States Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the Notice section of today's Federal Register, the Executive Office for Immigration Review (EOIR), a component within the United States Department of Justice (DOJ or Department), has published a notice of a new system of records titled "Fraud and Abuse Prevention Program Records" and numbered JUSTICE/EOIR-006. This system of records is exempt from U.S.C. 552a(c)(3) and (d) pursuant to 5 U.S.C. 552a (k)(2). EOIR proposes to exempt this system of records from certain provisions of the Privacy Act in order to protect law enforcement sensitive materials maintained in the system. For the reasons provided below, the Department proposes to amend its Privacy Act regulations by exempting records in this system from certain provisions of the Privacy Act. Public comment is invited.

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

ADDRESSES: You may send comments by any of the following methods:

- E-mail: *privacy.compliance@usdoj.gov*. To ensure proper handling, please reference the CPCLO Order No. in the subject line of the message.
- Fax: 202-307-0693.
- Mail: United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, Two Constitution Square, 145 N St. NE, Suite 8W-300,

Washington, DC 20530. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes. To ensure proper handling, please reference the CPCLO Order No. in your correspondence.

- Federal eRulemaking Portal: *http://www.regulations.gov*. When submitting comments electronically, you must include the CPCLO Order No. in the subject box. Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Daylight Savings Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all personal identifying information that you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business

information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, may be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the "FOR FURTHER INFORMATION CONTACT" paragraph, below.

FOR FURTHER INFORMATION CONTACT: Justine Fuga, Senior Component Official for Privacy, Office of the General Counsel; Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041; Justine.Fuga@usdoj.gov; EOIR.Privacy.Intake@usdoj.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The primary mission of EOIR is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. Under delegated authority from the Attorney General, EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings. Individuals who are subjects of EOIR immigration proceedings may be represented by counsel.

Within EOIR's Office of the General Counsel (OGC), under the supervision of a designated anti-fraud officer, the Fraud and Abuse Prevention Program (Fraud Program) investigates complaints of immigration fraud, immigration scams, and the unauthorized practice of immigration law within EOIR proceedings. The Fraud Program refers complaints of fraud to appropriate law enforcement and disciplinary authorities; and it provides training for EOIR personnel, outreach materials, and education for the public on these issues. *See* 8 CFR 1003.0(f)(2).

The anti-fraud officer serves as a point of contact relating to concerns about possible fraud involving EOIR proceedings, particularly with respect to matters relating to fraudulent applications or documents affecting multiple removal proceedings, applications for relief from removal, appeals, or other proceedings before EOIR. 8 CFR 1003.0(f)(2)(i). The Fraud Program coordinates with investigative authorities of the Department of Justice, Department of Homeland Security, and other appropriate agencies with respect to the identification of and response to reported fraud. 8 CFR 1003.0(f)(2)(ii). The Fraud Program also collaborates with the EOIR disciplinary counsel and with other appropriate authorities with respect to instances of fraud, misrepresentation, or abuse pertaining to an attorney or accredited representative providing representation to clients in EOIR immigration proceedings. 8 CFR 1003.0(f)(2)(iii).

The Fraud Program maintains a system of records in connection with its work receiving, tracking, managing, investigating, and responding to reports of suspected immigration fraud, abuse, and unauthorized practice of immigration law. The Fraud Program refers complaints to appropriate Federal, state, local, territorial, or tribal law enforcement and disciplinary authorities for further investigation into potential violations of civil and/or criminal law. When referring complaints, the Fraud Program will provide authorities with copies of records maintained in the system. The records include information pertaining to complainants, witnesses, and subjects of investigations of alleged fraud and individuals (EOIR adjudicators or personnel, or members of the public) reporting or observing alleged fraud. Such records contain law enforcement sensitive information and are properly exempt from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

II. Privacy Act Exemptions

The Privacy Act allows Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including those that provide individuals with a right to request access to and amendment of records about the individual. If an agency intends to exempt a particular system of records, it must first issue a rulemaking pursuant to 5 U.S.C. 553(b)(1)-(3), (c), and (e).

The Department proposes to modify 28 CFR part 16 to amend the Privacy Act exemptions for the new system of records, Fraud and Abuse Prevention Program Records, JUSTICE/EOIR-006. Specifically, in section 16.83, the Department proposes to add paragraph (g) claiming certain records within the new system of records are exempt from 5 U.S.C. 552a(c)(3) and (d) and (2) pursuant to 5 U.S.C. 552a(k)(2). The exemption is justified because access to or an accounting for disclosures of records contained in this system of records could inform the subject of the investigation of an actual or potential criminal, civil, or regulatory violation or the existence of that investigation; of the nature

and scope of the information and evidence obtained by the investigation as to the subject's activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law and regulatory enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

These exemptions apply only to the extent that information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a (k)(2). To the extent that information in a record pertaining to an individual does not relate to official Federal investigations and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law or regulatory enforcement process, the applicable exemption may be waived by EOIR.

Executive Orders 12866 and 13563–Regulatory Review

In accordance with 5 U.S.C. 552a(k), this proposed action is subject to formal rulemaking procedures by giving interested persons an opportunity to participate in the rulemaking process "through submission of written data, views, or arguments," pursuant to 5 U.S.C. 553. The purpose of this proposed rule is to exempt certain records within this system from the requirements of 5 U.S.C. 552a(c)(3) and (d) to protect law enforcement sensitive information contained within the system of records. This proposed rule does not raise novel legal or policy issues, nor does it adversely affect the economy, the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof in a material way. The Office of Management and Budget has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of

Information and Regulatory Affairs within the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will only impact Privacy Act-protected records, which are personal and generally do not apply to an individual's entrepreneurial capacity, subject to limited exceptions. Accordingly, the Chief Privacy and Civil Liberties Officer, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E– Congressional Review Act)

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.*, requires the Department to comply with small entity requests for information and advice about compliance with statutes and regulations within the Department's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in "FOR FURTHER INFORMATION CONTACT" paragraph, above. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *https://www.sba.gov/advocacy.* This proposed rule is not a major rule as defined by 5 U.S.C. 804 of the Congressional Review Act.

Executive Order 13132–Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988–Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13175–Consultation and Coordination With Indian Tribal Governments

This proposed rule will have no implications for Indian Tribal governments. More specifically, it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, the consultation requirements of Executive Order 13175 do not apply.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000, as adjusted for inflation, or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires the Department to consider the impact of paperwork and other information collection burdens imposed on the public. This system of records may include copies of the official records of proceedings (ROPs) in immigration cases before EOIR, which are comprised in part by EOIR and DHS forms subject to the Paperwork Reduction Act. A list of active EOIR forms and their OMB Control Numbers can be found on the EOIR website at https://www.justice.gov/eoir/eoir-forms. A list of active DHS forms and their OMB

Control Numbers can be found on the DHS website at https://www.dhs.gov/find-dhs-forms.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated by Attorney General Order 2940-2008, the Department of Justice proposes to amend 28 CFR part 16 as follows:

PART 16--PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation for part 16 continues to read as follows:

Authority**:** 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

Subpart E – Exemption of Records Systems Under the Privacy Act

2. In § 16.83, add paragraph (g) to read as follows:

§ 16.83 Exemption of the Executive Office for Immigration Review System—limited access.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (d): Fraud and Abuse Prevention Program Records (JUSTICE/EOIR-006).

(1) Exemption from 5 U.S.C. 552a(c)(3) and (d) is justified because access to or an accounting of disclosures of records contained in this system of records could inform the subject of the investigation of an actual or potential criminal, civil, or regulatory violation or the existence of that investigation; of the nature and scope of the information and evidence obtained as to the subject's activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious

impediment to effective law and regulatory enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2). To the extent that information in a record pertaining to an individual does not relate to official Federal investigations and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law or regulatory enforcement process, the applicable exemption may be waived by the Executive Office for Immigration Review.

Dated: October 5, 2026.

Laurence E. Rothenberg,

Chief Privacy and Civil Liberties Officer,

United States Department of Justice.

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