

Brenda.Akstulewicz@nrc.gov or
Patricia.Jimenez@nrc.gov.

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Denise L. McGovern,
Policy Coordinator, Office of the Secretary.
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OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Routine Use Implementation; System of Records

AGENCY: U.S. Office of Personnel
Management.

ACTION: Notice; Routine Use
Implementation and Response to
Comments.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB), Circular No. A-130, notice is given that the U.S. Office of Personnel Management is implementing the modification, proposed in 80 FR 42133, to all of its systems of records, as identified in the list below.

SUPPLEMENTARY INFORMATION: On July 16, 2015, OPM published a notice to establish a new Privacy Act routine use which is applicable to all OPM systems of records. The new routine use allows OPM to disclose information to appropriate persons and entities for response and remediation purposes in the event of suspected or confirmed compromise of information in any of its systems. 80 FR 42133 (July 16, 2015). The July 16th notice invited comments on the new routine use until August 17, 2015. OPM received 5 comments during this period. After reviewing and

considering the comments, OPM has decided to implement the new routine use without substantive alteration. A description of the comments and OPM's corresponding responses are included below.

Two Federal agencies requested administrative changes that were unrelated to the form or substance of this routine use. In response to one agency comment, OPM re-listed all of the OPM systems to which the new routine use will apply, including OPM/Central-19, which had been inadvertently left out of the prior notice. OPM determined that the other suggested changes do not affect implementation of the newly proposed use because they pertain specifically to other OPM systems of records. Therefore, those suggestions will be considered in future updates to notices regarding those systems.

OPM also received comments from a non-governmental organization regarding the location of certain records in other OPM systems and requesting notice in the event that those systems are compromised. OPM plans to continue fulfilling its breach notification responsibilities whenever appropriate and will respond separately to the organization with regard to its other comments, which seek OPM's response to a previous communication.

Finally, one individual and one Federal employee union sought information about security measures that would be taken to convey information shared outside of OPM pursuant to the new routine use. As with information shared outside the agency pursuant any routine use associated with its systems, OPM will transmit such information in accordance

with applicable information security laws, guidelines, and standards including, but not limited to, the Federal Information Security Management Act (Pub. L. 107-296), and associated OMB policies, standards and guidance from the National Institute of Standards and Technology.

The individual commenter and employee union also questioned whether the routine use is appropriately tailored to address activities related to the suspected or confirmed compromise of information. OPM adopted the model language developed by the Office of Management and Budget (OMB Memorandum 07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, Attachment 2) and adopted by a number of other Federal agencies. As drafted, this routine use permits the agency to protect sensitive information contained in OPM's systems while also facilitating mitigation and prevention activities in the event of confirmed or suspected compromise of information. Therefore, OPM has adopted the new routine use, first published on July 16, 2015, without further change.

A description of the modification to the agency's systems of records is provided below. In accordance with 5 U.S.C. 552a(r), the agency has provided a report to OMB and the Congress.

U.S. Office of Personnel Management.

Beth F. Cobert,
Director.

U.S. Office of Personnel Management
Privacy Act notices and citations follow.
An asterisk (*) designates the last
publication of the complete document
in the **Federal Register**.

SORN	Title	FR#
2013 statement	2013 OPM Statement of Routine Uses for OPM's Internal and Central Systems of Records.	60 FR 63075.
CENTRAL-1	Civil Service Retirement and Insurance Records	73 FR 15013.* 64 FR 54930. 63 FR 45881. 60 FR 63075.
CENTRAL-2	Complaints and Inquiries Records	60 FR 63075.
CENTRAL-4	Inspector General Investigations Case File	60 FR 63075.
CENTRAL-5	Intergovernmental Personnel Act Assignment Records	64 FR 60249.* 60 FR 63075.
CENTRAL-6	Administrative Law Judge Application Records	60 FR 63075.
CENTRAL-7	Litigation and Claims Records	60 FR 63075.
CENTRAL-8	Privacy Act/Freedom of Information Act (PA/FOIA) Case Records	64 FR 53424.* 60 FR 63075. vol. 58, no. 68, 4/12/1993.
CENTRAL-9	Personnel Investigations Records	75 FR 28307.* 60 FR 63075.
CENTRAL-10	Federal Executive Institute Program Participants Records	64 FR 59221.* 60 FR 63075.
CENTRAL-11	Presidential Management Fellows (PMF) Program Records	77 FR 61791.* 74 FR 42334. 60 FR 63075.

SORN	Title	FR#
CENTRAL-13	Executive Personnel Records	64 FR 60247.* 60 FR 63075.
CENTRAL-14	Debarment or Suspension Records for Federal Employee Health Benefits	60 FR 63075.* 60 FR 39194.
CENTRAL-15	Health Claims Data Warehouse	78 FR 23313.* 76 FR 35050.
CENTRAL-16	Health Claims Disputes External Review Services	76 FR 70512.* 75 FR 56601.
CENTRAL-18	Federal Employees Health Benefits Program Claims Data Warehouse	76 FR 35052.
CENTRAL-19	External Review Records for Multi-State Plan (MSP) Program	78 FR 65011.
CENTRAL-X	Federal Competency Assessment Tool	72 FR 60396.
GOVT-1	General Personnel Records	77 FR 73694.* 76 FR 32997. 71 FR 35342. 65 FR 24732. 61 FR 36919.
GOVT-2	Employee Performance File System Records	71 FR 35342.* 65 FR 24732. 61 FR 36919.
GOVT-3	Records of Adverse Actions, Performance Based Reductions In Grade and Removal Actions, and Terminations of Probationers.	71 FR 35342.* 65 FR 24732. 61 FR 36919.
GOVT-5	Recruiting, Examining and Placement Records	79 FR 16834.* 71 FR 35342. 65 FR 24732.
GOVT-6	Personnel Research and Test Validation Records	71 FR 35342.* 65 FR 24732. 61 FR 36919.
GOVT-7	Applicant Race, Sex, National Origin, and Disability Status Records	71 FR 35342.* 65 FR 24732. 61 FR 36919.
GOVT-9	File on Position Classification Appeals, Job Grading Appeals, Retained Grade or Pay Appeals, Fair Labor Standard Act (FLSA) Claims and Complaints, Federal Civilian Employee Compensation and Leave Claims, and Settlement of Accounts for Deceased Civilian Officers and Employees.	78 FR 60331.* 71 FR 35342. 65 FR 24732. 61 FR 36919.
GOVT-10	Employee Medical File Systems Records	75 FR 35099.* 71 FR 35342. 65 FR 24732.
Internal-1	Defense Mobilization Emergency Cadre Records	64 FR 72705.* 60 FR 63075.
Internal-2	Negotiated Grievance Procedure Records	60 FR 63075.
Internal-3	Security Officer Control Files	65 FR 14635.* 60 FR 63075.
Internal-4	Health Program Records	64 FR 51807.* 60 FR 63075.
Internal-5	Pay, Leave, and Travel Records	64 FR 61949.* 60 FR 63075.
Internal-6	Appeal and Administrative Review Records	60 FR 63075.
Internal-7	Complaints and Inquiries Records	60 FR 63075.
Internal-8	Employee Counseling Services Program Records	60 FR 63075.
Internal-9	Employee Locator Card Files (PDF file)	64 FR 51807.* 60 FR 63075.
Internal-10	Motor Vehicle Operator and Accident Report Records	60 FR 63075.
Internal-11	Administrative Grievance Records	60 FR 63075.
Internal-12	Telephone Call Detail Records	64 FR 54934.
Internal-13	Parking Program Records	65 FR 540.
Internal-14	Photo Identification and Visitor Access Control Records	64 FR 73108.
Internal-15	OPM Child Care Tuition Assistance Records	65 FR 30643.
Internal-16	Adjudications Officer Control Files	79 FR 30202.* 66 FR 42568.
Internal-17	Web-Enabled Voting Rights System (WEVRS)	71 FR 38190.
Internal-18	CyberCorps®: Scholarship For Service (SFS)	79 FR 42064.* 74 FR 42336.
Internal-19	Investigation Training Records	79 FR 8515.
Internal-20	Integrity Assurance Officer Control Files	80 FR 2447.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To appropriate agencies, entities, and persons when (1) OPM suspects or has

confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the agency has determined that as a result of the

suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by OPM or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OPM's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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OFFICE OF PERSONNEL MANAGEMENT

Post-DOMA Survivor Annuitant Federal Employees Health Benefit Waiver Criteria

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: The U.S. Office of Personnel Management (OPM) has updated its Waiver Policy on the official OPM Web site¹ to post the additional criteria OPM will consider when reviewing certain requests for waiver of the Federal Employees Health Benefit (FEHB) Program enrollment eligibility requirements. The updates to the Waiver Policy detail the criteria OPM will consider when reviewing waiver requests from individuals who are receiving a monthly survivor annuity as the surviving same-sex spouse of a Federal employee or annuitant who died on or before June 26, 2013. After an individual who is receiving a monthly annuity as the surviving same-sex spouse of a deceased Federal employee or annuitant is granted a waiver pursuant to section 8905(b) of title 5, U.S. Code, and the applicable procedures, the FEHB enrollment will be effective the first day of the first pay period that begins after the date on which that OPM granted the waiver. The individual may not be enrolled in FEHB retroactively, unless there is clear administrative error.

FOR FURTHER INFORMATION CONTACT: Chelsea Ruediger, chelsea.ruediger@opm.gov, (202) 606-0004.

SUPPLEMENTARY INFORMATION: Following the Supreme Court's June 26, 2013 decision in *United States v. Windsor*,

same-sex spouses became eligible family members under a Federal Employees Health Benefits (FEHB) Program enrollment. Because existing same-sex marriages were not recognized by the Federal government before the *Windsor* decision, all legal same-sex marriages that predated the *Windsor* decision were treated as new marriages. FEHB enrollees, which included Federal employees and annuitants, had 60 days from June 26, 2013 until August 26, 2013 to submit a request to change their FEHB eligibility enrollment from self-only to self and family, to provide FEHB coverage to their same-sex spouse. See *OPM Benefits Administration Letter 13-203 issued July 17, 2013*. <https://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-203.pdf>. However, Federal employees and annuitants who died on or before the date of the *Windsor* decision, June 26, 2013, did not have an option to elect FEHB coverage for their same-sex spouse.

In the ordinary course for a surviving spouse to be enrolled in FEHB after the death of the Federal employee or annuitant, the deceased Federal employee or annuitant must have been enrolled in Self and Family FEHB coverage that covered the surviving spouse at the time of death and the surviving spouse must be entitled to a monthly annuity as the survivor of a deceased Federal employee or annuitant. This means, absent a waiver of the FEHB eligibility requirements codified at 5 U.S.C. 8905(b)(2), individuals who are now receiving a survivor annuity as the surviving same-sex spouse of a deceased employee or annuitant who died on or before June 26, 2013, are not eligible for FEHB enrollment.

This notice outlines the updates to the OPM FEHB Eligibility Waiver Policy and identifies the criteria OPM will consider when reviewing waiver requests from individuals who are receiving a monthly survivor annuity benefit as the surviving same-sex spouse of a Federal employee or annuitant who died on or before June 26, 2013. It also prescribes the requirements and enrollment effective dates for these certain survivor annuitants to receive FEHB coverage.

Waiver Statute and Implementing Regulations

Section 8905(b) of title 5, U.S. Code allows OPM to waive certain FEHB eligibility requirements for an individual if OPM:

“determines that, due to exceptional circumstances, it would be against equity and

good conscience not to allow such individual to be enrolled as an annuitant² in a health benefits plan under [chapter 89].”

The implementing regulation, promulgated at 5 CFR 890.108, requires the annuitant to provide OPM with evidence of the following in order to be granted a waiver for FEHB enrollment:

- (1) The individual intended to have FEHB coverage as an annuitant (retiree);
- (2) The circumstances that prevented the individual from meeting the requirements of 5 U.S.C. 8905(b) were beyond the individual's control; and
- (3) The individual acted reasonably to protect his or her right to continue coverage into retirement.

OPM does not want to penalize an individual who is receiving a survivor annuity as a same-sex spouse and who was not covered by a FEHB Self and Family plan before his/her spouse's death because prior to June 26, 2013, the provisions of the Defense of Marriage Act (DOMA) prevented OPM from recognizing the same-sex marriage. Therefore, we believe it would be against equity and good conscience not to grant a waiver request submitted by such individual. OPM will consider the criteria in 5 CFR 890.108 satisfied given the circumstances presented in the scope of this notice, provided that the appropriate documentation of marriage and death is submitted.

OPM will accept the following to meet the requirements above:

1. Proof of a legally valid same-sex marriage performed prior to June 26, 2013, to the deceased annuitant,
2. Proof that the deceased annuitant died on or before June 26, 2013, and
3. Proof that the deceased annuitant was enrolled in FEHB at death.

Individuals must submit requests for waiver of the FEHB enrollment eligibility requirements under 5 U.S.C. 8905(b) to OPM in writing. These waiver requests should be mailed to: Office of Personnel Management, Retirement Programs, Attn: Retirement Eligibility Services—HB Waiver Request, 1900 E Street NW., Room 2416, Washington, DC 20415.

In addition, the individual who is seeking a waiver of the FEHB eligibility requirements must have already been adjudicated eligible for a survivor annuity before he or she may seek a waiver under 5 U.S.C. 8905(b).

Enrollment Effective Date

After an individual who is receiving a survivor annuity as a same-sex spouse

¹ See: <https://www.opm.gov/healthcare-insurance/healthcare/reference-materials/reference/annuitants-and-compensationers/#current>.

² For purposes of the Federal Employees Health Benefits program, “annuitant” has been defined to include, *inter alia*, a member of a family who receives an immediate annuity as the survivor of an employee. 5 U.S.C. 8901(3)(B).