

Dated: November 16, 2007.

**Diane Auer Jones,**

*Assistant Secretary, U.S. Department of Education, Office of Postsecondary Education.*

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## DEPARTMENT OF EDUCATION

### Privacy Act of 1974; System of Records—Department of Education Federal Docket Management System (EDFDMS)

**AGENCY:** Office of the General Counsel, Department of Education.

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled "Department of Education Federal Docket Management System" (EDFDMS) (18-09-05).

EDFDMS contains individually identifying information voluntarily provided by individuals who submit public comments on the Department's rulemaking documents that are in the Federal Docket Management System (FDMS). FDMS is an interagency system that allows the public to search, view, download, and comment on Federal agency rulemaking documents through a single online system. The public accesses the FDMS Web portal at <http://www.regulations.gov>.

**DATES:** The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records referenced in this notice on or before December 27, 2007.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 21, 2007. This system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on December 31, 2007, unless OMB waives 10 days of the 40-day review period for compelling reasons shown by the Department, or (2) December 27, 2007, unless the system of records needs to be

changed as a result of public comment or OMB review.

**ADDRESSES:** Address all comments about the proposed routine uses to Elizabeth McFadden, Assistant General Counsel, Regulatory Services Division, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E227, Washington, DC 20202-6110. *Telephone:* (202) 401-6307. If you prefer to send comments through the Internet, use the following address: [comments@ed.gov](mailto:comments@ed.gov).

You must include the term "EDFDMS" in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 6E227, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth McFadden. *Telephone:* (202) 401-6307. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

### SUPPLEMENTARY INFORMATION:

#### Introduction

FDMS serves as a central, electronic repository for Federal rulemaking dockets and includes **Federal Register** notices, supporting materials such as scientific or economic analyses, and public comments, as well as non-rulemaking dockets. Each agency that uses FDMS, including the Department, is responsible for managing its own dockets and rulemaking documents.

Through the Department's portion of FDMS, members of the public may comment on the Department's rulemaking documents contained in the system. In order to submit a comment

through the Department's portion of FDMS, members of the public only need to complete two fields—the "Category" field and the "General Comments" field. To complete the "Category" field, commenters are prompted to select the most appropriate category from the following list: Parent/relative, teacher, student, individual, public elementary/secondary school, private elementary/secondary school, school administrator, institution of higher education, lender, guarantor, local educational agency, State educational agency, State agency, association/organization, Federal agency, child advocate, lobbyist, law firm, tribal organization, and other. The "General Comments" field in FDMS is a free text field in which individuals provide their actual comments. In addition to these two required fields, commenters may, but are not required to, provide the following information: First name, last name, city, country, State or province, e-mail address, organization name, submitter's representative, government agency type, and government agency.

Generally, the Department makes all of the information provided by commenters, including commenters' names and other individually identifying information provided within the comments, publicly viewable on the Federal government's interagency FDMS Web portal at <http://www.regulations.gov>. FDMS has full text search capability, enabling any member of the public to search all public submissions on any Department rulemaking in FDMS by any term, including any name and contact information submitted in or as part of a comment.

On the <http://www.regulations.gov> Web site and in the Department's notices of proposed rulemaking, the Department clearly notifies the public that, with few exceptions, comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) are made publicly available on the Federal eRulemaking Portal (<http://www.regulations.gov>) without change. The Department makes efforts to ensure that comments containing material the disclosure of which is restricted by Federal law, such as the Children's Online Privacy Protection Act of 1998 (COPPA), are not made publicly available. While not publicly posted, the Department will retain, evaluate, and consider these comments. EDFDMS is comprised of both these comments that are not publicly available, as well as the comments on the Department's rulemakings that are available to the

public through <http://www.regulations.gov>.

### The Privacy Act

The Department is publishing this new system of records notice, in accordance with the applicable requirements of the Privacy Act, to inform the public about how it will collect, maintain, use, and disclose the information that members of the public provide when commenting on a Department rulemaking that is part of FDMS.

The Privacy Act applies to information about individuals that contains individually identifying information and that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record," and the system, whether manual or computer-based, is called a "system of records." The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to OMB and Congress whenever the agency publishes a new system of records.

The portion of the EDFDMS system that comes under the Privacy Act includes only the individually identifying information that commenters voluntarily submit to the Department when they comment on the Department's rulemaking documents in FDMS. The Privacy Act, 5 U.S.C. 552a(e)(4), requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

### Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area, at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: November 21, 2007.

**Kent D. Talbert,**  
*General Counsel.*

For the reasons discussed in the preamble, the General Counsel of the Department of Education publishes a notice of a new system of records to read as follows:

### 18-09-05

#### SYSTEM NAME:

Department of Education Federal Docket Management System (EDFDMS).

#### SECURITY CLASSIFICATION:

None.

#### SYSTEM LOCATION:

The central location is at the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711-0001. Access is available through the Internet from other locations.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information on individuals who voluntarily provide individually identifying information when submitting a public comment or supporting materials in response to a Department rulemaking document or notice in the Federal Docket Management System (FDMS) are covered by this system. Although this system may also contain information on and public comments submitted by representatives of governmental or organizational entities, the purpose for which the Department is establishing this system of records is only to cover individuals protected under the Privacy Act of 1974 (5 U.S.C. 552a(a)(2)).

#### CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system include: First name, last name, category (such as parent/relative, student, teacher, local educational agency, or lender), city, country, State or province, email address, organization name, submitter's representative, government agency type, government agency, additional information provided in the "General Comments" section, and other supporting documentation furnished by the submitter.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 206(d) of the E-Government Act of 2002 (Pub. L. 107-347, 44 U.S.C. 3501 note); 5 U.S.C. 301; and 5 U.S.C. 553.

#### PURPOSE:

The EDFDMS system of records permits the Department to identify individuals who have submitted comments, in response to the

Department's rulemaking documents or notices that are in FDMS, so that communications or other actions, as appropriate and necessary, can be effected. Examples of such communications are seeking clarification of a comment and responding directly to a comment.

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

The Department may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis, or, if the Department has complied with the computer matching requirements of the Computer Matching and Privacy Protection Act of 1988, as amended, under a computer matching agreement.

(1) *Disclosure to the Public.* With few exceptions, the Department may disclose information in EDFDMS to any member of the public. EDFDMS permits members of the public to search the public comments that are received by the Department and included in FDMS by the name of the individual submitting the comment. Unless the individual submits a comment anonymously, a full-text search, using the individual's name, will generally result in the comment and the commenter's information being displayed for view. With few exceptions, comments that are submitted using the FDMS system will include any information that the commenter provided when submitting the comment. In addition, with few exceptions, comments that are submitted in writing and then scanned and uploaded into the FDMS system will include any identifying information about the submitter that is provided in the written comment. If a commenter provides individually identifying information about a third party, a full-text search using the third party's name, with some exceptions, will result in the third party's information being displayed for view.

**Note:** Identification of an individual commenter or third party is possible only if the commenter voluntarily provides his or her name or contact information, or that of a third party. If this information is not furnished, the submitted comments or supporting documentation cannot be linked to the commenter or a third party.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any

Federal, State, local, or foreign agency, or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components.

(ii) Any Department employee in his or her official capacity.

(iii) Any Department employee in his or her individual capacity if the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation for the employee.

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee.

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to the litigation or ADR to disclose certain records to an adjudicative body before which the Department is authorized to appear, to an individual, or to an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose

those records as a routine use to the adjudicative body, individual, or entity.

(d) *Disclosure to parties, counsels, representatives, or witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to DOJ or OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(6) *Disclosure to DOJ.* The Department may disclose records to DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(7) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(8) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested the inquiry.

(9) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records to appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in this system has been compromised; (2) the Department 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 the Department or by another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to

assist the Department in responding to the suspected or confirmed compromise and in helping the Department prevent, minimize, or remedy such harm.

#### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

Records are maintained on electronic storage media and in paper.

##### **RETRIEVABILITY:**

EDFDMS enables record retrieval by various data elements and key word searches. These data elements are: document identification number, comment tracking number, document title, Code of Federal Regulation (CFR) (search for a specific title within the CFR), CFR citation (search for the part or parts within the CFR title being searched), document type, document sub type, date posted, and comment period end date.

##### **SAFEGUARDS:**

As discussed above in routine use (1), *Disclosure to the Public*, any member of the public who accesses FDMS through <http://www.regulations.gov> and searches the comments associated with the Department's rulemakings can view EDFDMS records that are included in FDMS.

To the extent paper records from this system of records are maintained, they will be maintained in a controlled facility where physical entry is restricted by locks, guards, and administrative procedures.

Access to electronic and paper EDFDMS records that are not otherwise available to the public through FDMS is limited to those Department and contract staff who require the records to perform their official duties consistent with the purposes for which the information was collected. Personnel whose official duties require access to either electronic or written EDFDMS records that are not otherwise available to the public through FDMS are trained in the proper safeguarding and use of the information.

##### **RETENTION AND DISPOSAL:**

Until the National Archives and Records Administration (NARA) approves a retention and disposition schedule for EDFDMS, the Department will treat all EDFDMS records as permanent.

##### **SYSTEM MANAGER AND ADDRESS:**

Elizabeth McFadden, Assistant General Counsel, Regulatory Services Division, Office of the General Counsel, U.S. Department of Education, 400

Maryland Avenue, SW., room 6E227, Washington, DC 20202-6110.

**NOTIFICATION PROCEDURE:**

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

**RECORD ACCESS PROCEDURES:**

If you wish to gain access to your record in the system of records, contact the system manager at the address listed under **SYSTEM MANAGER AND ADDRESS**. Requests should contain your full name, address, and telephone number. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

**CONTESTING RECORD PROCEDURES:**

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations in 34 CFR 5b.7, including proof of identity.

**RECORD SOURCE CATEGORIES:**

Information maintained in this system of records is obtained from anyone who chooses to voluntarily submit a public comment or supporting materials in response to a Department rulemaking document or notice, including individuals and representatives of Federal, State or local governments, businesses, and other organizations.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

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**DEPARTMENT OF EDUCATION****Privacy Act of 1974; System of Records—Investigatory Material Compiled for Personnel Security, Suitability, Positive Identification Verification and Access Control for the Department of Education Security Tracking and Reporting System (EDSTAR)**

**AGENCY:** Office of Management, Department of Education.

**ACTION:** Notice of altered and deleted systems of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department), publishes this notice to amend and rename the system of records entitled "Investigatory Material Compiled for Personnel

Security and Suitability Purposes" (18-05-17) as "Investigatory Material Compiled for Personnel Security, Suitability, Positive Identification Verification and Access Control for the Department of Education Security Tracking and Reporting System (EDSTAR)" (18-05-17) and to delete the system of records entitled "Identification Media Records" (18-05-16). The Department is taking these actions because these systems of records have been merged into and consolidated with the EDSTAR system of records.

EDSTAR is designed to implement the requirements of Homeland Security Presidential Directive (HSPD)-12. HSPD-12 is a Presidential directive that requires the promulgation of a Federal standard to ensure a common, governmentwide standard for secure and reliable forms of Personal Identity Verification (PIV). On February 25, 2005, the National Institute of Standards and Technology's (NIST's) Computer Security Division issued Federal Information Processing Standard (FIPS) 201, entitled "Personal Identity Verification of Federal Employees and Contractors", in order to satisfy the requirements of HSPD-12 to improve the identification and authentication of Federal employees and contractors for access to Federal facilities and information systems.

The Department maintains records in EDSTAR for the purpose of making individual positive identification verification, adjudication determinations concerning suitability for Federal employment and contract positions, decisions concerning access to the Department's facilities and information systems, and information related to the issuance of PIV and FIPS compliant identification media and access to restricted areas. Because many of these records are currently covered by the systems of records entitled "Identification Media Records" (18-05-16) and "Investigatory Material Compiled for Personnel Security and Suitability Purposes" (18-05-17), the Department is merging and consolidating these systems of records by amending and renaming the "Investigatory Material Compiled for Personnel Security and Suitability Purposes" (18-05-17) system as EDSTAR and deleting the system of records for "Identification Media Records" (18-05-16).

**DATES:** We must receive your comments about the altered and deleted systems of records notice on or before December 27, 2007.

The Department filed a report describing the altered system of records

covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 21, 2007. The altered system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on December 31, 2007 or (2) December 27, 2007, unless the system of records needs to be changed as a result of public comment or OMB review.

**ADDRESSES:** Address all comments about the altered and deleted systems of records to Cecelia E. Briscoe, Senior Program Analyst, Security Services, Office of Management, Room 2W312, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-5345. If you prefer to send comments through the Internet, use the following address:

*Security.Services@Ed.gov*.

You must include the term "EDSTAR Comments" in the subject line of your electronic message.

During and after the comment period, you may inspect all public comments about this notice at the U.S. Department of Education in room 2W330, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:**

Colette Hawley, Security Services, Office of Management, room 2W312, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-5345. Telephone number: (202) 401-2993. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on