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SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

**5 CFR Part 9301**

**Office of Privacy, Records, and Disclosure; Privacy Act of  
1974; Proposed Implementation**

RIN 3460-AA03

AGENCY: Special Inspector General for Afghanistan  
Reconstruction

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Special Inspector General for Afghanistan Reconstruction (SIGAR) gives notice of a proposed amendment to this part to exempt several systems of records maintained within the agency from certain provisions of the Privacy Act.

DATES: Comments must be received no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments should be sent to Hugo Teufel, Acting General Counsel, Special Inspector General for Afghanistan

Reconstruction, 2530 Crystal Drive, Arlington, VA 22202-3934. Comments will be made available for inspection up written request. SIGAR will make such comments available for public inspection in the Office of Privacy, Records, and Disclosure, 9th Floor, 1550 Crystal Drive, Arlington, VA 22202, on official business days between the hours of 9 a.m. and 5 p.m. Eastern time. You can make an appointment to inspect comments by telephoning (703) 545-6000. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kate Gastner, Public Information Manager, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202-3934, (703) 545-5993.

**SUPPLEMENTARY INFORMATION:** On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. No. 110-181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). SIGAR is responsible for coordinating and conducting audits and investigations to promote efficiency and effectiveness of reconstruction programs, and to detect and

prevent waste, fraud, and abuse of taxpayers' dollars. Under 5 U.S.C. § 301, heads of Executive or military departments may prescribe regulations governing the conduct of its employees and the custody, use, and preservation of the agency's records, papers, and property.

SIGAR is publishing separately the notices of the new systems of records to be maintained by SIGAR.

The provisions of the Privacy Act upon which SIGAR is relying for the exemptions are 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). Under 5 U.S.C. 552a(j)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws", and includes information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws.

To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C. 552a(j)(2), SIGAR proposes to exempt the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2):

SIGAR-04 Freedom of Information Act and Privacy Act Records

SIGAR-05 Audit Records

SIGAR-06 Correspondence Records

SIGAR-07 Hotline Records

SIGAR-08 Investigation Records

SIGAR-09 Legal Records

SIGAR-10 Legislative Inquiries and Correspondence

The proposed exemption under 5 U.S.C. 552a(j)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to themselves. 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individuals access, or concern

procedures by which an individual may gain access, to records pertaining to themselves. 5 U.S.C. 552a(d) (2), (3), and (4), (e) (4) (H), and (f) (4) permit an individual to request amendment of a record pertaining to the individual or concern related procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed.

5 U.S.C. 552a(c) (3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. 5 U.S.C. 552a(c) (4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. 5 U.S.C. 552a(e) (4) (I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records.

5 U.S.C. 552a(e) (1) requires an agency to maintain in its records only such information about an individual as is

relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. 5 U.S.C. 552a(e) (2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. 5 U.S.C. 552a(e) (3) requires an agency to inform each individual, whom it asks to supply information, of the agency's authority for soliciting the information, whether disclosure of information is voluntary or mandatory, the principal purpose(s) for which the agency will use the information, the routine uses that may be made of the information, and the effects on the individual of not providing all or part of the information.

5 U.S.C. 552a(e) (5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. 5 U.S.C. 552a(e) (8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record.

5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual.

Under 5 U.S.C. 552a(k) (1), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act to the extent that the system contains information subject to the provisions of 5 U.S.C. 552(b) (1), to protect material authorized to be kept secret in the interest of national defense or foreign policy pursuant to Executive Order.

To the extent that these systems of records contain national defense or foreign policy information within the provisions of 5 U.S.C. 55a (k) (1), SIGAR proposes to exempt the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k) (1):

SIGAR-07 Hotline Records

SIGAR-08 Investigation Records

SIGAR-09 Legal Records

The proposed exemption under 5 U.S.C. 552a(k)(1) for the above-referenced systems of records is from provisions of 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individuals access, or concern procedures by which an individual may gain access, to records pertaining to them. 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern related procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed.

5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the above-referenced systems of records could allow individuals to learn whether they have been identified as subjects of investigation. 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records.

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is "investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2)." To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C. 552a(k)(2), SIGAR proposes to exempt the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2):

SIGAR-04 Freedom of Information Act and Privacy Act Records

SIGAR-05 Audit Records

SIGAR-06 Correspondence Records

SIGAR-07 Hotline Records

SIGAR-08 Investigation Records

SIGAR-09 Legal Records

SIGAR-10 Legislative Inquiries and Correspondence

The proposed exemption under 5 U.S.C. 552a(k)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individuals access, or concern procedures by which an individual may gain access, to records pertaining to them. 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern related procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement

with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed.

5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the above-referenced systems of records could allow individuals to learn whether they have been identified as subjects of investigation. 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records.

Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

This proposed rule is not a "significant regulatory action" under Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. The term "small entity" is defined to have the same meaning as the terms "small business," "small organization" and "small governmental jurisdiction" as defined in the RFA.

The proposed regulation, issued under section 522a(j)(2) and (k) of the Privacy Act, is to exempt certain information maintained by SIGAR in the above systems of records from notification, access and amendment of a record by individuals who are citizens of the United States or aliens lawfully admitted for permanent residence. In as much as the Privacy Act rights are personal and apply only to U.S. citizens or an alien lawfully admitted for permanent residence, small entities, as defined in the RFA, are not provided rights under the Privacy Act and are outside the scope of this regulation.

DATED: June 19, 2012

Steven J Trent

Acting Inspector General

**List of Subjects in 5 CFR Part 9301**

Administrative practice and procedure, freedom of information, privacy.

For the reasons set forth above, SIGAR proposes to amend 5 CFR part as follows:

**PART 9301 DISCLOSURE OF RECORDS AND INFORMATION**

1. The authority citation for part 9301 continues to read as follows

Authority: Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896, codified at 5 U.S.C. 552a(f) (agency rules).

2. Add § 9301.20 to subpart B to read as follows:

§ 9301.20 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

(a) *In General.* In accordance with 5 U.S.C. 552a(j) and (k), SIGAR hereby exempts the systems of records identified below from the following provisions of the Privacy Act for the reasons indicated.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Special Inspector General by 5 U.S.C. 552a (j) and (k).

(c) *General exemptions under 5 U.S.C. 552a(j)(2).* (1) Under 5 U.S.C. 552a(j)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the agency or component thereof that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. Certain components of SIGAR have as their principal function activities pertaining to the enforcement of criminal laws and protective service activities which are necessary to assure the safety of individuals protected by SIGAR pursuant to the provisions of 18 U.S.C. 3056. This paragraph applies to the following systems of records maintained by SIGAR:

SIGAR-04 Freedom of Information Act and Privacy Act Records

SIGAR-05 Audit Records

SIGAR-06 Correspondence Records

SIGAR-07 Hotline Records

SIGAR-08 Investigation Records

SIGAR-09 Legal Records

SIGAR-10 Legislative Inquiries and Correspondence

(2) SIGAR hereby exempts the systems of records listed in paragraphs (c)(1)(i) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(j)(2): 5 U.S.C. 552a(c)(3) and (4), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), (2) and (3), 5 U.S.C. 552a(e)(4)(G), (H), and (I), 5 U.S.C. 552a(e)(5) and (8), 5 U.S.C. 552a(f), and 5 U.S.C. 552a(g).

(d) *Reasons for exemptions under 5 U.S.C. 552a(j)(2).* (1) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would give individuals an opportunity to learn whether they have been identified as suspects or subjects of investigation. As further described in (d)(2) of this section, access to such knowledge would impair SIGAR's ability to carry out its mission, since individuals could:

- (i) Take steps to avoid detection;
- (ii) Inform associates that an investigation is in progress;
- (iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise SIGAR's ability to provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their arrest;

(B) Enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest; and

(C) Using knowledge that criminal investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair SIGAR's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (d)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with SIGAR and thus would restrict SIGAR's access to information necessary to accomplish its mission most effectively.

(vi) Limitation on access to the material contained in the protective intelligence files is considered necessary to the preservation of the utility of intelligence files and in safeguarding those persons SIGAR is authorized to protect. Access to the protective intelligence files could adversely affect the quality of information available to SIGAR; compromise confidential sources, hinder the ability of SIGAR to keep track of persons of protective interest; and interfere with SIGAR's protective intelligence activities by individuals gaining access to protective intelligence files.

(vii) Many of the persons on whom records are maintained in the protective intelligence suffer from mental aberrations. Knowledge of their condition and progress comes from authorities, family members and witnesses. Many times this information comes to SIGAR as a result of two party conversations where it would be impossible to hide the

identity of informants. Sources of information must be developed, questions asked and answers recorded. Trust must be extended and guarantees of confidentiality and anonymity must be maintained. Allowing access to information of this kind to individuals who are the subjects of protective interest may well lead to violence directed against an informant by a mentally disturbed individual.

(viii) Finally, the dissemination of certain information that SIGAR may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (d)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside SIGAR to make effective use of information provided by SIGAR. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Moreover, providing accountings to the subjects of investigations would alert them to the fact that SIGAR has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of SIGAR's information-gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(iii) The release of such information to the subject of a protective intelligence file would provide significant information concerning the nature of an investigation, and could result in impeding or compromising the efforts of Department personnel to detect persons suspected of criminal activities or to collect information necessary for the proper evaluation of persons considered to be of protective interest.

(5) 5 U.S.C. 552(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to

access to and amendment of records, for the reasons set out in paragraph (f)(3) of this section, this provision should not apply to the systems of records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise SIGAR's ability to provide useful information to law enforcement agencies, since revealing sources for the information could:

- (i) Disclose investigative techniques and procedures;
- (ii) Result in threats or reprisals against informers by the subjects of investigations; and
- (iii) Cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain," as defined in 5 U.S.C. 552a(a)(3), includes "collect" and "disseminate." The application of this provision

to the systems of records could impair SIGAR's ability to collect and disseminate valuable law enforcement information.

(i) At the time that SIGAR collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a SIGAR purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible to immediately determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic up-dating of SIGAR's protective intelligence files to insure that the records maintained in the system remain timely and complete.

(iv) Not all violations of law discovered by SIGAR fall within the investigative jurisdiction of SIGAR. To promote effective law enforcement, SIGAR will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, SIGAR might be placed in the position of having to ignore

information relating to violations of law not within the jurisdiction of SIGAR when that information comes to SIGAR's attention during the collation and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the systems of records would impair SIGAR's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(i) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities.

(ii) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(iii) In certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty.

(iv) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The systems of records should be exempted from this provision to avoid impairing SIGAR's ability to collect and collate investigative, intelligence, and enforcement data.

(i) Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or

his or her associates know that a criminal investigation is in progress.

(ii) If it became known that the undercover officer was assisting in a criminal investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(iii) Individuals often feel inhibited in talking to a person representing a criminal law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities.

(iv) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(v) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would impede or compromise subsequent investigations.

(vi) Finally, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(i) Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict SIGAR's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is

often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination, because SIGAR may not have the expertise with which to make such determinations.

(ii) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(iii) Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic up-dating of SIGAR's protective intelligence files to insure that the records maintained in the system remain timely and complete.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those

records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The systems of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which SIGAR is exempted. Exemption from this provision will also protect SIGAR from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, and law enforcement data.

(e) *Specific exemptions under 5 U.S.C. 552a(k)(1)*. (1) Under 5 U.S.C. 552a(k)(1), the head of any agency may promulgate

rules to exempt any system of records within the agency from certain provisions of the Privacy Act to the extent that the system contains information subject to the provisions of 5 U.S.C. 552(b)(1). This paragraph applies to the following systems of records maintained by SIGAR:

SIGAR-07 Hotline Records

SIGAR-08 Investigation Records

SIGAR-09 Legal Records

(2) SIGAR hereby exempts the systems of records listed in paragraph (e)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(1): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(f) *Reasons for exemptions under 5 U.S.C. 552a(k)(1).* The reason for invoking the exemption is to protect material authorized to be kept secret in the interest of national defense or foreign policy pursuant to Executive Orders 12958, 13526, or successor or prior Executive Orders.

(g) *Specific exemptions under 5 U.S.C. 552a(k)(2).* (1)

Under 5 U.S.C. 552a(k)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled for law enforcement purposes and for the purposes of assuring the safety of individuals protected by SIGAR pursuant to the provisions of 18 U.S.C. 3056. This paragraph applies to the following systems of records maintained by SIGAR:

SIGAR-04 Freedom of Information Act and Privacy Act Records

SIGAR-05 Audit Records

SIGAR-06 Correspondence Records

SIGAR-07 Hotline Records

SIGAR-08 Investigation Records

SIGAR-09 Legal Records

SIGAR-10 Legislative Inquiries and Correspondence

(2) SIGAR hereby exempts the systems of records listed in paragraphs (g)(1)(i) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(h) *Reasons for exemptions under 5 U.S.C. 552a(k)(2)*. (1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of SIGAR and of law enforcement agencies outside SIGAR to make effective use of information maintained by SIGAR. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that an agency is conducting an investigation into their illegal activities and could reveal the geographic location of the investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their illegal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for detection or apprehension. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Providing accountings to the subjects of investigations would alert them to the fact that SIGAR has information regarding their illegal activities and could inform them of the general nature of that information.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise SIGAR's ability to utilize and provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their detection or apprehension;

(B) Enabling them to destroy or alter evidence of illegal conduct that would form the basis for their detection or apprehension, and

(C) Using knowledge that investigators had reason to believe that a violation of law was about to be committed, to delay the commission of the violation or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning non-criminal acts to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair SIGAR's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers or other persons who compiled information regarding the individual's illegal activities and thereby endanger the physical safety of those undercover officers, persons, or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (h) (2) (i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with SIGAR and thus would restrict SIGAR's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that SIGAR may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d) (2), (3) and (4), (e) (4) (H), and (f) (4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in

paragraph (h) (2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(e) (1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain," as defined in 5 U.S.C. 552a(a) (3), includes "collect" and "disseminate." The application of this provision to the system of records could impair SIGAR's ability to collect, utilize and disseminate valuable law enforcement information.

(i) At the time that SIGAR collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a Department purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Not all violations of law discovered by SIGAR analysts fall within the investigative jurisdiction of SIGAR.

To promote effective law enforcement, SIGAR will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies that have jurisdiction over the offenses to which the information relates. Otherwise, SIGAR might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of SIGAR when that information comes to SIGAR's attention during the collation and analysis of information in its records.

(5) 5 U.S.C. 552a (e) (4) (G) and (f) (1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair SIGAR's ability to carry out its mission, since individuals could:

- (i) Take steps to avoid detection;
- (ii) Inform associates that an investigation is in progress;
- (iii) Learn the nature of the investigation;
- (iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or (vi) Destroy evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise SIGAR's ability to complete or continue investigations or to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informers by the subjects of investigations; and

(iii) Cause informers to refuse to give full information to investigators for fear of having their identities as sources disclosed

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