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**DEPARTMENT OF LABOR**

**Office of the Secretary**

**Privacy Act of 1974; Publication in Full of All Notices of Systems of Records, Including Several New Systems, Substantive Amendments to Existing Systems, Decommissioning of Obsolete Legacy Systems, and Publication of Proposed Routines Uses.**

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Notice: Response to Comments on the Department's April 29, 2016 System of Records Notice.

**SUMMARY:** This notice announces a response to public comments on the Department's April 29, 2016 System of Records Notice. In response to comments, the Department is revising one SORN. That SORN, and the remainder of SORNs published on April 29, 2016, will become effective on the date of publication of this notice.

**DATES:** The effective date for the Department's System of Records Notice is the date of publication of this notice.

**EFFECTIVE DATE:** The date of publication of this notice.

**FOR INFORMATION CONTACT:** Joseph J. Plick, Counsel for FOIA and Information Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, N.W., Room N-2420,

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**BACKGROUND:** On April 29, 2016, the Department of Labor issued a Publication In Full of All Notices of Systems of Records, including several new systems; substantive amendments to systems; decommissioning of obsolete legacy systems; and publication of new universal routine uses for all system of records. The Department received several public comments and one Federal agency comment on this System of Records Notice during the public comment period, which ended June 8, 2016. The Department required additional time to review and address the comments, so, by Federal Register notice of June 21, 2016, 81 F.R. 40352, the effective date was postponed to July 23, 2016.

The Department is now publishing this notice to address the eleven comments to and revise SORN DOL/Central-5 in response to those comments.

*Comment:* Several comments criticized Universal Routine Use #14, which "permits the Department to disclose information to the United States Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) that will be included in the National Instant Criminal Background Check System

(NICS).” The commenters argued that this Routine Use impermissibly infringes on Second Amendment rights. One commenter stated, for example:

This rule (which refers specifically to 23 executive actions that Obama took on Jan. 16, 2013) infringes on the Second Amendment by having developed through rule, manner in which protected health information (PHI) is now authorized to be released unconstitutionally by HHS to agenc(ies) of the federal government without the affected individual's consent, and the PHI is thus used in a manner to target individuals and unconstitutionally remove access to weapons in connection with NICS.

*Response:* The Department is required by law - the Brady Handgun Violence Prevention Act, as amended by the NICS Improvement Amendments Act of 2007 - to provide information to the Attorney General to carry out its provisions. Therefore, the Department is declining to make changes to Universal Routine Use #14.

*Comment:* One comment was critical of Universal Routine Use #13, which allows the Department to disclose information to

a state or local government agency in charge of issuing licenses to attorneys and health care professionals. The commenter raised the concern that state laws, particularly California's state laws, prohibit information sharing with state and local agencies.

*Response:* Under the Supremacy Clause, federal law takes precedence over state law. But to the extent that state law in California may apply, the Department has not identified any laws which prohibit the disclosure contemplated by Universal Routine Use #13. On the contrary, California's most broadly applicable privacy law - the Information Practices Act of 1977 - explicitly allows sharing "To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law." The Department declines to make changes in response to this comment.

*Comment:* Several comments did not specifically reference or provide substantive feedback on any section of the SORN. One commenter stated, for example, "I do not favor the use of funds for rail support that is not directly supportive of General Aviation or Airline services, viz. flights."

Another argued "No undocumented alien should have the same ability to sue for discrimination because of their country of origin, as an American Citizen does."

*Response:* The Department was unable to identify any sections of the SORN relevant to these comments, and, therefore, is making no changes in response.

*Comment:* Three commenters, including the Office of Government Information Services (OGIS) (within the National Archives and Records Administration (NARA)) suggested changing the text of Routine Use (b) in the DOL/Central-5 SORN, which covers the Department's Freedom of Information Act files, to follow model language drafted by OGIS and to explicitly note that disclosure to OGIS is a permissible routine use for FOIA files. Specifically, the OGIS model language states:

To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. § 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS'

offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

*Response:* The Department agrees that additional language can be helpful to clarify that the scope of permissible disclosures of FOIA files under Routine Use (b) of DOL/Central 5 SORN includes disclosure to OGIS in order to facilitate its responsibilities related to FOIA compliance and mediation. Accordingly, the Department is revising this routine use to incorporate this model language. Routine Use (b) will now read:

*Information to other Federal agencies (e.g., Department of Justice or the Office of Government Information Services within the National Archives and Records Administration) in order to obtain advice and recommendations concerning matters on which the agency has specialized experience or particular competence; for use in making required determinations; to fulfill agency responsibilities to review administrative agency policies, procedures, and compliance under the Freedom of Information Act or the Privacy Act of 1974; or to facilitate mediation services between*

*administrative agencies and persons making Freedom of  
Information requests.*

The SORN will become effective, with the change to  
DOL/Central-5, on the date of publication of this notice.

Signed at Washington, D.C. this 15th day of  
July, 2016.

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THOMAS E. PEREZ

Secretary of Labor

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