

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an express or implied promise that the identity of the source would be held in confidence.

APPENDIX I TO PART 83—MEMORANDUM OF UNDERSTANDING

This memorandum of understanding constitutes an agreement between the U.S. Office of Personnel Management (OPM), the National Archives and Records Service of the General Services Administration (NARS), and the U.S. Government Accountability Office (GAO) concerning:

(1) The maintenance of the Official Personnel Folder (OPF) of an individual who has been employed in a position subject to the provisions of Title 5, U.S.C. and to the regulations and procedures issued by OPM to govern the Federal civil service, and also in

a position subject to the GAO Personnel Act of 1980 (Pub. L. 96-191) and its implementing regulations and procedures;

(2) The exchange of personnel documents and data between the Federal civil service administered by OPM and the personnel system administered by GAO;

(3) The establishment of procedures for processing requests for access to, disclosure from, and amendment of documents in the OPF of an individual who has service under both personnel systems;

(4) The establishment of procedures to be followed by the National Personnel Records Center (NPRC) when responding to requests pertaining to separated employees in any of the following circumstances:

(a) When the OPF contains documentation resulting from employment in both systems;

(b) When a request is received for transfer of an OPF between systems;

(c) When processing a request for an OPF, and that OPF contains only records of GAO employment since October 1, 1980;

(5) The agreement of the parties to consult and cooperate in matters relating to the establishment and revision of personnel procedures which may have mutual effect so as to insure the sharing of essential information while minimizing the recordkeeping burden of all three parties.

SUBCHAPTER G [RESERVED]

CHAPTER II—RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

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PART 200—PRIVACY ACT OF 1974

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AUTHORITY: 5 U.S.C. 552a(f).

SOURCE: 74 FR 60127, Nov. 20, 2009, unless otherwise noted.

§ 200.1 Purpose and scope.

This part sets forth the policies and procedures of the Board regarding access to systems of records maintained by the Board under the Privacy Act, Public Law 93-579, 5 U.S.C. 552a. The provisions in the Act shall take precedence over any part of the Board's regulations in conflict with the Act. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether a Board system of records contains a record pertaining to him or her; to gain access to such records; and to request correction or amendment of such records. These regulations also set identification requirements and prescribe fees to be charged for copying records.

§ 200.2 Definitions.

As used in this part:

(a) *Agency* means any executive department, military department, government corporation, or other establishment in the executive branch of the federal government, including the Executive Office of the President or any independent regulatory agency;

(b) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* means to collect, use, store, or disseminate records as well as any combination of these record-keeping functions. The term also includes exercise of control over, and therefore responsibility and accountability for, systems of records;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Board and contains the individual's name or other identifying information, such as a number or symbol assigned to the individual or his or her fingerprint, voice print, or photograph. The term includes, but is not limited to, information regarding an individual's education, financial transactions, medical history, and criminal or employment history;

(e) *System of records* means a group of records under the control of the Board from which information is retrievable by use of the name of the individual or by some number, symbol, or other identifying particular assigned to the individual;

(f) *Routine use* means, with respect to the disclosure of a record, the use of a record for a purpose that is compatible with the purpose for which it was collected;

(g) *Designated Privacy Act Officer* means the person named by the Board to administer the Board's activities in regard to the regulations in this part;

(h) *Executive Director* means the chief operating officer of the Board;

(i) *Days* means standard working days, excluding weekends and federal holidays.

§ 200.3 Privacy Act records maintained by the Board.

(a) The Board shall maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive Order of the President. In addition, the Board shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to that individual in the making of any determination about him or her. However, the Board shall not be required to update retired records.

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(b) The Board shall not maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity.

§ 200.4 Privacy Act inquiries.

(a) *Inquiries regarding the contents of record systems.* Any person wanting to know whether the Board's systems of records contain a record pertaining to him or her may file an inquiry in person, by mail or by telephone.

(b) *Inquiries in person* may be submitted at the Board's headquarters located at 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006. Inquiries should be marked "Privacy Act Inquiry" on each page of the inquiry and on the front of the envelope and directed to the Privacy Act Officer.

(c) *Inquiries by mail* may be sent to: Privacy Act Officer, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006. "Privacy Act Inquiry" should be written on the envelope and each page of the inquiry.

(d) *Telephone inquiries* may be made by calling the Board's Privacy Act Officer at (202) 254-7900.

§ 200.5 Requests for access to records.

(a) All requests for records should include the following information:

(1) Full name, address, and telephone number of requester.

(2) The system of records containing the desired information.

(3) Any other information that the requester believes would help locate the record.

(b) *Requests in writing.* A person may request access to his or her own records in writing by addressing a letter to: Privacy Act Officer, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

(c) *Requests by fax.* A person may request access to his or her records by facsimile at (202) 254-7970.

(d) *Requests by phone.* A person may request access to his or her records by

calling the Privacy Act Officer at (202) 254-7900.

(e) *Requests in person.* Any person may examine and request copies of his or her own records on the Board's premises. The requester should contact the Board's office at least one week before the desired appointment date. This request may be made to the Privacy Act Officer in writing or by calling (202) 254-7900. Before viewing the records, proof of identification must be provided. The identification should be a valid copy of one of the following:

(1) A government ID;

(2) A driver's license;

(3) A passport; or

(4) Other current identification that contains both an address and a picture of the requester.

§ 200.6 Processing of requests.

Upon receipt of a request for information, the Privacy Act Officer will ascertain whether the records identified by the requester exist, and whether they are subject to any exemption under § 200.15. If the records exist and are not subject to exemption, the Privacy Act Officer will provide the information.

(a) *Requests in writing, including those sent by fax.* Within five working days of receiving the request, the Privacy Act Officer will acknowledge its receipt and will advise the requester of any additional information that may be needed. Within 15 working days of receiving the request, the Privacy Act Officer will send the requested information or will explain to the requester why additional time is needed for a response.

(b) *Requests in person or by telephone.* Within 15 days of the initial request, the Privacy Act Officer will contact the requester and arrange an appointment at a mutually agreeable time when the record can be examined. The requester may be accompanied by no more than one person. In such case, the requestor must inform the Privacy Act Officer that a second individual will be present and must sign a statement authorizing disclosure of the records to that person. The statement will be kept with the requester's records. At the appointment, the requester will be asked to present identification as stated in § 200.5(e).

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(c) *Excluded information.* If a request is received for information compiled in reasonable anticipation of litigation, the Privacy Act Officer will inform the requester that the information is not subject to release under the Privacy Act (see 5 U.S.C. 552a(d)(5)).

§ 200.7 Fees.

A fee will not be charged for searching, reviewing, or making corrections to records. A fee for copying will be assessed at the same rate established for the Freedom of Information Act requests. Duplication fees for paper copies of a record will be 10 cents per page for black and white and 20 cents per page for color. For all other forms of duplication, the Board will charge the direct costs of producing the copy. However, the first 100 pages of black-and-white copying or its equivalent will be free of charge.

§ 200.8 Appealing denials of access.

(a) If access to records is denied by the Privacy Act Officer, the requester may file an appeal in writing. The appeal should be directed to Executive Director, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

(b) The appeal letter must specify the denied records that are still sought, and state why denial by the Privacy Act Officer is erroneous.

(c) The Executive Director or his or her designee will respond to appeals within 20 working days of the receipt of the appeal letter. The appeal determination will explain the basis of the decision to deny or grant the appeal.

§ 200.9 Requests for correction of records.

(a) *Correction requests.* Any person is entitled to request correction of his or her record(s) covered under the Act. The request must be made in writing and should be addressed to Privacy Act Officer, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006. The letter should clearly identify the corrections desired. In most circumstances, an edited copy of the record will be acceptable for this purpose.

(b) *Initial response.* Receipt of a correction request will be acknowledged by the Privacy Act Officer in writing within five working days. The Privacy Act Officer will provide a letter to the requester within 20 working days stating whether the request for correction has been granted or denied. If the Privacy Act Officer denies any part of the correction request, the reasons for the denial will be provided to the requester.

§ 200.10 Disclosure of records to third parties.

(a) The Board will not disclose any record that is contained in a system of records to any person or agency, except with a written request by or with the prior written consent of the individual whose record is requested, unless disclosure of the record is:

(1) Required by an employee or agent of the Board in the performance of his/her official duties.

(2) Required under the provisions of the Freedom of Information Act (5 U.S.C. 552). Records required to be made available by the Freedom of Information Act will be released in response to a request in accordance with the Board's regulation published at 4 CFR Part 201.

(3) For a routine use as published in the annual notice in the FEDERAL REGISTER.

(4) To the Census Bureau for planning or carrying out a census, survey, or related activities pursuant to the provisions of Title 13 of the United States Code.

(5) To a recipient who has provided the Board with adequate advance written assurance that the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable.

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Archivist of the United States, or his or her designee, to determine whether the record has such value.

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(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board for such records specifying the particular part desired and the law enforcement activity for which the record is sought. The Board also may disclose such a record to a law enforcement agency on its own initiative in situations in which criminal conduct is suspected, provided that such disclosure has been established as a routine use, or in situations in which the misconduct is directly related to the purpose for which the record is maintained.

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual.

(9) To either House of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.

(10) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of official duties of the Government Accountability Office.

(11) Pursuant to an order of a court of competent jurisdiction. In the event that any record is disclosed under such compulsory legal process, the Board shall make reasonable efforts to notify the subject individual after the process becomes a matter of public record.

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(b) Before disseminating any record about any individual to any person other than a Board employee, the Board shall make reasonable efforts to ensure that the records are, or at the time they were collected, accurate, complete, timely, and relevant. This paragraph (b) does not apply to disseminations made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and paragraph (a)(2) of this section.

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§ 200.11 Maintaining records of disclosure.

(a) The Board shall maintain a log containing the date, nature, and purposes of each disclosure of a record to any person or agency. Such accounting also shall contain the name and address of the person or agency to whom or to which each disclosure was made. This log will not include disclosures made to Board employees or agents in the course of their official duties or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) An accounting of each disclosure shall be retained for at least five years after the accounting is made or for the life of the record that was disclosed, whichever is longer.

(c) The Board shall make the accounting of disclosure of a record pertaining to an individual available to that individual at his or her request. Such a request should be made in accordance with the procedures set forth in § 200.5. This paragraph (c) does not apply to disclosure made for law enforcement purposes under 5 U.S.C. 552a(b)(7) and § 200.10(a)(7).

§ 200.12 Notification of systems of Privacy Act records.

(a) *Public notice.* The Board periodically reviews its systems of records and will publish information about any significant additions or changes to those systems in the FEDERAL REGISTER. Information about systems of records maintained by other agencies that are in the temporary custody of the Board will not be published. In addition, the Office of the Federal Register biennially compiles and publishes all systems of records maintained by all federal agencies, including the Board.

(b) At least 30 days before publishing additions or changes to the Board's systems of records, the Board will publish a notice of intent to amend, providing the public with an opportunity to comment on the proposed amendments to its systems of records in the FEDERAL REGISTER.

§ 200.13 Privacy Act training.

(a) The Board shall ensure that all persons involved in the design, development, operation, or maintenance of

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any Board systems of records are informed of all requirements necessary to protect the privacy of individuals. The Board shall ensure that all employees having access to records receive adequate training in their protection and that records have adequate and proper storage with sufficient security to ensure their privacy.

(b) All employees shall be informed of the civil remedies provided under 5 U.S.C. 552a(g)(1) and other implications of the Privacy Act and of the fact that the Board may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and the regulations in this part.

§ 200.14 Responsibility for maintaining adequate safeguards.

The Board has the responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automated records systems. These security safeguards shall apply to all systems of records in which identifiable personal data are processed or maintained, including all reports and output from such systems of records that contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification, or destruction of any personal records or data; must minimize, to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data; and shall further ensure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in a system of records as defined in this part may be used, held, or stored only where facilities are adequate to prevent unauthorized access by persons within or outside the Board.

(2) Access to and use of a system of records shall be permitted only to persons whose duties require such access to the information for routine uses or for such other uses as may be provided in this part.

(3) Other than for access by employees or agents of the Board, access to records within a system of records

shall be permitted only to the individual to whom the record pertains or upon his or her written request.

(4) The Board shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(5) The disposal and destruction of identifiable personal data records shall be done by shredding and in accordance with rules promulgated by the Archivist of the United States.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored, or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times, including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning, or, in the case of electronic records, by degaussing or by overwriting with the appropriate security software, in accordance with regulations of the Archivist of the United States or other appropriate authority.

§ 200.15 Systems of records covered by exemptions.

The Board currently has no exempt systems of records.

§ 200.16 Mailing lists.

The Board shall not sell or rent an individual's name and/or address unless such action is specifically authorized by law. This section shall not be construed to require the withholding of

names and addresses otherwise permitted to be made public.

PART 201—PUBLIC INFORMATION AND REQUESTS

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AUTHORITY: 5 U.S.C. 301, 5 U.S.C. 552 as amended; Executive Order 12600, 3 CFR, 1987 Comp., p. 235.

SOURCE: 74 FR 60132, Nov. 20, 2009, unless otherwise noted.

§ 201.1 Scope.

This part sets forth the policies and procedures of the Recovery Accountability and Transparency Board (Board) regarding public access to documents under the Freedom of Information Act (FOIA or the Act), 5 U.S.C. 552. The provisions in the Act shall take precedence over any part of the Board's regulations in conflict with the Act. This part gives the procedures the public may use to inspect and obtain copies of Board records under the FOIA, including administrative procedures which must be exhausted before a requestor invokes the jurisdiction of an appropriate United States District Court for the Board's failure to respond to a proper request within the statutory time limits, for a denial of Board records or challenges to the adequacy of a search, or for denial of fee waiver.

§ 201.2 Definitions.

For words used in this document, unless the context indicates otherwise, singular includes the plural, plural in-

cludes the singular, present tense includes the future tense, and words of one gender include the other gender.

(a)(1) *Agency records*—Materials that are in the control of the Board and associated with Board business, including:

- (i) Materials produced by the Board.
- (ii) Materials produced by staff for the Board.
- (iii) Materials distributed by presenters at a Board meeting or Board Committee meeting.

(2) All references to records include the entire record and/or any part of the record.

(b) *Board*—The Recovery Accountability and Transparency Board.

(c) *Chairman*—The Chairman of the Board is designated or appointed by the President.

(d) *Designated FOIA Officer*—The person designated to administer the Board's activities in regard to the regulations in this part. The FOIA Officer shall be:

(1) The Board officer having custody of, or responsibility for, agency records in the possession of the Board.

(2) The Board officer having responsibility for authorizing or denying production of records from requests filed under the FOIA.

(e) *Executive Director*—The chief operating officer of the Board.

(f) *Member*—An individual appointed to serve on the Board pursuant to Title XV, Subtitle B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(g) *Days*—Standard working days, excluding weekends and federal holidays.

§ 201.3 Publicly available documents and electronic reading room.

(a) Many Board records are available electronically at the Board's Web site (<http://www.recovery.gov>).

(b) Records available electronically on the Board's Web site include:

- (1) The rules and regulations of the Board.
- (2) Statements of policy adopted by the Board.

(3) Board reports to the President and Congress, including the Committees on Appropriations of the Senate and House of Representatives.

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(4) Congressional Testimony of the Chairman of the Board.

(5) Biographical information about the Chairman and other Board members.

(6) Copies of records frequently requested and released in response to FOIA requests.

(c) The cost of copying information available in the Board office shall be imposed in accordance with the provisions of § 201.8.

§ 201.4 Board records exempt from public disclosure.

5 U.S.C. 552 provides that the requirements of the FOIA do not apply to matters that are:

(a) Specifically authorized under the criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such an executive order.

(b) Related solely to the internal personnel rules and practices of the Board.

(c) Specifically exempted from disclosure by another federal statute, provided that such statute:

(1) Requires that records are withheld from the public in such a manner that leaves no discretion on the issue; or

(2) Establishes criteria for withholding or refers to particular types of matters to be withheld.

(d) Trade secrets, and commercial or financial information obtained from a person and privileged or confidential.

(e) Interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the Board.

(f) Personnel, medical, or similar files that disclosing would constitute a clearly unwarranted invasion of personal privacy.

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records of information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of any confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement agency in the course of a criminal investigation or by an agency conducting a lawful security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) Contained in or related to examination, operating, or condition reports, prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(i) Geological and geophysical information and data, including maps, concerning wells.

§ 201.5 Requests for Board records.

(a) To request Board records, you may:

(1) Write: FOIA Officer, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006;

(2) Send a request via e-mail at FOIA@ratb.gov; or

(3) Fax: (202) 254-7970.

(b) When requesting records under this section you must state, in writing:

(1) Your full name,

(2) Address,

(3) Telephone number, and

(4) At your option, electronic mail address.

(c) When making a request for records about a person, Privacy Act regulations also may apply. Please

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check the regulations for additional requirements before submitting a request. When making a request for records about someone other than yourself, you must include either:

(1) Written authorization signed by the person permitting you to see the records; or

(2) Proof that the individual is deceased (*e.g.*, a death certificate or obituary).

(d) A request will be considered received for purposes of §201.7 on the date that it is received by the Board's FOIA office. For prompt handling, write "Freedom of Information Act Request" on the letter and envelope or in the subject line of the e-mail request or fax.

(e) Each request must clearly describe the desired records in sufficient detail to enable Board personnel to locate them with reasonable effort. Response to requests may be delayed if the records are not clearly described.

(f) Whenever possible, requests should include specific information about each record sought, such as date, title or name, author, recipient, and subject.

(g) If the FOIA Officer determines that the request does not clearly describe the records sought, he or she will either advise you of the additional information needed to locate the record or otherwise state why the request is insufficient. You will then be given the opportunity to provide additional information or to modify your request.

(h) Submitting a FOIA request shall be considered a commitment by the requestor to pay applicable fees required under §201.8 unless the requestor seeks a waiver of fees. When making a request, you may specify a willingness to pay fees up to a specific amount.

(i) The FOIA does not require the Board to:

(1) Compile or create records solely for the purpose of satisfying a request for records.

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some time in the future.

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requestor

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that the records have been destroyed or otherwise disposed of.

§201.6 Responsibility, form, and content of responses.

The Board's Executive Director or his/her designated FOIA Officer is authorized to grant or deny any request for a record and determine appropriate fees. When determining which records are responsive to a request, the Board will include only records in its possession as of the date of the request.

(a) If no records are responsive to the request, the FOIA Officer will notify the requestor in writing.

(b) When the FOIA Officer denies a request in whole or in part, he/she will notify the requestor in writing. The response will be signed by the FOIA Officer and will include:

(1) The name and title or position of the person making the denial;

(2) A brief statement of the reasons for the denial, including the FOIA exemption(s) that the FOIA Officer has relied on in denying the request; and

(3) A statement that the denial may be appealed under §201.14 and a description of the requirements of that section.

(c) *Referrals.* When a request for a record not created by the Board is received, the Board shall refer the requestor to the issuing agency in writing, providing the address of the agency contact and the section(s) referred.

(d) *Timing of responses to requests sent to other agencies.* The Board shall provide, within the FOIA deadline, responses only to those parts of the request not referred.

(e) *Agreements on referrals.* The Board may make agreements with other agencies to eliminate the need for referrals for particular types of records.

§201.7 Timing of responses to requests.

(a) *General.* The Board shall normally respond to requests in the order of their receipt.

(b) *Acknowledgement of requests.* On receipt of a request, the Board shall send an acknowledgement letter or an e-mail confirming the requestor's agreement to pay fees under §201.8 and providing a request number for future reference.

(c) *Time limits for responding to FOIA requests.* The Board shall make an initial determination to grant or deny a request for records within 20 days (excluding Saturday, Sunday and holidays) after the date of receipt of the request, as described in §201.5(d), except as stated in paragraph (f) of this section. Once the Board determines whether it can grant a request entirely or in part, it shall notify the requestor in writing. The Board shall advise the requestor of any fees to be charged under §201.8 and shall disclose records promptly on payment of the fees. Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record when technically feasible.

(d) *Unusual circumstances.* (1) If the statutory time limits for processing a request cannot be met because of “unusual circumstances” as defined in the FOIA (5 U.S.C. 552(6)(B)(iii)), the Board shall promptly notify the requestor in writing, explaining the circumstances and giving the date by which the request can be completed or if the Board cannot complete the request. If the extension is for more than 10 working days, the Board shall provide the requestor with an opportunity to:

(i) Modify the request so that it can be processed within the time limit; or

(ii) Arrange an alternative time period for processing the original request.

(2) If the Board believes that multiple requests submitted by a requestor or by requestors acting in concert constitute a single request that would otherwise involve unusual circumstances, and if the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(e) *Expedited processing.* (1) Requests and appeals shall be taken out of order and given expedited processing whenever it is determined that they involve:

(i) Circumstances that could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged activity if

made by a person primarily engaged in disseminating information.

(2) Requests for expedited processing may be made either at the time of the initial request or at a later time.

(3) Requests for expedited processing must include a statement explaining in detail the basis for requesting expedited processing. For example, a requestor under §201.8 must establish that his/her professional activity is news reporting, although it need not be his/her sole occupation. The requestor also must establish a particular urgency to inform the public about government activity involved in the request, beyond the public’s right to know about government activity generally.

(4) Within 10 calendar days of receipt of a request for expedited processing, the Board shall decide whether to grant the request and notify the requestor of its decision. If a request for expedited treatment is granted, the request shall be processed as soon as practicable. If a request for expedited processing is denied, an appeal of that decision shall be acted on expeditiously.

(f) *Tolling of time limits.* (1) The Board may toll the 20-day time period to:

(i) Make one request for additional information from the requester; or

(ii) Clarify the applicability or amount of any fees, if necessary, with the requester.

(2) The tolling period ends upon the Board’s receipt of information from the requester or resolution of the fee issue.

§201.8 Fees.

(a) *General.* The Board shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under §201.9 or where a waiver or reduction of fees is granted under §201.11. Fees must be paid before the copies of records are sent. Fees may be paid by check or money order payable to the Treasury of the United States.

(b) *Definitions for this section.* (1) *Commercial use request*—A request from, or on behalf of, a person who seeks information for a purpose that furthers his/her commercial, trade, or profit interests including furthering those interests through litigation. The Board

shall try to determine the use to which a record will be put. When the Board believes that a request is for commercial use either because of the nature of the request or because the Board has cause to doubt the stated use, the Board shall ask the requestor for clarification.

(2) *Direct costs*—Expenses that the Board incurs in searching for, duplicating, and reviewing records in response to a request. Direct costs include the full salary of the employee performing the work and the cost of duplication of the records. Overhead expenses, such as the cost of space, heating, and lighting, are not included.

(3) *Duplication*—Making a copy of a record or the information in the record, to respond to a request. Copies can be in paper, electronic, or other format. The Board shall honor a requestor's preference for format if the record is readily reproducible in that format at a reasonable cost.

(4) *Educational institution*—A public or private undergraduate, graduate, professional or vocational school that has a program of scholarly research. For a request to be in this category, a requestor must show that the request is authorized by and made under the auspices of the qualifying institution and that the records will be used for scholarly research.

(5) *Noncommercial scientific institution*—An institution that is not operated on a commercial basis, as defined in paragraph (b)(1) of this section and is operated solely for conducting scientific research that does not promote any particular product or industry. For a request to be in this category, the requestor must show that the request is authorized and made under the auspices of the qualifying institution and that the records will be used for further scientific research.

(6) *Representative of the news media*—Any person who, or entity that, gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A freelance journalist shall be regarded as working for a news media entity if the person can demonstrate a solid basis for expecting publication through that entity,

whether or not the journalist is actually employed by that entity. A publication contract is one example of a basis for expecting publication that ordinarily would satisfy this standard. The Board may consider past publication records of the requester in determining whether he or she qualifies as a “representative of the news media.”

(7) *Review*—Examining a record to determine whether any part of it is exempt from disclosure, and processing a record for disclosure. Review costs are recoverable even if a record is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under § 201.13 but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search*—The process of looking for and retrieving records, including page-by-page or line-by-line identification of information within records and reasonable efforts to locate and retrieve information from records maintained in electronic form. The Board shall ensure that searches are done in the most efficient and least expensive way that is reasonably possible.

(c) *Fees*. In responding to FOIA requests, the Board shall charge the following fees unless a waiver or a reduction of fees has been granted under § 201.11.

(1) *Search*. (i) Search fees shall be charged for all requests subject to the limitations of § 201.9. The Board may charge for time spent searching even if no responsive record is located, or if the record(s) located are withheld as exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee will be \$5. If a search and retrieval requires the use of professional personnel, the fee will be \$8 for each quarter hour. If the time of managerial personnel is required, the fee will be \$10 for each quarter hour.

(iii) For computer searches for records, requestors will be charged the direct costs of conducting the search although certain requestors (*see* § 201.9(a)) will be charged no search fee and certain other requestors (*see* § 201.9(b)) will be entitled to two hours

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of manual search time without charge. Direct costs include the cost of operating a computer for the search time for requested records and the operator salary for the search.

(2) *Duplication.* Duplication fees for paper copies of a record will be 10 cents per page for black and white and 20 cents per page for color. For all other forms of duplication, the Board shall charge the direct costs of producing the copy. All charges are subject to the limitations of §§ 201.9 and 201.11.

(3) *Review.* When a commercial-use request is made, review fees shall be charged as stated in paragraph (c)(1) of this section. These fees apply only to the initial record review, when the Board determines whether an exemption applies to a particular record. Charges shall not be imposed for review at the administrative appeal level if an exemption is applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies. The costs of that review shall be charged. All review fees shall be charged at the same rates as those charged in paragraph (c)(1) of this section.

§ 201.9 Restrictions on charging fees.

(a) When determining search or review fees:

(1) No search fee shall be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) The Board shall provide without charge to all but commercial users:

(i) The first 100 pages of black and white duplication (or the cost equivalent); and

(ii) The first two hours of search by a clerical staff member (or the cost equivalent).

(3) When the total fee for a request will be \$14.00 or less for any request, no fee shall be charged.

(b) The Board will not assess search and/or duplication fees, as applicable, if it fails to respond to a requester's FOIA request within the time limits specified under 4 CFR 201.7, and no "unusual" circumstances (as defined in 5 U.S.C. 552(a)(6)(B) and 4 CFR 201.7(d)) or "exceptional" circumstances (as de-

finied in 5 U.S.C. 552(a)(6)(C)) apply to the processing of the request.

§ 201.10 Notice of anticipated fees.

(a) *General.* The Board shall advise the requestor in writing of any applicable fees. If only a part of the fee can be estimated readily, the Board shall advise the requestor that this may be only a part of the total fee. After the requestor has been sent a fee estimate, the request shall not be considered received until the requestor makes a firm commitment to pay the anticipated total fee. Any such agreement must be made by the requestor in writing and must be received within 60 days of the Board's notice. If the requestor does not provide a firm commitment to pay the anticipated fee within 60 days of the notice, the request shall be closed. The requestor may be given an opportunity to work with the Board to change the request and lower the cost.

(b) *Charges for other services.* When the Board chooses as a matter of administrative discretion to provide a special service, such as certifying that records are true copies or sending them by other than ordinary mail, the Board shall pay the costs of providing the services unless previous arrangements have been made with the requestor.

(c) *Charging interest.* The Board may charge interest on any unpaid bill starting on the 31st day following the date of billing. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and shall accrue from the date of the billing until payment is received by the Board. The Board shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended.

(d) *Aggregating requests.* If the Board reasonably believes that a requestor or a group of requestors acting together is trying to divide a request into a series of smaller requests for the purpose of avoiding fees, the Board may aggregate the requests and charge accordingly. The Board shall assume that multiple requests of the same type made within a 30-day period have been made in order to avoid fees. If requests are separated by a longer period, the Board shall aggregate them only if there is a solid basis for determining that aggregation is warranted. Multiple requests

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involving unrelated matters shall not be aggregated.

(e) *Advance payments.* When a requestor has previously failed to pay promptly a properly charged FOIA fee to the Board or another agency, the Board shall require proof that full payment has been made to that agency before it begins to process that requestor's FOIA request. The Board shall also require advance payment of the full amount of the anticipated fee. When advance payment is required, the request is not considered received until payment has been made.

§ 201.11 Requirements for waiver or reduction of fees.

(a) Fees for processing your request may be waived if you meet the criteria listed in paragraph (b) of this section. The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis. The fact that you have received a fee waiver in the past does not mean you are automatically entitled to a fee waiver for every request you may submit, because the essential element of any fee waiver determination is whether the release of the particular documents sought in the request will likely contribute significantly to public understanding of the operations or activities of the government. The Board will rely on the fee waiver justification you have submitted in your request letter. If you do not submit sufficient justification, your fee waiver request will be denied. The Board may, at its discretion, communicate with you to request additional information if necessary. However, the Board must make a determination on the fee waiver request within the statutory time limit, even if the Board has not received such additional information. In certain circumstances, a partial fee waiver may be appropriate, if some, but not all, of the requested records are likely to contribute significantly to public understanding of the operations and activities of the government.

(b) The Board will waive fees (in whole or part) if disclosure of all or part of the information is in the public interest because its release:

(1) Is likely to contribute significantly to public understanding of the

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operations or activities of the government; and

(2) Is not primarily in the commercial interest of the requester.

§ 201.12 Denials.

(a) When denying a request in any respect, the Board shall notify the requestor of that determination in writing. The types of denials include:

(1) Denials of requests, including a determination:

(i) To withhold any requested record in whole or in part;

(ii) That a requested record does not exist or cannot be located;

(iii) That a record is not readily reproducible in the form or format sought;

(iv) That what has been requested is not a record subject to the FOIA; and

(v) That the material requested is not a Board record (*e.g.*, material produced by another agency or organization).

(2) A determination on any disputed fee matter, including a denial of a request for a fee waiver.

(3) A denial of a request for expedited processing.

(b) The denial letter shall be signed by the FOIA Officer or designee and shall include all of the following:

(1) The name and title of the person responsible for the denial.

(2) A brief statement of the reason(s) for the denial, including any FOIA exemptions applied in denying the request.

(3) An estimate of the volume of records withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if it would harm an interest protected by an applicable exemption.

(4) A statement that the denial may be appealed under § 201.14 and a description of the requirements of § 201.14.

§ 201.13 Business information.

(a) *In general.* Business information obtained by the Board from a submitter shall be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) Business information—commercial or financial records obtained by

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the Board that may be protected from disclosure under Exemption 4 of the FOIA.

(2) Submitter—any person or entity from which the Board obtains business records, either directly or indirectly. The term includes but is not limited to corporations and state, local, tribal, and foreign governments.

(c) *Designation of business information.* Submitters of business information shall designate any part of the record considered to be protected from disclosure under Exemption 4 of the FOIA by appropriately marking the material. This may be done either at the time the record is submitted or at a reasonable time thereafter. This designation lasts for 10 years after submittal unless the submitter requests and provides justification for a longer period.

(d) *Notice to submitters.* The Board shall provide a business submitter with prompt written notice of any FOIA request or appeal that seeks its business information under paragraph (e) of this section, except as provided in paragraph (h) of this section, to give the submitter an opportunity to object to that disclosure under paragraph (f) of this section. The notice shall either describe the records requested or include copies of the records.

(e) *Required notice.* The Board shall give notice of a FOIA request seeking business information when:

(1) The submitter has designated that the information is considered protected from disclosure under Exemption 4 of the FOIA; or

(2) The Board has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(f)(1) *Objecting to disclosure.* A submitter shall have 30 days to respond to the notice described in paragraph (d) of this section. If a submitter has an objection to disclosure, it is required to submit a detailed written statement including:

(i) All grounds for withholding any of the information under any exemption of the FOIA, and

(ii) In the case of Exemption 4, the reason why the information is a trade secret, commercial, or financial information that is privileged or confidential.

(2) If a submitter fails to respond to the notice in paragraph (d) of this section within 30 days, the Board shall assume that the submitter has no objection to disclosure. The Board shall not consider information not received by the Board until after a disclosure decision has been made. Information provided by a submitter under this paragraph might itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The Board shall consider a submitter's objections and specific grounds for non-disclosure in deciding whether to disclose the business records. Whenever the Board decides to disclose business records over the objection of a submitter, it shall give the submitter written notice, that will include:

(1) A statement of the reason(s) the submitter's objections were not sustained;

(2) A description of the business records to be disclosed; and

(3) A specified disclosure date at a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements in paragraphs (d) and (g) of this section shall not apply if:

(1) The Board determines that the information should not be disclosed;

(2) The information has been published legally or has been officially made available to the public;

(3) Disclosure of the information is required by another statute or by a regulation issued in accordance with Executive Order 12600 (3 CFR, 1987 Comp., p. 235); or

(4) The objection made by the submitter under paragraph (f) of this section appears frivolous. In such a case, the Board shall promptly notify the submitter of its decision using the guidelines in paragraph (g) of this section.

(i) *Notice of FOIA lawsuit.* When a requestor files a lawsuit seeking to compel the disclosure of business information, the Board shall promptly notify the submitter.

(j) *Corresponding notice to requestors.* When the Board provides a submitter with either notice and an opportunity to object to disclosure under paragraph (d) of this section or with its intent to

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disclose requested information under paragraph (g) of this section, the Board also shall notify the requestor(s). When a submitter files a lawsuit seeking to prevent the disclosure of business information, the Board shall notify the requestor(s).

§ 201.14 Appeals.

(a)(1) *Appeals of adverse determinations.* If you are dissatisfied with the Board's response to your request, you may appeal to the Board's Executive Director:

(i) By mail to: Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006;

(ii) By e-mail to: FOIA@ratb.gov; or

(iii) By fax to: 202-254-7970.

(2) The appeal must be in writing and must be received within 30 days of the date of the Board's response. The appeal letter, e-mail or fax may include as much or as little related information as you wish, as long as it clearly identifies the Board determination that you are appealing, including the assigned request number, if known. For prompt handling, please mark your appeal "Freedom of Information Act Appeal."

(b) *Responses to appeals.* Requestors shall be notified in writing of the decision on the appeal. A decision affirming an adverse determination shall include a statement of the reason(s) for the affirmation, including any FOIA exemption(s) applied, and shall include the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, the request shall be reprocessed in accordance with that appeal decision.

(c) [Reserved]

(d) *Denial of appeal.* An adverse determination by the Executive Director shall be the final action of the Board.

§ 201.15 Preservation of records.

The Board shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code of the National Archives and Records Administration's General Records Schedule 14. Records will not

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be disposed of while they are the subject of a pending request, appeal, or lawsuit.

§ 201.16 Other rights and services.

Nothing in this part shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is entitled under the FOIA.

§ 201.17 How to track a FOIA request.

(a) *Tracking number.* The Board will issue a tracking number to all FOIA requesters within 5 days of the receipt of the request (as described in § 201.7(b)). The tracking number will be sent via electronic mail if the requester has provided an electronic mail address. Otherwise, the Board will mail the tracking number to the requester's physical address, as provided in the FOIA request.

(b) *Status of request.* FOIA requesters may check the status of their FOIA request(s) by contacting the FOIA Officer at FOIA@ratb.gov or (202) 254-7900.

PART 202—OFFICIAL SEAL

Sec.

202.1 Description.

202.2 Authority to affix seal.

202.3 Prohibitions against misuse of seal.

AUTHORITY: 5 U.S.C. 301, 18 U.S.C. 506.

SOURCE: 74 FR 38503, Aug. 4, 2009, unless otherwise noted.

§ 202.1 Description.

(a) The official seal of the Recovery Accountability and Transparency Board (Board) is described as follows: The American Eagle, right facing, with left wing outstretched and pointing forward with right wing partially shown, is superimposed over a background suggesting the American Flag; upon a blue field, which fills background space above the Eagle's outstretched wing, are thirteen gold, five-pointed stars; the lower half of the background, filling the space beneath the Eagle's outstretched wing, is vertically striped in alternating colors of red and gold. The entire image is circumscribed by a gold boundary with 18 equally spaced "gear" teeth; that image is further encircled by a ring

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bearing the gold-colored words “RECOVERY ACCOUNTABILITY AND TRANSPARENCY” centered at its top, and the word “BOARD” is centered at its bottom and separated from the top-centered words by two laurel branches to its left and right.

(b) The Board also has developed an alternate, monochromatic version of the seal in which the above-described blue field and red-and-gold stripes are replaced by a white field and white-and-gold stripes. A reproduction of the official seal in black and white appears as follows:



§ 202.2 Authority to affix seal.

(a) The following officials of the Board are authorized to affix the official seal (including reproductions) to appropriate documents, certifications, and other materials of the Board: The Chairman and all Members, the Executive Director, the General Counsel, and the Directors.

(b) The officials named in paragraph (a) of this section may delegate this authority as appropriate.

§ 202.3 Prohibitions against misuse of seal.

(a) Falsely making, forging, counterfeiting, mutilating, or altering the Board seal or reproduction, or knowingly using or possessing with fraudulent intent an altered Board seal or reproduction is punishable under 18 U.S.C. 506.

(b) Any person using the Board seal or reproduction in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which states penalties for the wrongful use of an official seal, and other provisions of law as applicable.