

**§ 1204.15 Records of other agencies.**

Requests for Board records that were created by another agency may, in appropriate circumstances, be referred to that agency for discussion or processing. In these instances, the Board will notify the requester.

**Subpart C—Appeals**

**§ 1204.21 Submission.**

(a) A person may appeal the following actions, or failure to act by the Clerk of the Board, a Regional Director, or Chief Administrative Judge:

- (1) A denial of access to agency records;
- (2) A denial of a request for a waiver or reduced fees;
- (3) A decision that it is technically not possible to reproduce electronically maintained information in the requester's preferred format;
- (4) A denial of a request for expedited processing of information under this part; or
- (5) A failure to decide a request for expedited processing within 10 workdays from the date of the request.

(b) Appeals must be filed with the Chairman, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419-0001 within 10 workdays from the date of the denial. Any appeal must include a copy of the initial request, a copy of the letter denying the request, and a statement of the reasons why the requester believes the denying employee erred.

**§ 1204.22 Decision on appeal.**

A decision on an appeal will be made within 20 workdays after the appeal is received. A decision not to provide expeditious processing of a request will be made within 15 workdays after the appeal is received. The decision will be in writing and will contain the reasons for the decision and information about the appellant's right to seek court review of the denial.

Dated: September 2, 1999.

**Robert E. Taylor,**  
Clerk of the Board.

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**MERIT SYSTEMS PROTECTION BOARD**

**5 CFR Part 1205**

**Privacy Act Regulations**

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its Privacy Act regulations to update its fee schedule, update certain information to conform to administrative changes, and to comply with the President's Memorandum on Plain Language in Government Writing.

**DATES:** Effective date: September 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653-7200.

**SUPPLEMENTARY INFORMATION:** To be consistent with the amendments to our regulations (5 CFR 1204.11(c)) which were allowed by the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104-231, 101 Stat. 3048), the Board is changing from 10 to 20 the number of workdays in which it will acknowledge a request for access to records in § 1205.12(a) and (a)(4). Section 1205.23 retains the 10 workday time limit but reflects the requirement that the Board acknowledge, rather than rule on a request for amendment of the record. The amendments also add to unusual circumstances in § 1205.12(a)(1) the circumstance where the Board must obtain requested records from a Federal Records Center.

These amendments also update § 1205.16 of the Board's rules controlling the computation and collection of fees. Paragraphs (e) and (f) of § 1205.16 are eliminated as redundant and paragraph (f) is renamed. Section 1205.31 adds a time limit of 10 workdays to file an appeal of a denial of an amendment with the Board's Chairman.

In addition, the Board is updating the wording of its regulations to reflect the existence of field offices in addition to its regional offices and the chief administrative judges who handle certain responsibilities in those offices. Other changes have been made for consistency, to update zip codes, and to comply with the President's Memorandum, "Plain Language in Government Writing", 34 Weekly Comp. Pres. Doc. 1010 (June 1, 1998).

**List of Subjects in 5 CFR Part 1205—Privacy**

Accordingly, the Board is revising 5 CFR part 1205 to read as follows:

**PART 1205—PRIVACY ACT REGULATIONS**

**Subpart A—General Provisions**

Sec.

- 1205.1 Purpose.
- 1205.2 Policy and scope.
- 1205.3 Definitions.
- 1205.4 Disclosure of Privacy Act records.

**Subpart B—Procedures for Obtaining Records**

- 1205.11 Access to Board records.
- 1205.12 Time limits and determinations.
- 1205.13 Identification.
- 1205.14 Granting access.
- 1205.15 Denying access.
- 1205.16 Fees.

**Subpart C—Amendment of Records**

- 1205.21 Request for amendment.
- 1205.22 Action on request.
- 1205.23 Time limits.

**Subpart D—Appeals**

- 1205.31 Submitting appeal.
- 1205.32 Decision on appeal.

**Authority:** 5 U.S.C. 552a and 1204.

**Subpart A—General Provisions**

**§ 1205.1 Purpose.**

This subpart implements the Privacy Act of 1974, 5 U.S.C. 552a, ("the Act") by stating the procedures by which individuals may determine the existence of, seek access to, and request amendment of Board records concerning themselves, and by stating the requirements that apply to Board employees' use and disclosure of those records.

**§ 1205.2 Policy and scope.**

The Board's policy is to apply these regulations to all records that can be retrieved from a system of records under the Board's control by using an individual's name or by using a number, symbol, or other way to identify the individual. These regulations, however, do not govern the rights of the parties in adversary proceedings before the Board to obtain discovery from adverse parties; those rights are governed by part 1201 and part 1209 of this chapter. These regulations also are not meant to allow the alteration, either before or after the Board has issued a decision on an appeal, of evidence presented during the Board's adjudication of the appeal.

**§ 1205.3 Definitions.**

The definitions of 5 U.S.C. 552a apply to this part. In addition, as used in this part:

- (a) *Inquiry* means a request by an individual regarding whether the Board has a record that refers to that individual.
- (b) *Request for access* means a request by an individual to look at or copy a record.
- (c) *Request for amendment* means a request by an individual to change the substance of a particular record by addition, deletion, or other correction.
- (d) *Requester* means the individual requesting access to or amendment of a record. The individual may be either the person to whom the requested record

refers, a legal guardian acting on behalf of the individual, or a representative designated by that individual.

#### § 1205.4 Disclosure of Privacy Act records.

(a) Except as provided in 5 U.S.C. 552a(b), the Board will not disclose any personal record information from systems of records it maintains to any individual other than the individual to whom the record refers, or to any other agency, without the express written consent of the individual to whom the record refers, or his or her representative or attorney.

(b) The Board's staff will take necessary steps, in accordance with the law and these regulations, to protect the security and integrity of the records and the personal privacy interests of the subjects of the records.

#### Subpart B—Procedures for Obtaining Records

##### § 1205.11 Access to Board records.

(a) *Submission of request.* Inquiries or requests for access to records must be submitted to the appropriate regional or field office of the Board, or to the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419-0001. If the requester has reason to believe that the records are located in a regional or field office, the request must be submitted to that office. Requests submitted to the regional or field office must be addressed to the Regional Director or Chief Administrative Judge at the appropriate regional or field office listed in appendix II of 5 CFR part 1201.

(b) *Form.* Each submission must contain the following information:

(1) The name, address, and telephone number of the individual to whom the record refers;

(2) The name, address, and telephone number of the individual making the request if the requester is someone other than the person to whom the record refers, such as a legal guardian or an attorney, along with evidence of the relationship. Evidence of the relationship may consist of an authenticated copy of:

(i) The birth certificate of the minor child, and

(ii) The court document appointing the individual legal guardian, or

(iii) An agreement for representation signed by the individual to whom the record refers;

(3) Any additional information that may assist the Board in responding to the request, such as the name of the agency that may have taken an action against an individual, or the docket number of the individual's case;

(4) The date of the inquiry or request;

(5) The inquirer's or requester's signature; and

(6) A conspicuous indication, both on the envelope and the letter, that the inquiry is a "PRIVACY ACT REQUEST".

(c) *Identification.* Each submission must follow the identification requirements stated in § 1205.13 of this part.

(d) *Payment.* Records usually will not be released until fees have been received.

##### § 1205.12 Time limits and determinations.

(a) *Board determinations.* The Board will acknowledge the request for access to records and make a determination on whether to grant it within 20 workdays after it receives the request, except under the unusual circumstances described below:

(1) When the Board needs to obtain the records from other Board offices or a Federal Records Center;

(2) When it needs to obtain and examine a large number of records;

(3) When it needs to consult with another agency that has a substantial interest in the records requested; or

(4) When other extenuating circumstances prevent the Board from processing the request within the 20-day period.

(b) *Time extensions.* When unusual circumstances exist, the Board may extend the time for making a determination on the request for no more than 10 additional workdays. If it does so, it will notify the requester of the extension.

(c) *Improper request.* If a request or an appeal is not properly labeled, does not contain the necessary identifying information, or is submitted to the wrong office, the time period for processing the request will begin when the correct official receives the properly labeled request and the necessary information.

(c) *Determining officials.* The Clerk of the Board, a Regional Director, or a Chief Administrative Judge will make determinations on requests.

##### § 1205.13 Identification.

(a) *In person.* Each requester must present satisfactory proof of identity. The following items, which are listed in order of the Board's preference, are acceptable proof of the requester's identity when the request is made in person:

(1) A document showing the requester's photograph;

(2) A document showing the requester's signature; or

(3) If the items described in paragraphs (a)(1) and (2) of the section

are not available, a signed statement in which the requester asserts his or her identity and acknowledges understanding that misrepresentation of identity in order to obtain a record is a misdemeanor and subject to a fine of up to \$5,000 under 5 U.S.C. 552a(i)(3).

(b) *By mail.* The identification of a requester making a request by mail must be certified by a notary public or equivalent official or contain other information to identify the requester. Information could be the date of birth of the requester and some item of information in the record that only the requester would be likely to know.

(c) *Parents of minors, legal guardians, and representatives.* Parents of minors, legal guardians, and representatives must submit identification under paragraph (a) or (b) of this section. Additionally, they must present an authenticated copy of:

(1) The minor's birth certificate, and

(2) The court order of guardianship, or

(3) The agreement of representation, where appropriate.

##### § 1205.14 Granting access.

(a) The Board may allow a requester to inspect records through either of the following methods:

(1) It may permit the requester to inspect the records personally during normal business hours at a Board office or other suitable Federal facility closer to the requester; or

(2) It may mail copies of the records to the requester.

(b) A requester seeking personal access to records may be accompanied by another individual of the requester's choice. Under those circumstances, however, the requester must sign a statement authorizing the discussion and presentation of the record in the accompanying individuals presence.

##### § 1205.15 Denying access.

(a) *Basis.* In accordance with 5 U.S.C. 552a(k)(2), the Board may deny access to records that are of an investigatory nature and that are compiled for law enforcement purposes. Those requests will be denied only where access to them would otherwise be unavailable under Exemption (b)(7) of the Freedom of Information Act.

(b) *Form.* All denials of access under this section will be made in writing and will notify the requester of the right to judicial review.

##### § 1205.16 Fees.

(a) No fees will be charged except for making copies of records.

(b) Photocopies of records duplicated by the Board will be subject to a charge of 20 cents a page.

(c) If the fee to be assessed for any request is less than \$100 (the cost to the Board of processing and collecting the fee), no charge will be made to the requester.

(d) Fees for copying audio tapes and computer records will be charged at a rate representing the actual costs to the Board, as shown in paragraphs (d)(1) through (d)(3) of this section.

(1) Audio tapes will be provided at a charge not to exceed \$15 for each cassette tape.

(2) Computer printouts will be provided at a charge of 10 cents a page.

(3) Records reproduced on computer tapes, computer diskettes, or other electronic media, will be provided at the actual cost to the Board.

(e) The Board will provide one copy of the amended parts of any record it amends free of charge as evidence of the amendment.

**Subpart C—Amendment of Records**

**§ 1205.21 Request for amendment.**

A request for amendment of a record must be submitted to the Regional Director or Chief Administrative Judge of the appropriate regional or field office, or to the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419-0001, depending on which office has custody of the record. The request must be in writing, must be identified conspicuously on the outside of the envelope and the letter as a "PRIVACY ACT REQUEST," and must include the following information:

(a) An identification of the record to be amended;

(b) A description of the amendment requested; and

(c) A statement of the basis for the amendment, along with supporting documentation, if any.

**§ 1205.22 Action on request.**

(a) *Amendment granted.* If the Board grants the request for amendment, it will notify the requester and provide him or her with a copy of the amendment.

(b) *Amendment denied.* If the Board denies the request for amendment in whole or in part, it will provide the requester with a written notice that includes the following information:

- (1) The basis for the denial; and
- (2) The procedures for appealing the denial.

**§ 1205.23 Time limits.**

The Clerk of the Board, Regional Director, or Chief Administrative Judge will acknowledge a request for amendment within 10 workdays of

receipt of the request in the appropriate office except under the unusual circumstances described in paragraphs (a)(1) through (a)(4) of § 1205.12 of this part.

**Subpart D—Appeals**

**§ 1205.31 Submitting appeal.**

(a) A partial or complete denial, by the Clerk of the Board, by the Regional Director, or by the Chief Administrative Judge, of a request for amendment may be appealed to the Chairman, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419-0001 within 10 workdays from the date of the denial.

(b) Any appeal must be in writing, must be clearly and conspicuously identified as a Privacy Act appeal on both the envelope and letter, and must include:

(1) A copy of the original request for amendment of the record;

(2) A copy of the denial; and

(3) A statement of the reasons why the original denial should be overruled.

**§ 1205.32 Decision on appeal.**

(a) The Chairman will decide the appeal within 30 workdays unless the Chairman determines that there is good cause for extension of that deadline. If an appeal is improperly labeled, does not contain the necessary information, or is submitted to an inappropriate official, the time period for processing that appeal will begin when the Chairman receives the appeal and the necessary information.

(b) If the request for amendment of a record is granted on appeal, the Chairman will direct that the amendment be made. A copy of the amended record will be provided to the requester.

(c) If the request for amendment of a record is denied, the Chairman will notify the requester of the denial and will inform the requester of:

(1) The basis for the denial;

(2) The right to judicial review of the decision under 5 U.S.C. 552a(g)(1)(A); and

(3) The right to file a concise statement with the Board stating the reasons why the requester disagrees with the denial. This statement will become a part of the requester's record.

Dated: September 2, 1999.

**Robert E. Taylor,**  
*Clerk of the Board.*

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 903**

[Docket No. FR-4420-F-04]

RIN 2577-AB89

**Public Housing Agency Plans; Change in Plan Submission Dates**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule; amendment.

**SUMMARY:** This final rule makes two amendments to HUD's February 18, 1999 interim rule regarding public housing agency (PHA) plans. First, this final rule provides PHAs whose fiscal years begin on January 1, 2000, with additional time to submit their first PHA plans to HUD. This final rule also provides that, for purposes of first PHA plan submissions, a PHA will be considered to have submitted its PHA plans on the submission due date, regardless of whether the PHA submits its first plans before that date. This final rule does not address the public comments received on the February 18, 1999 interim rule. The comments will be addressed in a separate rulemaking that HUD is currently developing, and that HUD expects to publish within the next few weeks.

**DATES:** *Effective Date:* October 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Beth Cooper, the Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708-0730 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. HUD's February 18, 1999 Interim Rule**

On February 18, 1999 (64 FR 8170), HUD published an interim rule to implement a new component of public housing and tenant-based assistance operations required by the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998) (referred to as the "Public Housing Reform Act")—the public housing agency plans. Through these plans—the 5-year Plan and the Annual Plan—a public housing agency (PHA) will advise HUD, its