



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of
Legal Counsel

September 10, 2012

TRANSMITTED VIA E-MAIL

Alfred M. Pollard
General Counsel
Attn: Comments/2012-N-10
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20024

Re: 2012-N-10, Request for Comments Regarding Establishment of Reasonable Accommodation Information System (FHFA-18)

Dear Mr. Pollard:

The U.S. Equal Employment Opportunity Commission (“EEOC” or “the Commission”) submits this comment in response to the Federal Housing Finance Agency’s (FHFA’s) request for comments on its establishment of a new system of records, the Reasonable Accommodation Information System (FHFA-18).¹ This information system was created to enable FHFA to collect and maintain records on applicants, employees, former employees, and others who request a reasonable accommodation under the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended. In addition, the information system allows FHFA to process, track, and report on reasonable accommodation requests and to preserve and maintain the confidentiality of medical information.² Records in the system may include information concerning the nature of the requester’s disability and need for accommodation, as well as appropriate medical or other documentation provided in support of the reasonable accommodation request.³ In addition to disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act, records maintained in FHFA-18 may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) in sixteen delineated situations.⁴ As indicated below, we recommend that FHFA review and revise the disclosure provisions for FHFA-18 as necessary to avoid conflict with the requirements of the Rehabilitation Act.

¹ See Privacy Act of 1974; System of Records, 77 Fed. Reg. 47641 (Aug. 9, 2012).

² *Id.* at 47647.

³ *Id.*

⁴ *Id.* at 47647 – 48.

As you know, the EEOC enforces Section 501 of the Rehabilitation Act of 1973, as amended (Section 501), which prohibits federal agencies from discriminating against qualified applicants or employees on the basis of disability.⁵ Section 501 requires that federal agencies that obtain medical information about applicants and employees collect and maintain the information on separate forms and in separate medical files and treat it as a “confidential medical record.”⁶ Disclosure of this information is permitted in limited circumstances. Specifically, agencies may share medical information with supervisors and managers who need to know about an employee’s work restrictions and necessary accommodations; with first aid and safety personnel if an employee’s disability might require emergency treatment or assistance in the event of an emergency; and with government officials investigating compliance with the Rehabilitation Act.⁷ The Commission also has interpreted the Rehabilitation Act to allow agencies to disclose information for workers’ compensation and insurance purposes.⁸

The Commission’s own Reasonable Accommodation Records System identifies four specific routine uses pursuant to the Privacy Act that permit the agency:

- a. to disclose information to medical personnel to meet a bona fide medical emergency;
- b. to disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding;
- c. to disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual; and
- d. to disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.⁹

The first and fourth recognized routine uses are consistent with the exceptions to confidentiality under Section 501 of the Rehabilitation Act. The second routine use involves disclosure of relevant information as part of a proceeding in which EEOC is a party, and the third disclosure

⁵ 29 U.S.C. § 791 et seq. *See also* 29 U.S.C. § 791(g) (applying the standards under Title I of the Americans with Disabilities Act of 1990 to the Rehabilitation Act).

⁶ 29 C.F.R. § 1630.14(b)(1), (c)(1), (d)(1). *See also* 29 U.S.C. § 791(g) (applying the standards under Title I of the Americans with Disabilities Act of 1990 to the Rehabilitation Act).

⁷ 29 C.F.R. § 1630.14(b)(1), (c)(1), (d)(1).

⁸ 29 C.F.R. Pt 1630, App. § 1630.14(b).

⁹ Privacy Act of 1974; Publication of Notices of Systems of Records and Proposed New Systems of Records, 67 Fed. Reg. 49338, 49354 (July 30, 2002).

would occur only when the individual whose information is being disclosed has requested a member of Congress to make an inquiry on the individual's behalf.

We believe that the sixteen situations in which FHFA-18 would permit disclosure of information related to an applicant's or employee's request for, or receipt of, a reasonable accommodation exceed what is legally permissible under the Rehabilitation Act or what is appropriate as a routine use of such information. Accordingly, we recommend that FHFA review and revise the disclosure provisions in FHFA-18 as necessary to prevent any unintended legal conflicts.

Thank you for the opportunity to provide these comments in response to the proposed information system. Should you wish to discuss any of the issues raised in this letter in further detail, please feel free to contact Assistant Legal Counsel Christopher Kuczynski at (202) 663-4665 or Senior Attorney Advisor Lisa Schnall at (202) 663-4845.

Sincerely,

/s/

Peggy R. Mastroianni
Legal Counsel