

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-61; File No. S7-19-23]

Privacy Act of 1974; System of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice of a new system of records.

SUMMARY: The Securities and Exchange Commission (SEC) proposes to establish SEC-36, Harassment Prevention and Response Program Records under the Privacy Act of 1974. The information in the system concerns internal inquiries and/or investigations into allegations of harassment reported to SEC by applicants for employment, current and former SEC employees, fellows, interns, and individuals who conduct business with the SEC; and resolutions of allegations of workplace harassment. The Harassment Prevention and Response Program addresses harassment concerns that are raised separate and apart from harassment claims that may also be raised under the procedures for administrative equal employment opportunity complaints.

DATES: The system of records will become effective October 31, 2023, with the exception of the routine uses, which will take effect on November 30, 2023, to permit public comment on the routine uses. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To assure consideration, comments should be received on or before November 30, 2023

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/comments/s7-19-23/privacy-act-1974-system-records>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-19-23 on the subject line.

Paper Comments:

- Send paper comments to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-19-23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (<https://www.sec.gov/rules/2023/10/s7-19-23>).

Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

FOR FURTHER INFORMATION CONTACT: Ronnette McDaniel, Privacy and Information Assurance Branch Chief, 202-551-7200 or privacyhelp@sec.gov.

SUPPLEMENTARY INFORMATION:

The Harassment Prevention and Response Program strives to create a work environment that is respectful and inclusive for all in the SEC workplace and SEC sanctioned activities and events, including those outside of SEC facilities. The program provides a mechanism for SEC employees, fellows, interns, or individuals who conduct business with the SEC to report allegations of harassment to the SEC. In order to intake, manage and track inquiries to a resolution the SEC is establishing SEC-36, Harassment Prevention and Response Program Records, under the Privacy Act. Records may include contact information of individuals involved in reports or allegations of harassment, statements of witnesses, exhibits, reports of interviews, findings and recommendations, close-out materials, documentation of any corrective action taken by management, and related correspondence. Information from this system of records will be collected, maintained, and disclosed in accordance with applicable law, regulations, and statutes, including but not limited to Prohibited Personnel Practices; Executive Order 11478, 34 FR 12985 (as amended by Executive Orders 13087, 13145 and 13152); Equal Employment Opportunity Commission Management Directive 715 (EEO-MD-715); and Equal Employment Opportunity Commission, Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999).

SYSTEM NAME AND NUMBER

SEC-36 Harassment Prevention and Response Program Records.

SECURITY CLASSIFICATION:

Non-classified.

SYSTEM LOCATION:

U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SYSTEM MANAGER(S):

Director, Office of Equal Employment Opportunity, 100 F Street NE, Washington, DC 20549.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Records Management by Federal Agencies, 44 U.S.C. 3101 *et seq.*; Civil Service Reform Act of 1978, 5 U.S.C. 2302(b), Prohibited Personnel Practices; Executive Order 11478, 34 FR 12985 (as amended by Executive Orders 13087, 13145 and 13152); title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-16 *et seq.*; Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*; Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791; titles I and V of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.*, as amended by ADA the Amendments Act of 2008; Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, Pub. L. 107-174, as amended by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020; title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. 2000ff *et seq.*; Equal Pay Act of 1963, 29 U.S.C. 206(d); Equal Employment Opportunity Commission Management Directive 715 (EEO-MD-715); and Equal Employment Opportunity Commission, Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999).

PURPOSE(S) OF THE SYSTEM:

The Harassment Prevention and Response Program system of records maintains records regarding allegations of workplace harassment. These records are maintained for the purpose of conducting internal inquiries and/or investigations into allegations of harassment reported to the SEC by applicants for employment, current and former SEC employees, fellows, interns, or

individuals who conduct business with the SEC and resolving allegations of workplace harassment. The records contained in this system do not duplicate any existing agency or government-wide system of records, even though some of the documents might also appear in other systems of records maintained for other purposes. Particularly, records are not collected to advance claims of discrimination pursuant to processes outlined in title 29 CFR part 1614. Rather, these records are collected for administrative action relating to allegations of workplace harassment, including bases found in EEO laws and elsewhere. The agency policy and processes govern the collection and maintenance of these records to further the agency's commitment to appropriately respond to allegations of workplace harassment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records maintains information on individuals who have reported harassing conduct by or against SEC personnel and harassing conduct by or against non-SEC personnel to the program manager for prevention of harassment and response, in accordance with the agency's administrative regulation relating to harassment prevention and response. Individuals covered include, but are not limited to applicants for SEC employment, current and former SEC employees, fellows, interns, and individuals who conduct business with the SEC. Covered individuals include those who report harassment concerns, provide information in support of harassment inquiries or investigations, or are witnesses or are otherwise contacted as part of the fact-finding process for inquiries, investigations, and reports relating to workplace harassment.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all records related to a report of harassment received by the SEC through the harassment prevention and response program manager or through referrals from the Office of Equal Employment Opportunity, other SEC organizations necessary for the implementation of the SEC Harassment Prevention and Response Program (or its successor program), or management officials. The records may include contact information of individuals involved in reports or allegations of harassment, statements of witnesses, exhibits, reports of interviews, findings and recommendations, close-out materials, documentation of any corrective action taken by management, and related correspondence. The specific data elements found in these records may include names, positions, Social Security numbers, mailing addresses, email addresses, employment histories, employee evaluations, disciplinary actions, case-related communications and notes, and audit logs of user access and activities within the SEC Harassment Prevention and Response Program electronic databases maintained by the SEC.

RECORD SOURCE CATEGORIES:

The SEC obtains information in this system from alleged targets of harassment, alleged harassers, witnesses, members of the public, other Federal agencies, and other individuals involved in the allegations. Some information, such as the alleged target's or harasser's name, personal identification number (PIN), employee identification number, position, and job location may be obtained from other SEC system of records as relevant and necessary to carry out the SEC's function. Other record sources include documents related to reports of harassment to the SEC Harassment Prevention and Response Program staff or management; information obtained through correspondence, letters, telephone calls, emails, or any other form of communication; data obtained from investigative material and any information relevant to an investigation;

materials and information gathered by staff in the performance of their duties; electronic databases maintained by the staff; other SEC files; and from individuals, including where practicable, those to whom the records relate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (1) the SEC suspects or has confirmed that there has been a breach of the system of records; (2) the SEC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the SEC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
2. To another Federal agency or Federal entity, when the SEC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

3. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.
4. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry. Such disclosure is permitted in connection with civil litigation only when it is relevant and necessary to the litigation.
5. To the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, to permit the National Archivist to inspect SEC records or inspect the SEC records management program and practices.
6. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.
7. To Federal, State, local, and/or foreign law enforcement agencies or other appropriate entity charged with the responsibility of investigating or prosecuting a violation or potential violation of law, whether civil, criminal, or regulatory in nature.
8. To respond to subpoenas in any litigation or other proceeding.
9. To the U.S. Department of Justice (DOJ), when:

- (a) The SEC or any component thereof; or
 - (b) Any SEC employee in his or her official capacity; or
 - (c) Any SEC employee in his or her individual capacity that DOJ has agreed to represent;
or
 - (d) The United States or any agency thereof where the SEC determines the litigation is likely to affect the SEC or any of its components is a party to a litigated matter or has an interest in a litigated matter and the SEC determines that the use of such records by DOJ is relevant and necessary to the litigation.
10. In any proceeding before a court or adjudicative body before which the SEC is authorized to appear, when:
- (a) The SEC or any component thereof; or
 - (b) Any SEC employee in his or her official capacity; or
 - (c) Any SEC employee in his or her individual capacity; or
 - (d) The United States or any agency thereof where the SEC determines the litigation is likely to affect the SEC or any of its components is a party to the proceeding or has an interest in the proceeding and SEC determines that the use of such records is relevant and necessary to the proceeding.
11. To provide information to the EEOC when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with Uniformed Guidelines on Employee Selection Procedures, or other functions vested in the EEOC.

12. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting conditions of employment.

POLICIES AND PRACTICE FOR STORAGE OF RECORDS:

Records in this system of records are stored electronically or on paper in secure facilities.

Electronic records are stored on the SEC's secure network and/or an SEC-approved cloud storage location. Access to and use of these records is limited to those persons whose official duties require such access.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are cross-indexed by the name of the individual who reports harassment, the name of the alleged target of harassment, if any, and the name of the alleged harasser. The records may be retrieved by any of the above three indexes and other indexes, as appropriate.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are maintained for three years after the report of harassment is closed and are then deleted or destroyed in accordance with NARA, General Records Schedule (GRS) 023, Item 40 and the SEC Comprehensive Records Schedule. Authorized staff follow the SEC's records management procedures for safeguarding and disposing of records related to reports of harassment that have met their retention period.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to SEC facilities, data centers, and information or information systems is limited to authorized personnel with official duties requiring access. SEC facilities are equipped with security cameras, and, at certain SEC facilities, 24-hour security guard service. Computerized records are safeguarded in a secured environment. Records are maintained in a secure, password-

protected electronic system that will utilize commensurate safeguards that may include: firewalls, intrusion detection and prevention systems, and role-based access controls. Additional safeguards will vary by program. All records are protected from unauthorized access through appropriate administrative, operational, and technical safeguards. These safeguards include restricting access to authorized personnel who have a “need to know” and using locked file cabinets and/or locked offices or file rooms. Contractors and other recipients providing services to the Commission shall be required to maintain equivalent safeguards.

RECORDS ACCESS PROCEDURES:

Persons seeking to gain access to any record contained in this system of records must submit a written request in accordance with instructions in SEC Privacy Act Regulations; 17 CFR 200.301 *et seq.* Address such request to: FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE, Mail Stop 5100, Washington, DC 20549-2465.

CONTESTING RECORD PROCEDURES:

Persons seeking to contest the content of any record contained in this system of records may inquire in writing in accordance with instructions in SEC Privacy Act Regulations, 17 CFR 200.301 *et seq.* Address such requests to: FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE, Mail Stop 5100, Washington, DC 20549-2736.

NOTIFICATION PROCEDURES:

See “Record Access Procedures” above.

EXEMPTIONS PROMULGATED FOR THE:

None

HISTORY:

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By the Commission.

Dated: October 26, 2023.

Vanessa A. Countryman,

Secretary.