OBELISK TECH SYSTEMS INC., JAMES POOLE

Proposal and Comment Information

Title: BGFRS-14 General File of Reserve Bank and Branch Directors, SORN-202601

Comment ID: FR-2026-0003-01-C09

Subject

FRS-2026-1024-0001 BGFRS-14

Submitter Information

Organization Name: Obelisk Tech Systems Inc.

Organization Type: Company

Name: James Poole

Submitted Date: 04/11/2026

[Screenshot 2026-04-11 at 2.46.31 AM.png]
[Screenshot 2026-04-11 at 2.35.51 AM.png]
[Screenshot 2026-04-11 at 2.30.18 AM.png]

Ms. Alye S. Foster Associate General Counsel, Legal Division Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue NW Washington, DC 20551

Mr. Benjamin W. McDonough Secretary of the Board Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue NW Washington, DC 20551

Re: Public Comment on Modified System of Records BGFRS-14, "FRB—General File of Federal Reserve Bank and Branch Directors," 91 FR 12802 (Mar. 17, 2026); and Associated Matters — Information Collection OMB Control No. 7100-0328; Delegation of Authority under 12 CFR § 265.2

Dear Ms. Foster and Mr. McDonough:

Obelisk Tech Systems Inc. respectfully submits the attached public comment and administrative filing in response to the Board's proposed modification of system of records BGFRS-14, published at 91 FR 12802 on March 17, 2026, with comments due on or before April 16, 2026. This email transmits the filing for the Board's consideration and for contemporaneous administrative-record preservation. A parallel submission is being made concurrently through the Board's proposal portal at https://www.federalreserve.gov/apps/proposals/ in accordance with the instructions set forth in the Federal Register notice, which constitutes the official filing of record with the Board.

The attached filing addresses the scope, internal-control posture, and transparency of the proposed modification, and raises associated matters concerning information collection OMB Control No. 7100-0328 and delegation of authority under 12 CFR § 265.2. It is submitted pursuant to 5 U.S.C. § 552a(e)(4) and (e)(11), the Administrative Procedure Act (5 U.S.C. §§ 553, 706), the Paperwork Reduction Act (44 U.S.C. ch. 35), OMB Circulars A-108 and A-123 (2026 revision), the E-Government Act of 2002 § 208, and the Federal Records Act.

Obelisk does not oppose the Board's underlying statutory duty to maintain records relating to Reserve Bank and Branch director eligibility, conduct, and service under sections 3, 4, 11, and 21 of the Federal Reserve Act (12 U.S.C. §§ 248, 302, 485, 521). Obelisk does respectfully request that the Board address on the administrative record each of the specific objections, formal questions, and documentation requests set forth in Sections 5, 9, and 10 of the attached filing.

Copies of this submission are being transmitted contemporaneously to additional federal offices listed in the carbon copy and blind carbon copy fields for administrative-record preservation and notice purposes. Transmittal is informational and for record-keeping; it is not intended to assert that each recipient bears independent jurisdictional responsibility for the subject matter of this comment, and each recipient is free to disregard, forward, or archive this transmission in accordance with its own records management practices.

Obelisk appreciates the Board's consideration of this comment and stands ready to respond to any questions or requests for clarification through the contact information set forth below.

Respectfully submitted,

Attachment: FRS-2026-1024-0001_BGFRS-14_April_11_2026_630AM_ET_James_Poole_Obelisk.pdf (11 sections; public comment and administrative challenge)

FORMAL REGULATORY OVERSIGHT FILING

Public Comment and Administrative Challenge

Re: Federal Reserve Board Modified System of Records

BGFRS-14 — "FRB—General File of Federal Reserve Bank and Branch Directors"

Published at 91 FR 12802 (Tuesday, March 17, 2026)

Comments Due: April 16, 2026

And Associated Matters:

Information Collection OMB Control No. 7100-0328

Delegation of Authority under 12 CFR § 265.2

Cross-Cutting Compliance Gaps — 12 CFR Title 12 (Federal Reserve & OCC Frameworks)

Agency:

Board of Governors of the Federal Reserve System

20th Street and Constitution Avenue NW, Washington, DC 20551

Submitted by:

James Hunter Poole

Executive Chairman & Chief Executive Officer

Obelisk Tech Systems Inc.

Thomasville, Thomas County, Georgia

CAGE 9S0L8 | UEI U34MSJ6A6413 | HUBZone-certified | ITAR-registered

Date of Submission: April 11, 2026

Dockets: BGFRS-14 SORN; FR-2026-0004-01; OMB 7100-0328

Section 2 — Executive Summary

Obelisk Tech Systems Inc. ("Obelisk") submits this filing in response to the Federal Reserve Board's ("Board") proposed modification of system of records BGFRS-14, published at 91 FR 12802 (Mar. 17, 2026). Obelisk does not oppose the Board's underlying statutory duty to maintain records relating to Reserve Bank and Branch director eligibility, conduct, and service. Obelisk does, however, formally challenge the scope, methodology, internal-control posture, and transparency of the proposed modification, and places on the administrative record a parallel challenge to associated information collections, delegation authority, and cross-cutting compliance gaps under Title 12 of the Code of Federal Regulations.

Core challenge.

The proposed modification simultaneously (a) expands ingestion of personally identifiable information to non-employee candidates and their staff assistants, (b) authorizes third-party database sourcing without source-authentication controls, (c) permits demographic data collection, and (d) invokes the Privacy Act § (k)(5) exemption to deny access, accounting, and accuracy rights — while publishing no Privacy Impact Assessment, no OMB A-123 internal-control matrix, and no cumulative Paperwork Reduction Act burden reconciliation. This combination produces an asymmetry between regulated private actors (who face extensive qualification, registry, and audit-trail obligations) and federal delegation authority under 12 CFR § 265.2 (which operates without comparable transparency).

Legal effect of this filing.

This submission is structured to trigger binding agency obligations under the Administrative Procedure Act (5 U.S.C. §§ 553, 706), the Paperwork Reduction Act (44 U.S.C. §§ 3506–3507), the Privacy Act of 1974 (5 U.S.C. § 552a), OMB Circular A-108, OMB Circular A-123 (2026 revision), and the Federal Records Act. It creates an administrative record supporting subsequent Government Accountability Office audit, Office of Inspector General inspection, and judicial review.

Section 3 — Legal Authority Stack

The following layered authorities establish the Board's obligation to respond, to produce documentation, and to coordinate with oversight entities.

3.1 Administrative Procedure Act — 5 U.S.C. §§ 553, 706

Section 553 requires notice-and-comment procedures for rules of agency practice and substantive effect. A SORN modification that collaterally narrows Part 261a access procedures and expands categories of covered individuals functions as substantive rulemaking and must be supported by a reasoned explanation. Section 706 requires reviewing courts to set aside agency action found arbitrary, capricious, or not in accordance with law. Failure to respond substantively to material comments is itself reversible error.

3.2 Privacy Act of 1974 — 5 U.S.C. § 552a

Subsections (e)(1), (e)(4), (e)(10), (e)(11), (o), (p), (r), and (u) impose affirmative duties respecting relevance, publication, safeguards, matching agreements, Data Integrity Board oversight, and reports to OMB and Congress. Subsection (k)(5) authorizes exemption only for material compiled solely for

suitability, eligibility, or access determinations, and only to the extent disclosure would reveal a confidential source.

3.3 Paperwork Reduction Act — 44 U.S.C. ch. 35

Sections 3506 and 3507 require agencies, prior to conducting or sponsoring an information collection, to (a) demonstrate practical utility, (b) evaluate burden, (c) consult with affected parties, and (d) obtain OMB clearance. Associated collection OMB 7100-0328 must be reconciled against BGFRS-14's expanded ingestion; duplication across collections and systems is a PRA violation.

3.4 OMB Circular A-108 — Federal Agency Responsibilities for Privacy Act SORNs

A-108 § 6(c) requires SORN modifications to identify all categories of individuals, records, and sources with specificity; § 7 requires Privacy Impact Assessments where E-Government Act § 208 is triggered; § 8 requires narrative justification for routine uses; § 9 requires Data Integrity Board review where matching programs are implicated.

3.5 OMB Circular A-123 (2026 Revision) — Management's Responsibility for ERM and Internal Control

A-123 requires federal managers to identify risks to objectives, design proportionate control activities, and monitor and remediate deficiencies. The 2026 revision expressly requires linkage between identified risks and published control activities in rulemaking records affecting information systems.

3.6 Federal Records Act — 44 U.S.C. chs. 29, 31, 33

The Federal Records Act, in conjunction with NARA General Records Schedules, forbids ad hoc destruction standards such as "may be destroyed when no longer needed." Records schedules must be NARA-approved.

3.7 Why the Board Must Respond

Under the APA, an agency must consider and respond to material comments. Under the PRA, OMB cannot approve a collection that has not addressed substantive public objections. Under A-108, unanswered objections to SORN scope require republication. Under A-123, unresolved control deficiencies must be escalated to entity-level risk review. These obligations are non-discretionary.

Section 4 — CFR Title 12 Analysis: Delegation Asymmetry
4.1 12 CFR § 265.2 — Functions Delegated to the Secretary

Part 265 establishes the Board's internal delegation framework. § 265.2 and the surrounding sections delegate a wide range of supervisory, licensing, personnel, and administrative decisions to Board officers and Reserve Bank officials. The regulation does not, on its face, establish:

* A publicly accessible registry of delegated authorities actually exercised.

* Qualification standards for individuals to whom authority is delegated.

* Audit trails documenting the factual basis for each delegated decision.

* Public transparency mechanisms comparable to those imposed on regulated private actors.

* Cross-references to the Privacy Act system that would capture delegation decisions about identifiable individuals.

4.2 Comparison — Mortgage Loan Originator and OMB 7100-0328

Under the SAFE Act, CFPB Regulation G, and the Nationwide Multistate Licensing System, mortgage loan originators are subject to federal registration, unique identifier assignment, qualification testing, continuing education, public-record disclosure, and audit. The Board's information collection OMB 7100-0328 imposes analogous reporting burdens on regulated depository personnel.

By contrast, persons exercising delegated federal authority under 12 CFR § 265.2 — whose decisions can materially affect supervised institutions, director eligibility, and personal reputations — face no comparable registration, qualification, or public-audit regime.

4.3 Framing: Regulatory Asymmetry

This filing characterizes the resulting condition as a regulatory asymmetry between controlled private actors and uncontrolled federal delegation authority. The asymmetry is not merely rhetorical; it is a measurable internal-control gap under A-123 and a cognizable APA reasoned-decisionmaking defect when the Board expands an SORN that feeds delegated decisions without disclosing the delegation framework itself.

Section 5 — Privacy Act / Circular A-108 Failure Analysis
5.1 System of Records Scope

The proposed BGFRS-14 modification expands covered individuals to include candidates for director positions and their assistants. A-108 § 6(c) requires specificity. The term "news and other information databases" is not a source category; it is a sourcing modality and fails A-108.

5.2 Routine Uses

The notice narrows the system-specific routine use while relying on general routine uses A, C, D, G, I, and J. The narrative does not explain, as A-108 § 8 requires, why each retained general routine use is compatible with the purpose of collection as applied to non-employee candidates.

5.3 Reporting Obligations

Under Privacy Act § (r) and OMB implementing guidance, significant SORN modifications require advance report to OMB and to the congressional committees of jurisdiction. The notice does not document whether that report was submitted, its contents, or OMB's response.

5.4 Data Integrity Board Oversight

Under § (u), each agency maintaining a system of records subject to a matching program must establish a Data Integrity Board. The notice does not disclose whether BGFRS-14 records are used in any matching program, nor whether the Board's Data Integrity Board has reviewed the proposed modification.

5.5 Forced Questions

* What matching programs, if any, draw on or feed BGFRS-14?

* What interagency data-sharing agreements touch BGFRS-14 records?

* Where are the § (r) reports to OMB and Congress concerning this modification?

* What Data Integrity Board minutes or findings exist concerning BGFRS-14?

* What PIA, if any, was prepared under E-Government Act § 208?

Section 6 — Paperwork Reduction Act Challenge to OMB 7100-0328 and Associated Collections
6.1 Burden Estimation Validity

PRA § 3506(c)(1)(A)(iv) requires agencies to provide a specific, objectively supported estimate of burden. Expansion of BGFRS-14 to ingest candidate and assistant data from third-party databases necessarily increases the downstream burden on Reserve Bank staff who must authenticate, reconcile, and maintain those records. No revised burden estimate is disclosed.

6.2 Cross-System Duplication

PRA § 3506(c)(3)(B) requires agencies to avoid unnecessary duplication. To the extent BGFRS-14 duplicates information already collected under OMB 7100-0328 or other Board collections, that duplication must be documented and justified.

6.3 Cumulative Burden Accounting

PRA § 3507 requires OMB review before approval. Cumulative burden across BGFRS-14, OMB 7100-0328, and any related collections must be aggregated; the public record does not reflect such aggregation.

6.4 Relief Sought under the PRA

* OMB reopening of 7100-0328 clearance in light of the BGFRS-14 expansion.

* Publication of a cumulative burden statement reconciling all collections touching director records.

* Written justification under 44 U.S.C. §§ 3506–3507 addressing practical utility, duplication, and burden.

Section 7 — Interagency Obligation Map

The matters raised in this filing cannot remain internal to the Board. Mandatory interagency obligations flow as follows:

7.1 Federal Reserve Board → Office of Management and Budget

Under Privacy Act § (r), PRA §§ 3506–3507, and A-108, the Board must coordinate with OMB on SORN modifications, information collections, and PIAs. OMB's role is non-discretionary review.

7.2 OMB → Government Accountability Office

GAO exercises audit authority under 31 U.S.C. § 712 and 31 U.S.C. § 717 over agency compliance with information-management statutes. A-123 (2026) explicitly contemplates GAO access to internal-control documentation.

7.3 Board → Board Office of Inspector General

Under the Inspector General Act of 1978, as amended, the Board OIG has jurisdiction to inspect and investigate management and operational deficiencies, including SORN compliance and internal-control posture.

7.4 Interagency Coordination — CIGIE

The Council of the Inspectors General on Integrity and Efficiency coordinates cross-agency inspection standards under the Blue Book and the Silver Book. Coordination is required where systemic deficiencies implicate multiple federal systems of records.

Section 8 — Audit Cascade

This filing is structured to create an audit-triggering condition across multiple oversight bodies. The cascade operates as follows:

1. PRA trigger — OMB review of associated information collections, including OMB 7100-0328, under 44 U.S.C. §§ 3506–3507.

2. A-123 trigger — internal-control audit by the Board's management and, where escalation is warranted, by the Board OIG.

3. Privacy Act trigger — SORN compliance review under § 552a and A-108, including § (r) report reconciliation and Data Integrity Board review.

4. GAO trigger — audit authority under 31 U.S.C. §§ 712, 717, and GAGAS (Yellow Book, 2024 revision).

5. OIG trigger — inspection or investigation pathway under the Inspector General Act and CIGIE Blue/Silver Book standards.

This filing creates an audit-triggering condition across oversight bodies. The record established herein is available for citation in any subsequent audit, inspection, investigation, or judicial proceeding.

Section 9 — Formal Questions Requiring Mandatory Response

The following questions are submitted pursuant to the APA, the Privacy Act, the PRA, and associated OMB Circulars. Each demands documentation and a written response on the administrative record.

1. Does a publicly accessible registry of delegated authorities exercised under 12 CFR § 265.2 exist? If so, produce it. If not, explain the legal basis for its absence.

2. What qualification standards govern individuals to whom authority is delegated under 12 CFR §§ 265.2–265.20, and where are they published?

3. Produce the OMB A-123 (2026) internal-control documentation specific to BGFRS-14, including the entity-level risk assessment, control activity matrix, and monitoring plan.

4. Identify all interagency data-sharing agreements and computer-matching agreements that touch BGFRS-14, and produce the underlying agreements and Data Integrity Board minutes.

5. Identify all matching programs, as defined in 5 U.S.C. § 552a(a)(8), that draw on or feed BGFRS-14.

6. Produce the § (r) report to OMB and to the congressional committees of jurisdiction concerning the proposed BGFRS-14 modification, together with any OMB response.

7. Produce the Privacy Impact Assessment prepared under E-Government Act § 208 for the BGFRS-14 modification, or explain the legal basis for its absence.

8. Produce the cumulative Paperwork Reduction Act burden statement reconciling BGFRS-14 with OMB 7100-0328 and all other Board collections touching director records.

9. Produce all Board OIG consultations, findings, or recommendations concerning BGFRS-14 in the preceding 36 months.

10. Identify the NARA-approved retention schedule governing candidate and candidate-assistant records, and produce the NARA disposition authority number.

11. Produce all internal memoranda supporting the expansion of covered individuals to include non-employee candidates and their assistants.

12. Identify the authentication, hashing, versioning, and chain-of-custody controls governing ingestion from "news and other information databases" into BGFRS-14.

Section 10 — Required Actions

* Produce all documentation identified in Section 9 within the comment reply window or state, for each item, a specific legal basis for withholding.

* Submit or resubmit BGFRS-14 and OMB 7100-0328 for OMB review with cumulative burden accounting.

* Publish the A-123 internal-control matrix specific to BGFRS-14.

* Publish the Section 208 Privacy Impact Assessment.

* Disclose all interagency coordination records, matching agreements, and Data Integrity Board minutes.

* Narrow the § (k)(5) exemption to records actually compiled solely for suitability determinations, and segregate mixed-use records.

* Adopt a NARA-approved retention schedule for candidate and candidate-assistant records.

* Conduct a cross-cutting internal-control review of 12 CFR Parts 261, 261a, 261b, 262, 263, 264, 264a, 264b, 265, 266, and 268 for parallel deficiencies.

* Commit to a CIGIE Blue Book-compliant Board OIG inspection within 12 months of the effective date of any final modification.

Section 11 — Conclusion and Reservation of Rights

This filing is not a generic public comment. It is a structured federal oversight filing designed to invoke the Administrative Procedure Act, the Privacy Act, the Paperwork Reduction Act, OMB Circulars A-108 and A-123, the Federal Records Act, and the Inspector General Act, and to create an administrative record available for Government Accountability Office audit, Office of Inspector General inspection, congressional oversight, and judicial review.

The Board's obligation to respond substantively is non-discretionary. Failure to respond, or response that fails to address the specific questions and documentation requests set forth in Sections 9 and 10, will constitute a reviewable agency action under 5 U.S.C. § 706 and will be cited as such in subsequent proceedings.

Obelisk reserves all rights under the Administrative Procedure Act, the Privacy Act, the E-Government Act, the Paperwork Reduction Act, the Information Quality Act, the Federal Records Act, and applicable judicial review provisions, and incorporates by reference its prior-filed federal regulatory comments maintained in the Obelisk master citation bank.

Respectfully submitted,

--
James H. Poole
Executive Chairman & CEO
Obelisk Tech Systems Inc.
CAGE: 9S0L8 | UEI: U34MSJ6A6413
ITAR DS-2032 Registrant | HUBZone-Certified
Thomasville, Georgia

ecfr.gov/current/title-12/chapter-II/subchapter-A/part-265?toc=1

Enter a search term or CFR reference (eg. fishing or 1 CFR 1.1)

§ 265.2 Delegation of functions generally.

(a) The Board has determined to delegate authority to exercise the functions described in this part.

(b) The Chair of the Board shall assign responsibility for performing such delegated functions.

(c) Where a delegatee must act with the concurrence of a Board employee, or in consultation with a Board employee, that Board employee may subdelegate his or her authority to concur or be consulted on the delegated action to an employee within the same division or office.

Details
Print
Search
Subscribe
Timeline
Go to Date
Published Edition
Developer Tools

[Federal Register Volume 91, Number 51 (Tuesday, March 17, 2026)]
[Notices]
[Pages 12802-12804]
From the Federal Register Online via the Government Publishing Office
[www.gpo.gov]
[FR Doc No: 2026-05156]

FEDERAL RESERVE SYSTEM

Privacy Act of 1974; System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is given that the Board of Governors of the Federal Reserve System (Board) proposes to modify an existing system of records, entitled BGFRS-14, ``FRB--General File of Reserve Bank and Branch Directors.'' BGFRS-14 is a system of records that enables Board staff to develop, implement, and communicate the Board's program regarding Federal Reserve Bank and Branch directors including the appointment of Class C directors and Board-appointed Branch directors; the eligibility, conduct, and service of all directors; the composition of Reserve Bank and Branch boards; and the interactions among the Board and the Federal Reserve Bank and Branch directors.

DATES: Comments must be received on or before April 16, 2026. This new system of records will become effective April 16, 2026, without further notice, unless comments dictate otherwise. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 30-day period prior to publication in the Federal Register in which to review the system and to provide any comments to the agency. The public is then given a 30-day period in which to comment, in accordance with 5 U.S.C. 552a(e)(4) and (11).

ADDRESSES: You may submit comments, identified by BGFRS-14 ``FRB--General File of Federal Reserve Bank and Branch Directors,'' by any of the following methods:

Agency Website: https://www.federalreserve.gov/apps/proposals/. Follow the instructions for submitting comments, including attachments. Preferred Method.

Mail: Benjamin W. McDonough, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

Hand Delivery/Courier: Same as mailing address.

Other Means: . You must include the docket number in the subject line of the message.

Comments received are subject to public disclosure. In general, comments received will be made available on the Board's website at https://www.federalreserve.gov/apps/proposals/ without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would be not appropriate for public disclosure. Public comments

may also be viewed electronically or in person in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

FOR FURTHER INFORMATION CONTACT: Alye Foster, Associate General Counsel, (202) 452-5289, or ; Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone anywhere in the United States.

SUPPLEMENTARY INFORMATION: The Board is modifying BGFRS-14 to update the system to expand the system's purpose, the category of individuals and records covered by the system, the records source categories, and to amend the system-specific routine use. The Board is also taking the opportunity to update the system manager contact information, add a link to the Board's routine uses, and update the policies and practices for storage of Board records.

BGFRS-14 outlines in its purpose and scope the broad purpose of the system, which is that the system facilitates the Board's oversight of the conduct and service of Federal Reserve Bank and Branch directors (``directors''). Upon reviewing the system, staff determined that while ``oversight'' is a broad term, the purpose and use of the system could be revised to more directly identify matters encompassed by the term ``oversight.'' Specifically, staff's oversight of the directors encompasses matters pertaining to the eligibility, conduct, and service related to all directors. It also includes the Board's appointment of Class C directors and Board-appointed Branch directors. This oversight also includes using the data to analyze the composition of Reserve Bank and Branch boards, for example, to track the Board's progress on ensuring that these boards include a variety of perspectives, backgrounds, and experiences. The data is also used to facilitate interactions between the Board and the directors, including through a variety of director conferences throughout the year. The Board is modifying the purpose of the system to clarify what the system encompasses.

The Board has also determined that its oversight of the directors requires the collection of additional information. Specifically, the Board will collect information from additional record sources to include candidates for director positions in addition to both past and present directors. Therefore, the Board is modifying the category of records and category of individuals in the system to encompass biographical and background information for directors and candidates. The Board is also modifying the record sources categories to reflect the collection of contact information for director/candidate staff assistants and demographic information either on a voluntary basis from directors or candidates or from publicly available information.

The Board is amending the existing system-specific routine use because the routine use was incorrectly drafted. Specifically, using the records as background information for determining qualifications for appointment and recording correspondence concerning such persons would not usually involve the disclosure of information outside of the Board. The Board is therefore modifying the use to cover only disclosures outside of the Board to provide information for news releases and other publications and is also

providing a link to the Board's routine uses.

The Board is further modifying the system to indicate that the

Board stores records in electronic form and that remaining paper records are now historical records, which the Board will maintain for the appropriate retention period. The Board is also updating the contact information for the system manager.

The Board is also making technical changes to BGFRS-14 consistent with the template laid out in OMB Circular No. A-108. Accordingly, the Board has made technical corrections and non-substantive language revisions to the following categories: ``Policies and Practices for Storage of Records,'' ``Policies and Practices for Retrieval of Records,'' ``Policies and Practices for Retention and Disposal of Records,'' ``Administrative, Technical and Physical Safeguards,'' ``Record Access Procedures,'' ``Contesting Record Procedures,'' and ``Notification Procedures.'' The Board has also created the following new fields: ``Security Classification'' and ``History.''

SYSTEM NAME AND NUMBER:

BGFRS-14 ``FRB--General File of Federal Reserve Bank and Branch Directors''

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

SYSTEM MANAGER(S):

Lila Stitely, Manager, Corporate Governance Oversight, Office of the Secretary, 20th Street and Constitution Avenue NW, Washington, DC 20551, 202-973-7486, or .

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 3, 4, 11 and 21 of the Federal Reserve Act (12 U.S.C. 248, 302, 485, and 521).

PURPOSE(S) OF THE SYSTEM:

These records are collected and maintained to facilitate the Board in its oversight of the eligibility, conduct, and service of all Federal Reserve Bank and Branch directors; the appointment of Class C directors and Board-appointed Branch directors; the analysis of the composition of Reserve Bank and Branch boards of directors; and interactions among the Board and the Federal Reserve Bank and Branch directors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates for, and past and present directors of, the Federal Reserve Banks and their respective Branches, as well as their assistants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical, background, and contact information for Federal Reserve Bank and Branch directors and candidates and other miscellaneous documentation (e.g., oaths of office, resignations) and correspondence regarding the conduct and service of Federal Reserve Bank and Branch directors. The system may also include contact information for assistants to candidates and Bank and Branch directors. The Board may collect demographic information from publicly available information or on a voluntary basis from director candidates and directors.

RECORD SOURCE CATEGORIES:

Information is provided by the candidate or director to whom the

record pertains, Federal Reserve Bank staff, candidate and director assistants, and publicly available information obtained by Board staff. Information is also provided by certain third parties, such as news and other information databases, on director candidates.

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

General routine uses A, C, D, G, I, and J apply to this system. These general routine uses are located at https://www.federalreserve.gov/files/SORN-page-general-routine-uses-of-board-systems-of-records.pdf and are published in the Federal Register at 83 FR 43872 at 43873-74 (August 28, 2018). Records may be disclosed in order to provide information for news releases and other publications.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Historical paper records in this system are stored in file folders with access limited to staff with a need-to-know. Electronic records are stored on a secure server with access limited to staff with a need-to-know.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records can be retrieved by name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records pertaining to past and present directors, including potential directors who are recommended for Board consideration, are retained for at least five years after the annual cutoff, and may be retained longer, if necessary for administrative or reference purposes. Records pertaining to candidates who are not recommended for Board consideration may be destroyed when no longer needed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records is limited to those whose official duties require it. Paper records in this system are stored in file folders with access limited to staff with a need-to-know. The system has the ability to track individual user actions. The audit and accountability controls are based on National Institute of Standards and Technology (NIST) and Board standards, which, in turn, are based on applicable laws and regulations. The controls assist in detecting security violations and performance or other issues in the system. Access to the system is restricted to authorized users within the Board and Federal Reserve System who require access for official business purposes. Users are classified into different roles and common access and usage rights are established for each role. User roles are used to delineate between the different types of access requirements such that users are restricted to data that is required in the performance of their duties. Periodic assessments and reviews are conducted to determine whether users still require access, have the appropriate role, and whether there have been any unauthorized changes.

RECORD ACCESS PROCEDURES:

The Privacy Act allows individuals the right to access records maintained about them in a Board system of records. Your request for access must: (1) contain a statement that the request is made pursuant to the Privacy Act of 1974; (2) provide either the name of the Board system of records expected to contain the record requested or a concise description of the system of records; (3) provide the information necessary to verify your identity; and (4) provide any other information that may assist in the rapid identification of the record you seek.

Current or former Board employees may make a request for access by contacting the Board office that maintains the record. The Board handles all Privacy Act requests as both a Privacy Act request and as a Freedom of Information Act request. The Board does not charge fees to a requestor seeking to access or amend his/her Privacy Act records.

You may submit your Privacy Act request to the--Secretary of the Board,

[[Page 12804]]

Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

You may also submit your Privacy Act request electronically by filling out the required information at: https://foia.federalreserve.gov/.

CONTESTING RECORD PROCEDURES:

The Privacy Act allows individuals to seek amendment of information that is erroneous, irrelevant, untimely, or incomplete and is maintained in a system of records that pertains to them. To request an amendment to your record, you should clearly mark the request as a ``Privacy Act Amendment Request.'' You have the burden of proof for demonstrating the appropriateness of the requested amendment and you must provide relevant and convincing evidence in support of your request.

Your request for amendment must: (1) provide the name of the specific Board system of records containing the record you seek to amend; (2) identify the specific portion of the record you seek to amend; (3) describe the nature of and reasons for each requested amendment; (4) explain why you believe the record is not accurate, relevant, timely, or complete; and (5) unless you have already done so in a related Privacy Act request for access or amendment, provide the necessary information to verify your identity.

NOTIFICATION PROCEDURES:

Same as ``Access procedures'' above. You may also follow this procedure in order to request an accounting of previous disclosures of records pertaining to you as provided for by 5 U.S.C. 552a(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain portions of this system of records may be exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5).

HISTORY:

This SORN was previously published in the Federal Register at 73 FR 24984 at 24997 (May 6, 2008). The SORN was also amended to incorporate two new routine uses required by OMB at 83 FR 43872 (August 28, 2018).

Board of Governors of the Federal Reserve System.
Benjamin W. McDonough,
Secretary of the Board.
[FR Doc. 2026-05156 Filed 3-16-26; 8:45 am]
BILLING CODE 6210-01-P

Displaying title 12, up to date as of 4/09/2026. Title 12 was last amended 4/03/2026.

There have been changes in the last two weeks to Title 12.

General Routine Uses of Board Systems of Records

A. Disclosure for Enforcement, Statutory and Regulatory Purposes.
Information may be disclosed to the appropriate federal, state, local, foreign, or self-regulatory organization or agency responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license.

B. Disclosure to Another Agency or a Federal Reserve Bank.
Information may be disclosed to a federal agency in the executive, legislative, or judicial branch of government, or to a Federal Reserve Bank, in connection with the hiring, retaining, or assigning of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the receiving entity, or the lawful statutory, administrative, or investigative purpose of the receiving entity to the extent that the information is relevant and necessary to the receiving entity's decision on the matter.

C. Disclosure to a Member of Congress.
Information may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains.

D. Disclosure to the Department of Justice, a Court, an Adjudicative Body or Administrative Tribunal, or a Party in Litigation. Information may be disclosed to the Department of Justice, a court, an adjudicative body or administrative tribunal, a party in litigation, or a witness if the Board (or in the case of an Office of Inspector General system, the Office of Inspector General) determines, in its sole discretion, that the information is relevant and necessary to the matter.

E. Disclosure to Federal, State, Local, and Professional Licensing Boards.
Information may be disclosed to federal, state, local, foreign, and professional licensing boards, including a bar association, a Board of Medical Examiners, a state board of accountancy, or a similar governmental or non-government entity that maintains records concerning the issuance, retention, or revocation of licenses, certifications, or registrations relevant to practicing an occupation, profession, or specialty.

F. Disclosure to the EEOC, MSPB, OGE and OSC.
Information may be disclosed to the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Office of Government Ethics, or the Office of Special Counsel to the extent determined to be relevant and necessary to carrying out their authorized functions.

G. Disclosure to Contractors, Agents, and Others.
Information may be disclosed to contractors, agents, or others performing work on a contract, service, cooperative agreement, job, or other activity for the Board and who have a need to access the information in the performance of their duties or activities for the Board.

H. Disclosure to Labor Relations Panels.
Information may be disclosed to the Federal Reserve Board Labor Relations Panel or the Federal Reserve Banks Labor Relations Panel in connection with the investigation and resolution of allegations of unfair labor practices or other matters within the jurisdiction of the relevant panel when requested.

I. Disclosure to Facilitate a Response to a Breach of the Board.
Information may be disclosed to appropriate agencies, entities, and persons when: (1) the Board suspects or has confirmed that there has been a breach of the system of records; (2) the Board has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals or the Board (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 Board's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

J. Disclosure to Assist another Federal Agency or Federal Entity in Responding to a Breach.
Information may be disclosed to another federal agency or federal entity, when the Board determines that the information from the 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.

Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated April 8, 2026

Financial Inclusion: Access to Bank Accounts

Most U.S. consumers choose to open a bank account, such as a checking or savings account, because it is considered a safe and secure way to store money, particularly as the Federal Deposit Insurance Corporation (FDIC) insures up to $250,000 per depositor against an institution's failure. In addition, consumers gain access to payment services through checking accounts, such as the ability to make electronic payments online, direct deposit, paper checks, and frequently a debit card.

For most consumers, a bank account is less expensive than alternative ways to access these types of services. Checking and savings accounts are often the first relationships that a consumer has with a financial institution, which can later progress into other types of financial products and services, such as loan products or financial investments. A key policy question is whether the unbanked population is interested in banking services but unable to access them and, if so, what is the most effective way to bring more unbanked households into the fold. The share of unbanked consumers has decreased precipitously over time. Certain policy proposals that could further decrease this percentage include improving payment systems, expanding the number of de novo banks, and the government directly providing accounts to retail customers.

Economics of Bank Accounts

Depository institutions, such as banks and credit unions, incur expenses to provide accounts to consumers, which include the costs of providing monthly statements, protecting against settlement and fraud risks, hiring staff, and maintaining retail locations. To recoup these costs and make profits, depository institutions make money from interest on loans and noninterest fees such as minimum balance or overdraft fees, discussed later. Historically, some banks have been willing to lose money on bank accounts to begin a relationship with a client and later get more profitable business, such as a credit card or mortgage loan. Checking and savings account data might allow a bank to better underwrite and price loans to a consumer than without this relationship.

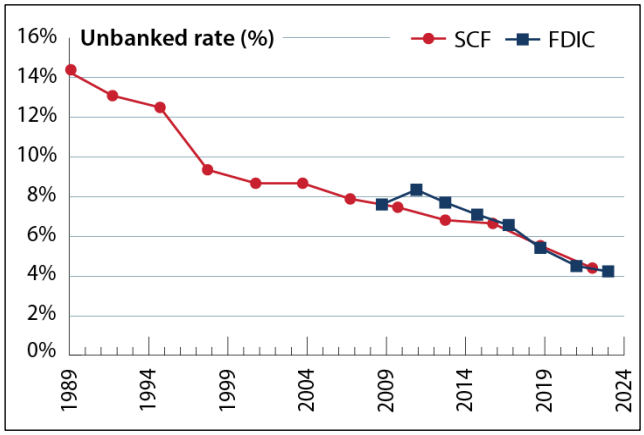
Lower-balance or less-creditworthy consumers are generally not as profitable for banks to serve. Consumers with low checking or savings account balances provide banks minimal funds to lend out and make a profit with. Less-creditworthy consumers may be less likely to develop into profitable relationships for banks if such consumers are not in a position to obtain loans from the banks in the near future. Therefore, bank fees may be seen as the best way for banks to recoup their account costs for these consumers.

Because of the way bank fees are structured, consumers with lower balances tend to incur more fees than higher-balance consumers. Some bank accounts require minimum account balances to avoid certain maintenance or service fees. Two common fees that checking account consumers incur are overdraft and insufficient fund fees. Overdraft services, where financial institutions temporarily cover insufficient funds in a checking account for a nominal fee, can help consumers pay bills on time. Overdraft fees can be costly, particularly if used repeatedly. For consumers living paycheck to paycheck or with less financial literacy, maintaining bank account minimums and avoiding overdrafts can be difficult. Since 2019, some major banks have drastically reduced or entirely eliminated overdraft fees, although overdraft income is on the rise at certain banks.

Unbanked and Underbanked Consumers

According to the Federal Reserve Survey of Consumer Finances (SCF) in 2022, 4.4% of households in the United States were *unbanked*, meaning that they did not have bank checking accounts, savings accounts, or money market accounts. This percentage was in line with the 2023 FDIC National Survey of Unbanked and Underbanked Households, which found that 4.2% of households were unbanked, without checking or savings accounts. This was a steep decline from the beginning of the SCF in 1989, when roughly 14% of households were unbanked, and a modest decline from 2007, when 8% of households were unbanked (**Figure 1**). The efficient unbanked share is likely not 0%, as there may be a certain percentage of the population that prefers not to hold a banking account.

Figure 1. Percentage of Unbanked American Households



Source: Adapted from Paola Boel and Peter Zimmerman, *Unbanked in America: A Review of the Literature*, May 26, 2022.

Note: The FDIC and Federal Reserve SCF have separate estimates of unbanked households, relying on surveys of American households. These surveys have similar methodologies, but the SCF has a longer historical time series, slightly different measurement of "unbanked," and a smaller sample size.

Unbanked consumers are more likely to be lower income, racial or ethnic minorities, or in rural areas compared with the general U.S. population. According to the FDIC's 2023 survey, the states with the highest unbanked shares are Mississippi (9.4%) and Louisiana (8.0%).

Unbanked households most frequently reported that they did not have bank accounts because they did not have enough money, did not trust banks, wanted to maintain privacy, or sought to avoid high and unpredictable bank fees.

In addition, according to the FDIC, another 14.2% of households were *underbanked*, meaning that although these households had bank accounts, they obtained certain nonbank financial services at least once in the past year. These nonbank financial products, called "alternative financial services," include check cashing, money orders, payday loans, auto title loans, pawn shop loans, refund anticipation loans, and rent-to-own services.

Banking Account Alternatives

Besides solely using cash, households rely on nonbank alternative financial products and services, particularly transaction-related offerings such as check cashing and money orders, to pay bills and receive income. Alternative financial products can be faster and more convenient with more predictable fees for some consumers. For example, alternative financial products might allow consumers to access cash more quickly, which might be valuable for consumers with tight budgets and little liquid savings or credit to manage financial shocks. Although unbanked consumers may find benefits in using nonbank alternative financial products and services, these may not always have the benefits of bank accounts, such as FDIC insurance or other consumer protections, and would possibly be costlier than a checking account.

General purpose prepaid cards are another popular alternative to a traditional checking account. These cards can be obtained through banks, at retail stores, or online, and they can be used in payment networks, such as Visa and Mastercard. Prepaid card funds can be federally insured against an institution's failure if the card is issued by an FDIC-insured bank and registered by the user. Unbanked consumers are more likely to use prepaid cards from stores or websites. General purpose, reloadable prepaid cards generally have features similar to debit and checking accounts, such as the ability to pay bills electronically, get cash at ATMs, make purchases at stores or online, and receive direct deposits. Prepaid cards often have monthly maintenance fees and other service fees for using ATMs or reloading cash that, cumulatively, can be high compared to bank products.

Possible Policy Responses

In regard to helping consumers manage their finances, some research suggests that consumers may particularly benefit from (1) access to affordable electronic payment system services and (2) a safe way to accumulate and hold emergency savings. These two consumer needs could partially be filled by upstart firms either partnering or competing with banks. However, developing a relationship with a bank may make it easier for a consumer to gain access to credit from the bank in the future. The government, the private sector, and the nonprofit sector all may be in a position to help increase access to these types of financial products for the underserved. More broadly, the FDIC notes that public trust in the national banking system is strengthened when it serves as many people as possible.

The Community Reinvestment Act of 1977 (CRA; P.L. 95-128, Title VIII; 12 U.S.C. §§2901-2908) currently encourages banks to provide credit in the areas where they collect deposits, and it encourages banks to provide outreach initiatives to low- and moderate-income customers that would promote access to bank accounts and relationships. Some policymakers suggest that changes to CRA or additional regulatory flexibility could encourage more banks to increase access to bank accounts and/or create new banks or branches in areas that are currently underserved by financial services. In addition, financial education programs or outreach initiatives coordinated by the government, financial institutions, or nonprofit organizations could promote access to bank accounts.

Private industry is already responding to the unbanked population, so no additional policy responses may be needed. The unbanked share shows a clear downward trend since 1989, and new innovations in the marketplace might have decreased the number of unbanked households.

The rise in "Bank On" accounts at banks, which offer lower-cost basic transaction accounts, targeted at the unbanked population, yields some evidence suggesting that they have had an effect on the number of unbanked consumers. In addition, new technologies may reduce the cost of providing more affordable financial products to unbanked and underbanked consumers. In recent years, some fintech companies have offered no-fee checking account alternatives to those at traditional banks, with a focus on unbanked and underbanked consumers.

Payment system improvements, by either the government or the private sector, may also improve welfare for unbanked or underbanked consumers. Real-time payments offered by banks are expanding rapidly. For example, earned wage access products allow consumers to access a portion of their income prior to their scheduled pay periods. Many of these consumers currently choose alternative financial payment products, such as check cashers, to access funds quickly.

Proposals to ease the formation of new financial institutions or expand the branching reach of existing banks, particularly in areas without an established bank, could have knock-on effects in reaching currently unbanked households. Concerns for such proposals surround the specific impacts of such proposals on safety and soundness.

Other policy proposals include the government directly providing accounts to retail customers (e.g., offering banking services at post offices or online through the Federal Reserve, which already provides accounts to banks). Opposition to these proposals often centers on the appropriate role for the government to compete with the private sector. Government bank accounts may fail to attract consumer demand or allocate resources effectively.

Karl E. Schneider, Analyst in Financial Economics

IF11631

Disclaimer

The National Labor Relations Board: Legal Background and Recent Constitutional Challenges

April 3, 2026

Congressional Research Service
https://crsreports.congress.gov
R48896

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

R48896

April 3, 2026

Jimmy Balser
Legislative Attorney

Jon O. Shimabukuro
Legislative Attorney

The National Labor Relations Board: Legal Background and Recent Constitutional Challenges

The National Labor Relations Act (NLRA or Act), 29 U.S.C. §§ 151–169, regulates labor-management relations between most private-sector employees and employers in the United States. The NLRA created the National Labor Relations Board (NLRB), a federal agency that administers and enforces the Act. The NLRB adjudicates labor representation disputes, complaints of unfair labor practices (ULPs), and contract disputes. The NLRB is led by a five-member board (NLRB Board or Board), whose members are appointed by the President, confirmed by the Senate, and generally serve five-year terms as laid out by the Act.

In legal developments this decade, litigants have challenged the constitutionality of the NLRB in federal court on several fronts, including claims that statutory provisions that prohibit presidents from removing Board members and administrative law judges without cause are unconstitutional. The NLRA restricts the President from removing any member of the Board except, "upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause." 29 U.S.C. § 153(a). Similar protections exist for the NLRB's administrative law judges, as laid out in the Administrative Procedure Act. 5 U.S.C. §§ 551–559. Such requirements under law are known as "for cause" removal provisions, in contrast to provisions that allow an employee to be removed "at will." The government in *Trump v. Wilcox*, 145 S. Ct. 1415 (2025), has contended that the NLRB's longstanding removal protections unconstitutionally curtail the President's Article II authority and violate the separation-of-powers doctrine.

Plaintiffs have also argued that the NLRB's combined investigatory and adjudicatory powers are inconsistent with separation-of-powers principles and violate the Fifth Amendment right to due process. For example, plaintiffs have contended that the NLRB unlawfully exercises the powers of all three branches of government by performing executive functions when it investigates and prosecutes ULPs, exercising judicial functions when it resolves ULP legal disputes and issues binding orders, and acting in a legislative capacity by establishing labor-management standards. *See, e.g., NLRB v. North Mountain Foothills Apartments*, 157 F.4th 1089, 1095 (9th Cir. 2025).

Additionally, some plaintiffs have argued that the NLRB's adjudication scheme violates the Seventh Amendment by depriving them of their right to a jury trial. The Seventh Amendment provides that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." Under the NLRA, unfair labor practice complaints are adjudicated before administrative law judges and the Board, which may order "such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of [the Act]." 29 U.S.C. § 160(c). The plaintiffs contend that these cases are suits at common law that should be decided by a jury and not by an agency.

This report discusses the various legal challenges to the NLRB's structure, procedures, and authorities. The report concludes with considerations for Congress, including federal proposals to amend the NLRA, state proposals to exercise jurisdiction alongside or in lieu of federal regulation, and potential constitutional obstacles to reform.

Contents

Contacts

The National Labor Relations Act (NLRA or Act) recognizes the right of most private-sector employees to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.[1] The National Labor Relations Board (NLRB) is a federal agency that enforces and administers the NLRA by adjudicating grievance and representation disputes and promulgating regulations that govern the labor-management relationship.[2] The NLRB is led by a five-member board (NLRB Board or Board), whose members are appointed by the President and confirmed by the Senate.[3] Although the NLRB was established more than ninety years ago and its practices are longstanding, some have recently challenged the agency's structure and actions, arguing violations of various provisions of the U.S. Constitution. In *Space Exploration Technologies Corporation* (*SpaceX*) *v. NLRB*, for example, an aerospace and space transportation company contended that the NLRB's structure violates Article II, the Fifth Amendment, and the Seventh Amendment.[4]

This report examines some of the litigation involving constitutional challenges to the NLRB, including claims that the NLRA's prohibition on presidents removing Board members without cause violates Article II and the separation-of-powers principle,[5] that the Board's combined investigatory and adjudicatory powers are inconsistent with the separation of powers and violate the Fifth Amendment's right to due process,[6] and that the Board's adjudication scheme violates the Seventh Amendment right to a jury trial.[7] A determination that the Board or its adjudication scheme is unconstitutional would affect labor-management relations and raise questions about the NLRA's future application. The report provides considerations for Congress in light of the various legal challenges.

Legal Background

The NLRA[8] regulates labor-management relations between most private-sector employees and their employers in the United States.[9] First enacted in 1935, the NLRA's stated purpose is to prevent labor-management disputes that could burden or obstruct commerce and harm the

[1] 29 U.S.C. § 157.

[2] *Id.* §§ 153, 156.

[3] *Id.* § 153(a).

[4] Complaint for Declaratory and Injunctive Relief, SpaceX v. NLRB, No. 24-cv-00001 (S.D. Tex. Jan. 4, 2024).

[5] U.S. CONST. art. II, § 2, cl. 1 ("[H]e shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.").

[6] U.S. CONST. amend. V. ("No person shall . . . be deprived of life, liberty, or property, without due process of law").

[7] U.S. CONST. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.").

[8] Pub. L. No. 74-198, 49 Stat. 449 (1935). The NLRA is also referred to as the "Wagner Act," after its Senate sponsor, Senator Robert Wagner.

[9] The three major federal labor-relations statutes are the NLRA, the Railway Labor Act (RLA), and the Federal Service Labor-Management Relations Statute (FSLMRS). While the NLRA covers most of the private sector, the RLA regulates labor-management relations in the railway and airline carrier industries. The FSLMRS regulates labor relations between most federal government employees and employers. *See* CRS Report R42526, *Federal Labor Relations Statutes: An Overview*, by Jon O. Shimabukuro and Julie M. Whittaker (2014).

nation's economy.[10] To achieve its purposes, the Act provides collective bargaining rights to covered employees, prevents practices that could frustrate peaceful worker-employer relationships, and creates mechanisms for workers and employers to resolve labor disputes.

The NLRB Board adjudicates labor representation disputes, complaints of unfair labor practices (ULPs), and contract disputes.[11] The Board members generally serve five-year terms as laid out by the Act.[12] For the Board to have a quorum, or the minimum number of members to exercise its full authority, there must be at least three of five member seats filled.[13] The Board has been traditionally composed of two Democrats, two Republicans, and a fifth member belonging to the same party as the President.[14] The NLRA restricts the President from removing any member of the Board except, "upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause."[15] Such requirements under law, while they may vary in wording and scope, are generally known as "for cause" removal protections, in contrast to provisions that allow an employee to be removed "at will."[16]

While there is no removal clause in the Constitution, historical practice and Supreme Court precedent have established a "general rule that the President possesses 'the authority to remove those who assist him in carrying out his duties.'"[17] In *Myers v. United States*, the Court considered a statute requiring the Senate's "advice and consent" to remove certain Senate-confirmed officers.[18] The Court found that the President, as the person authorized under Article II to appoint such officers, has the power to remove them,[19] and that ceding to Congress control over their removal would violate the separation of powers and the Take Care Clause, which requires the President "to take care that the laws be faithfully executed."[20]

---

[10] As stated in the opening section of the NLRA, "The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce[.]" 29 U.S.C. § 151.

[11] *See generally The NLRB Process*, NLRB, https://www.nlrb.gov/resources/nlrb-process [https://perma.cc/899Q-Y2QB] (last visited Mar. 12, 2026) (describing the duties of the NLRB).

[12] 29 U.S.C. § 153(a).

[13] *Id.* § 153(b).

[14] *See* CRS Report R46317, *Presidential Appointments to Full-Time Positions on Regulatory and Other Collegial Boards and Commissions, 115th Congress*, by Kathleen E. Marchsteiner (2020) ("The National Labor Relations Board consists of five members who serve five-year terms. Political balance is not required, but, by tradition, no more than three members are from the same political party.").

[15] 29 U.S.C. § 153(a).

[16] *See* Lib. Cong., *Overview of Removal of Executive Branch Officers*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artII-S2-C2-3-15-1/ALDE_00013107/ (last visited Mar. 12, 2026) ("Historical practice and judicial decisions acknowledge that the President is empowered to remove those officers he appoints without assent from Congress. Congress has, however, historically enacted legislation that shields certain Executive Branch officials from removal except for cause, although exactly which types of officials may be protected is not settled definitively." (footnote omitted)). *See also* CRS Insight IN12673, *Fixed Term and "For Cause" Removal Provisions*, by Henry B. Hogue and Todd Garvey (2026).

[17] Seila Law LLC v. Consumer Fin. Prot. Bureau, 591 U.S. 197, 215 (2020) (quoting Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 561 U.S. 477, 513–14 (2010)). For further discussion of the governing constitutional principles in the context of independent board member removals *see also* CRS Legal Sidebar LSB11292, *Supreme Court Grants Emergency Motion on President's Removal Power*, by Benjamin M. Barczewski and Todd Garvey (2025).

[18] *See* Myers v. United States, 272 U.S. 52, 107 (1926).

[19] *See id.* at 164. The Court thus tied the implied power of removal in Article II to the explicit power of appointment: "[A]s his selection of administrative officers is essential to the execution of the laws by him," the Court reasoned, "so must be his power of removing those for whom he cannot continue to be responsible." *See id*. at 117.

[20] *See id.* at 164.

Since *Myers*, the Court has established exceptions to the general rule permitting the President to remove executive officers: specifically, exceptions for inferior officers[21] and certain multimember bodies.[22] In the 1935 case *Humphrey's Executor v. United States*, the Court held that Congress acted within its authority in restricting the removal of members of the Federal Trade Commission (FTC).[23] In so doing, the Court recognized limits on the President's removal power and upheld the use of for-cause protections as applied to a multimember commission like the FTC whose "predominantly quasi-judicial and quasi-legislative" functions Congress had identified as needing some degree of political independence from the executive.[24]

In legal developments this decade, there has been speculation about the Court's future adherence to *Humphrey's Executor*, including, and as discussed herein, in the context of removal protections for NLRB Board members. First, in the 2020 decision *Seila Law v. Consumer Financial Protection Bureau (CFPB)*, the Court invalidated statutory for-cause removal protections for the CFPB Director.[25] Then, in 2021, in *Collins v. Yellen*, the Court invalidated the statutory for-cause removal protections for the Federal Housing Finance Agency Director.[26] While the Court in both cases reiterated Congress's authority to enact removal protections in some circumstances, the Court declined to extend coverage to these single-agency heads whom the Court found to wield significant executive power in comparison to the 1935 FTC in *Humphrey's Executor*.[27] In a case currently before the Supreme Court, *Trump v. Slaughter*, the Court is considering whether the statutory removal protections for the commissioners of the FTC are unconstitutional and, if so, whether *Humphrey's Executor* should be overruled entirely.[28]

With regard to the NLRB's functions, the Board reviews cases brought by the NLRB General Counsel, a presidentially appointed and Senate-confirmed official who has authority over investigations and the issuance of complaints.[29] For example, an employee may file a charge with the NLRB, such as an allegation that an employer committed a ULP by interfering with employees who are attempting to organize or refusing to bargain in good faith.[30] The General Counsel of the NLRB has delegated its authority to investigate charges to regional offices around the country.[31] If a regional officer finds sufficient evidence of a violation, the General Counsel

[21] *See Seila Law*, 591 U.S. at 217 ("We have recognized a second exception for inferior officers in two cases, *United States v. Perkins* and *Morrison v. Olson*. In *Perkins*, we upheld tenure protections for a naval cadet-engineer. And, in *Morrison*, we upheld a provision granting good-cause tenure protection to an independent counsel appointed to investigate and prosecute particular alleged crimes by high-ranking Government officials." (footnote and citations omitted)); Edmond v. United States, 520 U.S. 651, 663 (1997) (stating that "'inferior officers' are officers whose work is directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate").

[22] *See* Humphrey's Ex'r v. United States, 295 U.S. 602 (1935).

[23] *See id.* at 628–29; *see also* Wiener v. United States, 357 U.S. 349, 356 (1958).

[24] *See Humphrey's Ex'r*, 295 U.S. at 628–29.

[25] *Seila Law*, 591 U.S. at 204.

[26] Collins v. Yellen, 594 U.S. 220 (2021).

[27] *See Seila Law*,591 U.S. at 204; *Collins*, 594 U.S. at 256.

[28] Trump v. Slaughter, 146 S. Ct. 18 (2025) (mem.).

[29] *See* SpaceX v. NLRB, 151 F.4th 761, 767–68 (5th Cir. 2025) ("The NLRB is divided into: (1) an investigative and prosecutorial arm, led by a presidentially appointed General Counsel, and (2) an adjudicatory body—a five-member Board, also appointed by the President—that reviews [administrative law judge] decisions.").

[30] *See* 29 U.S.C. § 158(a). Labor organizations may also commit ULPs, such as punishing employees for not joining a labor union or engaging in misconduct when exercising self-help. *See id.* § 158(b).

[31] *See* A.B.A., The Developing Labor Law: The Board, the Courts, and the National Labor Relations Act, ch. 31 (Jayme L. Sophir et al. eds., BL 2024) [hereinafter THE DEVELOPING LABOR LAW].

files a formal complaint against the employer.[32] The complaint is then assigned to an administrative law judge (ALJ), who builds the administrative record and conducts a hearing with the parties.[33] ALJs have statutory removal protections in the Administrative Procedure Act (APA), which governs administrative adjudications, and may only be removed "for good cause established and determined by the Merit Systems Protection Board [(MSPB)] on the record after opportunity for hearing before the Board."[34] The MSPB is a separate agency in the executive branch charged with protecting federal employees against improper employment-related actions.[35]

Once an ALJ issues a decision and recommends an order, either party may seek review with the Board.[36] If no party seeks review, the Board adopts the ALJ's ruling as the final Board decision. If appealed, the Board may either adopt the ALJ's recommendation or issue its own decision.[37] In determining remedies, the Board may take "such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of [the Act]."[38] While the Board may issue orders to prevent and remedy violations of the NLRA, also known as "make-whole" remedies, courts have said the function of these remedies is to restore the status quo, rather than to punish NLRA violators with punitive remedies.[39] The Board can also issue informational remedies, such as requiring the employer to post a notice promising to not violate the law.[40]

Because the Board's orders are not independently enforceable, the Board may petition a federal court for "appropriate temporary relief or restraining order" if necessary to enforce compliance on a party.[41] A party aggrieved by a final order of the Board may also seek review in the U.S. Court of Appeals for the circuit where the alleged violation occurred, the circuit where the party resides or transacts business, or in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit).[42]

[32] 29 U.S.C. § 153(d). The NLRB General Counsel generally serves a four-year term as laid out in the NLRA. Unlike the Board authorities, the Act does not contain for-cause removal language with respect to the General Counsel. *See id*.

[33] *See* THE DEVELOPING LABOR LAW, *supra* note 31, at ch. 31.I.D. ("The ALJs function much like trial court judges in nonjury trials hearing witnesses, ruling on admissibility of evidence, and making initial decisions and findings of fact in unfair labor practice cases. Their decisions are final unless excepted to by a party").

[34] 5 U.S.C. § 7521(a).

[35] *See* CRS Report R45630, *Merit Systems Protection Board (MSPB): A Legal Overview*, by Jon O. Shimabukuro and Jennifer A. Staman (2019).

[36] *See* THE DEVELOPING LABOR LAW, *supra* note 31.

[37] 29 U.S.C. § 160(c) ("[S]uch recommended order shall become the order of the Board and become effective as therein prescribed").

[38] *Id*.

[39] *See* Kallmann v. NLRB, 640 F.2d 1094, 1103 (9th Cir. 1981) ("The function of the remedy in unfair labor cases is to restore the situation, as nearly as possible, to that which would have occurred but for the violation." (citing Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 194 (1941))). *See also* THE DEVELOPING LABOR LAW, *supra* note 31, at ch. 32.I ("[T]he Board does not have the authority to compel a party to make a bargaining concession or to agree to a proposal. Similarly, the Board lacks the authority to punish; its remedy must not be punitive in nature.").

[40] Recent NLRB guidance states that the Act's "nonmonetary remedies . . . should not automatically be sought but typically limited to cases involving widespread, egregious, or severe misconduct." *See* NLRB Gen. Couns. Mem. GC 25-06 (May 16, 2025).

[41] 29 U.S.C. § 160(e); *In re* NLRB, 304 U.S. 486, 495 (1938) (noting compliance with a Board order is not obligatory until entered as a decree by a court).

[42] 29 U.S.C. § 160(f).

Constitutional Challenges

Litigants have challenged the constitutionality of the NLRB on several fronts, including claims that the NLRA's prohibition on presidents removing members of the Board without cause violates Article II of the Constitution and the separation of powers, that the Board's combined investigatory and adjudicatory powers are inconsistent with the separation of powers and violate the Fifth Amendment's right to due process, and that the Board's adjudication scheme violates the Seventh Amendment's right to a jury trial. The discussion below summarizes and analyzes each of these issues in turn.

NLRB and For-Cause Removal

Trump v. Wilcox and Board Member For-Cause Removal

President Biden nominated and the U.S. Senate confirmed Gwynne Wilcox to a second five-year term as a member of the Board in September 2023,[43] and President Trump removed her on January 27, 2025.[44] Since the NLRB's founding and before Wilcox's removal, no President had ever removed a member of the Board.[45]

As described above, the NLRA restricts the President from removing any member of the Board unless "upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause."[46] When President Trump removed Wilcox from the Board, the Administration did not argue that the removal criteria in the statute had been met.[47] Instead, the Administration largely asserted that statutory for-cause restrictions that limit the President's authority to remove agency leaders, such as those in the NLRA, unconstitutionally infringe on the President's authority to remove executive officials.[48]

Wilcox, along with a member of the MSPB who had been similarly removed by President Trump, challenged her removal in the U.S. District Court for the District of Columbia.[49] On March 6, 2025, the district court granted summary judgment in favor of Wilcox and held that the President lacked authority to remove a member of the NLRB without complying with the NLRA.[50] The

[43] Press Release, NLRB, Gwynne A. Wilcox Sworn in for Second Term as Board Member (Sep. 11, 2023), https://www.nlrb.gov/news-outreach/news-story/gwynne-a-wilcox-sworn-in-for-second-term-as-board-member [https://perma.cc/LA6M-NHZQ] (last visited Mar. 12, 2026).

[44] *See* Wilcox v. Trump, 775 F. Supp. 3d 215, 222 (D.D.C. 2025) *rev'd sub nom.*, Harris v. Bessent, 160 F.4th 1235 (D.C. Cir. 2025). President Trump also dismissed members of other multimember boards with for-cause protections, such as the MSPB, Federal Labor Relations Authority, and FTC.

[45] *See Wilcox*, 775 F. Supp. 3d at 223.

[46] 29 U.S.C. § 153(a).

[47] *See Wilcox*, 775 F. Supp. 3d at 222 ("The email instead cited only political motivations—that plaintiff does not share the objectives of the President's administration—and asserted, in a footnote, that the restriction on the President's removal authority is unconstitutional as 'inconsistent with the vesting of the executive Power in the President.'" (quoting Attachment 4 to Plaintiff's Motion for Summary Judgment 3, *Wilcox*, 775 F. Supp. 3d 215, Dkt. No. 10-4).

[48] *See e.g.*, Letter from Sarah M. Harris, Acting Solic. Gen. to Hon. Richard J. Durbin, U.S. Senate (Feb. 12, 2025), https://fingfx.thomsonreuters.com/gfx/legaldocs/movawxboava/2025.02.12-OUT-Durbin-530D.pdf [https://perma.cc/BL7U-43KR].

[49] Plaintiff's Motion for Preliminary Injunction and Judgment on the Merits, Harris v. Bessent, No. 25-cv-00412 (D.D.C. Feb 23, 2025), Dkt. No. 22.

[50] *See Wilcox*, 775 F. Supp. 3d at 223. The district court explained that the Supreme Court's precedent upholding the constitutionality of multimember boards with removal protections bound it to hold that the removals at issue were unlawful. *See id.* at 240 ("*Humphrey's Executor* and its progeny control the outcome of this case and require that (continued...)

court concluded that Wilcox's removal from the Board was unlawful and ordered her reinstatement. On March 28, 2025, a divided panel of the D.C. Circuit granted the government's emergency motions to stay the reinstatement of the board members pending appeal of the District Court's decision.[51] In April 2025, the full D.C. Circuit reconsidered *en banc* the stay pending appeal, and by a vote of seven to four, reversed and vacated the stay of the district court's order reinstating the board members.[52] The Trump Administration subsequently applied to the Supreme Court for relief.[53]

On May 22, 2025, the Supreme Court granted the Trump Administration's motion, staying the reinstatements of Wilcox and the MSPB official.[54] In a two-page order, the Court, citing Article II, Section 1, Clause 1 of the Constitution,[55] explained that "[b]ecause the Constitution vests the executive power in the President, he may remove without cause executive officers who exercise that power on his behalf, subject to narrow exceptions . . . ."[56] The Court went on to explain, without ultimately deciding whether the NLRB or MSPB falls within an exception, that "the Government is likely to show that both the NLRB and MSPB exercise considerable executive power," suggesting a likelihood that the Trump Administration would succeed on the merits of showing the for-cause removal provisions protecting the board members are unconstitutional.[57] Further, in balancing the equities of whether to grant interim equitable relief, the Court favored the Trump Administration's position, as "the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty."[58]

As previously discussed, there has been speculation about the Court's future adherence to *Humphrey's Executor*.[59] The Supreme Court's order in *Trump v. Wilcox* reversed the district court's order that had relied on *Humphrey's Executor*, while not explicitly overturning *Humphrey's Executor*.[60] However, Justice Kagan's dissenting opinion in *Trump v. Wilcox*, joined by Justices Sotomayor and Jackson, argued that the order effectively overruled *Humphrey's*

plaintiff be permitted to continue her role as Board member of the NLRB and her termination declared unlawful and void. The Constitution and caselaw are clear in allowing Congress to limit the President's removal power and in allowing the courts to enjoin the executive branch from unlawful action.") (citing Humphrey's Ex'r v. United States, 295 U.S. 602 (1935)).

[51] Harris v. Bessent, No. 25-5037, 2025 WL 980278 (D.C. Cir. Mar. 28, 2025), *vacated*, No. 25-5037, 2025 WL 1021435 (D.C. Cir. Apr. 7, 2025) (en banc). Two of the three judges on the panel expressed their view that the government was likely to succeed on its claim that the statutory Board removal protections were unconstitutional.

[52] *Harris*, 2025 WL 1021435. In a brief *per curiam* order, a majority of the *en banc* court denied the government's motions for a stay pending appeal "[i]n light of the precedent in *Humphrey's Executor* and *Wiener* concerning multimember adjudicatory bodies." *See id.* at *2.

[53] *See* Application to Stay the Judgments of the U.S. District Court for the District of Columbia and Request for Administrative Stay, Trump v. Wilcox, 2025 WL 1101716 (U.S. Apr. 1, 2025). Chief Justice Roberts first issued an administrative stay of the reinstatement orders to give the Supreme Court time to evaluate whether to issue a stay pending the resolution of the government's appeal. *See id.*

[54] Trump v. Wilcox, 145 S. Ct. 1415 (2025).

[55] U.S. CONST. art. I, § 2, cl. 1 ("The executive Power shall be vested in a President of the United States of America.")

[56] *Wilcox*, 145 S. Ct. at 1415.

[57] *See id*.

[58] *Id.*

[59] *See e.g.*, Trump v. Slaughter, 145 S. Ct. 18 (2025) (mem.).

[60] *See Wilcox*, 145 S. Ct. at 1415.

Executor while the case is still in an interim posture,[61] without the benefit of full briefing and oral argument, and despite the majority never citing *Humphrey's Executor* in its order.[62]

On December 5, 2025, subsequent to the Supreme Court's decision granting the government's emergency stay pending appeal in the cases, a divided D.C. Circuit panel issued a decision on the underlying appeal of the district court's summary judgment decision.[63] The panel majority held that the NLRB has substantial executive powers such that the NLRA's for-cause removal protections for Board members are unconstitutional.[64] Following the Supreme Court's order in *Wilcox* that the NLRB "likely" exercises "considerable executive power,"[65] the panel majority held that the NLRB "substantially exceed[s] the circumscribed administrative powers that *Humphrey's Executor* deemed to be quasi-legislative or quasi-judicial."[66] Accordingly, the D.C. Circuit reversed the district court's underlying decision that had upheld the for-cause provision.

In *Trump v. Slaughter*, the Supreme Court is separately considering whether the statutory removal protections for members of the FTC are unconstitutional, and, if so, whether *Humphrey's Executor* should be overruled. Depending on whether it explicitly overrules *Humphrey's Executor* and how broadly the Court might extend its reasoning, *Slaughter* could effectively decide the constitutionality of the NLRA's for-cause removal protections.[67] During the *Slaughter* oral arguments in December 2025, the government stated that the NLRB is "clearly exercising executive power,"[68] and advocated for "the political discipline of [the NLRB and other entities] being accountable to the President."[69]

Other Challenges to For-Cause Removal Provisions

In addition to challenges at the Supreme Court, several recent cases before the lower courts have examined the constitutionality of for-cause removal protections at the NLRB. For example, in a 2025 case before the U.S. Court of Appeals for the Fifth Circuit (Firth Circuit), *SpaceX v. NLRB*, SpaceX and other consolidated plaintiffs challenged both the NLRB Board members' for-cause removal protections *and* similar removal protections for ALJs.[70]

As discussed above, complaints before the NLRB are first assigned to an ALJ who conducts a hearing and issues a recommended decision and order, which the Board may adopt.[71] While NLRB's Board members may only be removed "for neglect of duty or malfeasance in office,"

[61] The interim docket is also known as the "emergency docket" or "shadow docket." *See* CRS Legal Sidebar LSB10637, *The "Shadow Docket": The Supreme Court's Non-Merits Orders*, by Joanna R. Lampe (2021).

[62] *Wilcox*, 145 S. Ct. at 1418 (Kagan, J., dissenting). The dissent also took issue with the majority's distinguishing of the Federal Reserve—an agency without officers at issue in *Wilcox*. The dissent described the discussion of the Federal Reserve as "out of the blue," and further expressed that "the Federal Reserve's independence rests on the same constitutional and analytic foundations as that of the NLRB, MSPB, FTC, FCC, and so on—which is to say it rests largely on *Humphrey's*." *See id.* at 1421.

[63] Harris v. Bessent, 160 F.4th 1235 (D.C. Cir. 2025).

[64] *Id.* The panel similarly ruled that the for-cause removal protections for MSPB members are unconstitutional. *See id.*

[65] *Wilcox*, 145 S. Ct. at 1415.

[66] *Harris*, 160 F.4th at 1251. The panel majority highlighted the NLRB's administrative adjudications as a "mode of law-making and policymaking," as well as its "broad" rulemaking authority, remedial authority, and litigating authority, among others, as evidence that it is "not solely quasi-legislative or quasi-judicial." *See id.* at 1251–54.

[67] Trump v. Slaughter, 146 S. Ct. 18 (2025) (mem.).

[68] Transcript of Oral Argument at 22, Trump v. Slaughter, No. 25-332 (U.S. Dec. 8, 2025).

[69] *Id.* at 34.

[70] SpaceX v. NLRB, 151 F.4th 761 (5th Cir. 2025).

[71] *See* THE DEVELOPING LABOR LAW, *supra* note 31, at ch. 31.

ALJs may be removed only "for good cause established and determined by the MSPB on the record after opportunity for hearing before the Board."[72] The MSPB Board members who decide good cause in ALJ removal cases also enjoy for-cause removal protection, and may be removed "by the President only for inefficiency, neglect of duty, or malfeasance in office."[73]

In a 2010 decision, *Free Enterprise Fund v. Public Company Accounting Oversight Board (PCAOB)*, the Supreme Court held that members of the PCAOB, who are appointed by the Securities and Exchange Commission (SEC), were unconstitutionally insulated from executive control because of "dual for-cause limitations" on their removal.[74] In various contexts, entities subject to administrative adjudications have cited the reasoning in *Free Enterprise Fund* in challenging ALJs' removal protections, with mixed success to date.[75]

In *SpaceX*, the plaintiffs likewise argued that the removal protections for ALJs and MSPB members created a "multi-layered removal provision" that violated Article II.[76] As a threshold matter, the Fifth Circuit addressed its jurisdiction over the plaintiffs' claims in light of the Norris-LaGuardia Act, which states that, "[n]o court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the [statute]. . . ."[77] The Fifth Circuit found that it had jurisdiction to hear the plaintiffs' claims, holding that constitutional challenges to the structure of the NLRB are distinct from labor disputes that are outside of federal court jurisdiction.[78] Since the *SpaceX* decision, the U.S. Courts of Appeals for the Third Circuit and the Ninth Circuit (Ninth Circuit) have issued decisions splitting from the Fifth Circuit on this jurisdictional issue.[79] Those circuits have held that under the Norris-LaGuardia Act, federal courts lack jurisdiction to enjoin ongoing NLRB proceedings arising from labor disputes with current or former employers that involve constitutional challenges to the removal provisions protecting NLRB members and ALJs.[80]

After finding jurisdiction over the case, the Fifth Circuit agreed with the plaintiffs, holding that the ALJ and MSPB removal provisions were comparable to the two-layer removal scheme for SEC ALJs that the Fifth Circuit had found to be unconstitutional three years earlier in *SEC v. Jarkesy*.[81] Accordingly, the *SpaceX* panel held that because NLRB ALJs are inferior officers

[72] *Compare* 29 U.S.C. § 153(a), *with* 5 U.S.C. § 7521(a).

[73] 5 U.S.C. § 1202(d).

[74] Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 561 U.S. 477, 492 (2010).

[75] *Compare* Jarkesy v. Sec. & Exch. Comm'n, 34 F.4th 446, 463 (5th Cir. 2022) (holding that statutory removal protections for SEC ALJs violated Article II), *aff'd and remanded on other grounds*, 603 U.S. 109 (2024), *and adhered to*, 132 F.4th 745 (5th Cir. 2024); *with* Walmart, Inc. v. Chief Admin. L. Judge of Off. of Chief Admin. Hearing Officer, 144 F.4th 1315, 1319, 1345 (11th Cir. 2025) (holding that the APA's removal protection for ALJs is constitutional as applied to an ALJ position within the Department of Justice's Executive Office for Immigration Review, distinguishing that ALJ's role from PCAOB members); Axalta Coating Sys. LLC v. Fed. Aviation Admin., No. 23-2376, 2025 WL 1934352, at *7 (3d Cir. July 15, 2025) (declining to vacate an FAA ALJ's decision on removal grounds because the plaintiff had failed to show actual harm).

[76] *SpaceX*, 151 F.4th at 766.

[77] 29 U.S.C. § 101.

[78] *See id.* at 151 F.4th at 770.

[79] *See* Spring Creek Rehab. & Nursing Ctr. LLC v. NLRB, 160 F.4th 380, 389 (3d Cir. 2025); Amazon.com Servs., LLC v. Teamsters Amazon Nat'l Negotiating Comm., 163 F.4th 624 (9th Cir. 2025).

[80] *See id.*

[81] *See* Jarkesy v. SEC 34 F.4th 446 (5th Cir. 2022). The Supreme Court affirmed the Fifth Circuit's decision in *Jarkesy* vacating the SEC order imposing civil penalties on Seventh Amendment grounds, but the decision did not reach the portion of the Fifth Circuit's decision on SEC ALJ removal protections. *See* SEC v. Jarkesy, 603 U.S. 109 (2024).

insulated by two layers of for-cause protection, the removal restrictions are unconstitutional.[82] The Fifth Circuit addressed the for-cause removal protections for the Board, finding them also unconstitutional and pointing to the Supreme Court's emergency stay order in *Wilcox* to support the court's conclusion that the NLRB exercises considerable executive power and therefore "insulation from presidential removal likely violates Article II."[83]

Comparatively, in the October 2025 decision *NLRB v. North Mountain Foothills Apartments*, the Ninth Circuit rejected challenges to the statutory removal provisions for NLRB Board members and ALJs.[84] The Ninth Circuit acknowledged the Supreme Court's recent activity in *Wilcox*, but dismissed the employer's constitutional challenge to statutory removal protections for NLRB ALJs based on an insufficient showing of actual harm to receive retroactive relief. [85]

NLRB and Due Process

Plaintiffs challenging the NLRB's constitutionality have contended that the agency's combined investigatory and adjudicatory powers are inconsistent with separation-of-powers principles and therefore violate the Fifth Amendment right to due process.[86] In *North Mountain Foothills Apartments*, for example, the plaintiff argued that the NLRB unlawfully exercises the powers of all three branches of government when presented with an unfair labor practice charge.[87] It asserted that the NLRB performs executive functions when it investigates and prosecutes unfair labor practices, exercises judicial functions when it resolves legal disputes and issues binding orders, and acts in a legislative capacity by establishing labor-management standards that bind private parties.[88] The plaintiff argued that the NLRB's exercise of legislative and judicial powers that are not vested in the executive branch violates the Fifth Amendment.[89]

As recognized by the Ninth Circuit, while the NLRA vests both investigatory and adjudicatory functions in the NLRB, the Supreme Court has indicated that the combination of such functions "does not, without more, constitute a due process violation."[90] In *Withrow v. Larkin*, the Court upheld a Wisconsin law that authorized a state medical examining board to investigate, prosecute, and reprimand physicians who engaged in practices inimical to public health.[91] Acknowledging that a combination of investigative and adjudicative functions could create a risk of bias and deny a "fair trial in a fair tribunal," the Court observed that a due process challenge "must overcome a presumption of honesty and integrity in those serving as adjudicators; and . . . must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring

[82] *SpaceX*, 151 F.4th at 77.

[83] *See id*. at 776–77.

[84] NLRB v. N. Mountain Foothills Apartments, 157 F.4th 1089 (9th Cir. 2025); *see also* Care One, LLC v. Nat'l Lab. Rels. Bd.,166 F.4th 335, 343 (2d Cir. 2026) (holding plaintiffs failed to show a likelihood of irreparable harm from the continuance of NLRB proceedings as required for preliminary injunctive relief on claims including challenge to two-layer statutory removal protections of NLRB ALJs).

[85] *See id.* at 1098.

[86] *See, e.g.*, Opening Brief at 20, NLRB v. N. Mountain Foothills Apartments, No. 24-2223 (9th Cir. Aug. 30, 2024). *See also* U.S. Const. amend. V ("No person shall . . . be deprived of life, liberty, or property, without due process of law . . . .").

[87] Opening Brief, *supra* note 86, at 20–21.

[88] *Id*. at 22–23.

[89] *See N. Mountain Foothills Apartments*, 157 F.4th at 1100.

[90] Withrow v. Larkin, 421 U.S. 35, 58 (1975).

[91] *Id*. at 58–59.

investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden."[92]

Bias concerns that may exist because the same individuals perform investigatory and adjudicative functions may be lessened in light of the procedures used by the Board to resolve unfair labor practices. In *NLRB v. United Food and Commercial Workers Union, Local 23*, the Supreme Court recognized the "dichotomy" between the activities of the NLRB's General Counsel and the Board.[93] The Court observed that the history and structure of the NLRA demonstrate Congress's intent to differentiate between the General Counsel's and the Board's authority along prosecutorial and adjudicatory lines: "[T]he NLRA provides that the General Counsel has 'final authority' regarding the filing, investigation, and 'prosecution' of unfair labor practice complaints. Conversely, when the authority of the Board is discussed (with regard to unfair labor practice complaints), it is in the context of the *adjudication* of complaints."[94] Based on these observations, the bias risk identified by the *Larkin* Court would appear lessened in the NLRA context because the agency's investigatory and adjudicative functions are conducted by different individuals.

In *North Mountain Foothills Apartments*, the Ninth Circuit rejected the employer's due process claim, recognizing that the Board's investigatory and adjudicatory functions are not performed by a single individual, and that there is no indication that the Board or its ALJs had a potential for bias.[95] The court contended that the Board and its ALJs are entitled to a presumption of honesty and integrity given the employer's failure to demonstrate any potential for bias.[96]

NLRB and the Seventh Amendment

Plaintiffs challenging the NLRB's constitutionality have also argued that the agency's adjudication scheme violates the Seventh Amendment by denying them of their right to a jury trial.[97] The Seventh Amendment provides that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."[98] Under the NLRA, unfair labor practice complaints are adjudicated before ALJs and the Board, which may order "such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of [the Act]."[99] The plaintiffs contend that these cases are suits at common law that should be decided by a jury.

To determine whether an action is a "suit at common law," courts have examined whether the action has traditionally been brought before a court of law or court of equity, and whether the remedies sought are legal or equitable in nature.[100] The Supreme Court has acknowledged that

[92] *Id*. at 47. *See also id*. at 56 ("It is also very typical for the members of administrative agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings. This mode of procedure does not violate the Administrative Procedure Act, and it does not violate due process of law.").

[93] NLRB v. United Food & Com. Workers Union, Loc. 23, 484 U.S. 112, 124 (1987).

[94] *Id*.

[95] *N. Mountain Foothills Apartments*, 157 F.4th at 1100.

[96] *Id*. at 1100–01.

[97] *See, e.g.*, Complaint for Declaratory and Injunctive Relief, *supra* note 4 at 15; Opening Brief, *supra* note 86, at 18.

[98] U.S. Const. amend. VII.

[99] 29 U.S.C. § 160(c).

[100] *Jarkesy*, 603 U.S. at 122–23 (noting the Seventh Amendment's application to suits that are "legal in nature" and that courts are "to consider the cause of action and the remedy it provides."); *N. Mountain Foothills Apartments*, 157 F.4th (continued...)

some causes of action sound in both law and equity, and has indicated that the most important consideration for determining whether an action is a suit at common law is the remedy.[101] The Court has observed that money damages, in particular, are the "prototypical common law remedy."[102]

In 1937, the Supreme Court considered whether the NLRA's adjudication scheme violates the Seventh Amendment. In *NLRB v. Jones & Laughlin Steel Corp.*, the Court found no violation despite a Board order that directed the steel company to provide back pay to employees who were wrongfully terminated.[103] The company argued that the back pay was "equivalent to a money judgment and hence contravenes the Seventh Amendment with respect to trial by jury."[104] The Court determined, however, that the Seventh Amendment does not apply where the recovery of money damages is incident to equitable relief.[105] Here, the Board's order directed the company to cease and desist from engaging in unfair labor practices, reinstate ten terminated employees, and provide back pay to the employees. The Court also emphasized that an unfair labor practice case is a statutory proceeding and "one unknown to the common law."[106] The Court observed that reinstatement and "payment for time lost are requirements imposed for violation of the statute and are remedies appropriate to its enforcement."[107]

While the Court's decision in *Jones & Laughlin Steel Corp.* would seem to foreclose further consideration of whether the NLRA's adjudication scheme violates the Seventh Amendment, plaintiffs challenging the NLRB's constitutionality contend that the agency is now asserting broader authority to award monetary damages and that these damages are legal rather than equitable.[108] In 2022, the Board revisited its authority to order make-whole relief for employees who are subject to unfair labor practices. In *Thryv, Inc. and International Brotherhood of Electrical Workers, Local 1269*, the Board indicated it would order employers that commit unfair labor practices to compensate affected employees "for all direct or foreseeable pecuniary harms" suffered as a result of such practices.[109] The Board explained that requiring compensation for all direct or foreseeable pecuniary harms better effectuates the NLRA's purpose and "restore[s] the employee to the situation they would have been in but for that unlawful conduct."[110] The Board indicated that this relief could address various financial costs incurred as a result of an unfair labor practice, including "out-of-pocket medical expenses, credit card debt, or other costs simply in order to make ends meet."[111]

The Board in *Thryv* addressed concerns that a remedy that includes compensation for all direct or foreseeable pecuniary harms would implicate the Seventh Amendment. Citing *Jones & Laughlin*

---

at 1098 ("To determine whether an action is one 'at common law,' or otherwise, courts consider whether the action is akin to an action that would have traditionally been brought before a court of law or a court of equity and whether the remedies sought are legal or equitable in nature.").

[101] *Jarkesy*, 603 U.S. at 123.

[102] *Id.* at 123. *See also* Mertens v. Hewitt Assocs., 508 U.S. 248, 255 (1993) ("Money damages are, of course, the classic form of legal relief.").

[103] NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 48 (1937).

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.* at 48–49.

[108] *See* Complaint for Declaratory and Injunctive Relief, *supra* note 4, at 15.

[109] Thryv, Inc. & IBEW, Loc. 1269, 372 NLRB No. 22 (2022), *vacated in part and review granted sub nom.*, Thryv, Inc. v. NLRB, 102 F.4th 727 (5th Cir. 2024).

[110] *Id.* at 9.

[111] *Id.*

Steel Corporation, the Board emphasized that the NLRA provides the agency with broad remedial authority, and ordering compensation for all direct or foreseeable pecuniary harms is restorative rather than punitive.[112] Acknowledging that make-whole relief may resemble damages in a common law tort proceeding, the Board maintained that "the relief we issue is nevertheless purely statutory in nature and specifically designed to effectuate the purposes of the [NLRA]."[113]

Since the Board's decision in *Thryv*, three federal appellate courts have vacated awards of all direct or foreseeable pecuniary harms, concluding that the awards exceeded the agency's remedial authority under the NLRA.[114] These courts did not address, however, whether the Seventh Amendment entitled the employers subject to such awards to jury trials.[115]

In *North Mountain Foothills Apartments*, the Ninth Circuit rejected the employer's assertion that the Board's adjudication scheme violates the Seventh Amendment because the agency's so-called "*Thryv* remedies" are legal damages that should be awarded in a jury trial.[116] The court determined that the *Thryv* remedies are not legal, but equitable in nature and designed to restore the status quo.[117] The court maintained that the Seventh Amendment is not implicated because the Board "specifically explained that this remedy 'do[es] not punish bad actors, but rather implement[s] the statutory principles of rectifying the harms actually incurred by the victims of unfair labor practices and restoring them to where they would have been but for the unlawful conduct.'"[118]

If the Board were to revisit its decision permitting the award of foreseeable costs in *Thryv*, it could be more difficult for employers to contend that NLRB proceedings are legal in nature rather than equitable, triggering the Seventh Amendment. Some legal observers contend that a newly constituted Board with a majority of Republican-appointed members could reverse *Thryv* and other decisions that have been viewed as less favorable to employers.[119]

Considerations for Congress

Due to the removal and term expiration of sitting NLRB Board members, the NLRB lacked a quorum from roughly January to December 2025, when the Senate confirmed two of President Trump's nominees.[120] During that time, the Board could not hear any appeals or issue

[112] *Id*. at 10–11.

[113] *Id*. at 11.

[114] NLRB v. Starbucks Corp., 159 F.4th 455 (6th Cir. 2025); Hiran Mgmt., Inc. v. NLRB, 157 F.4th 719 (5th Cir. 2025); NLRB v. Starbucks Corp., 125 F.4th 78 (3d Cir. 2024).

[115] *See, e.g.*, Starbucks Corp., 125 F.4th at 97 ("Starbucks, making a constitutional avoidance argument, contends that the Board's interpretation of the NLRA would require a jury trial under the Seventh Amendment and an adjudication in federal court under Article III. Because we agree that the Board's order is inconsistent with the NLRA, we need not reach these constitutional questions.").

[116] *N. Mountain Foothills Apartments*, 157 F.4th at 1099.

[117] *Id*.

[118] *Id*. at 1100 (alterations in original) (quoting 372 NLRB No. 22 (2022). *See also* Int'l Union of Operating Eng'rs, Stationary Eng'rs, Loc. 39 v. NLRB, 155 F.4th 1023, 1052 (9th Cir. 2025) (compensation for direct or foreseeable pecuniary harms incurred as a result of an unfair labor practice is within the Board's broad discretion to effectuate the NLRA's policies), *petition for cert. docketed sub nom., Macy's Inc. v. NLRB*, No. 25-627 (U.S. Dec. 2, 2025).

[119] Robert Iafolla, *NLRB Faces Hefty Case Backlog as New Members Formally Join Board*, DAILY LAB. REP. (BL) (Jan. 7, 2026, at 11:16 ET), https://news.bloomberglaw.com/daily-labor-report/nlrb-faces-hefty-case-backlog-as-new-members-formally-join-board [https://perma.cc/TLK2-9HKZ].

[120] *See* Daniel Wiessner, US Senate Confirms Trump Nominees for Labor Board Paralyzed After Member's Firing, REUTERS (Dec. 18, 2025, at 20:36 ET), https://www.reuters.com/world/us/us-senate-confirms-trump-nominees-labor-board-paralyzed-after-members-firing-2025-12-19/ [https://perma.cc/NH25-KPYL].

decisions.[121] In response, several states introduced legislation to address labor enforcement and adjudication that they argued had lapsed during the quorum-less period. For example, California and New York each passed laws creating state-level labor boards.[122] However, attempts by state boards to assert jurisdiction over issues covered by the NLRA have been held to violate the Supremacy Clause[123] of the Constitution.[124] For example, in December 2025, the U.S. District Court for the Eastern District of California largely enjoined A.B. 288, the California law that would allow California private-sector workers covered by the NLRA to bring labor disputes to a state board when the NLRB suffers a loss of quorum, loss of independence, enjoinment, or processing delays.[125] If Congress wished, it could allow the states to exercise jurisdiction alongside of or in lieu of federal jurisdiction under the NLRA.

If Congress perceived the NLRB quorum lapse to create a gap unfillable by states for preemption reasons, Congress could enact its own legislative reforms. For example, the Protecting American Jobs Act would alter the Board's adjudication scheme to allow aggrieved parties to seek judicial relief in the courts rather than before the Board, while maintaining some investigative functions.[126] The National Labor Relations Board Reform Act would have allowed judicial review of complaints issued by the NLRB General Counsel and would have permitted parties to appeal to federal court if the NLRB does not issue a final order within one year, among other reforms.[127] Congress could also seek to expand the NLRB's authorities, such as in the Richard L. Trumka Protecting the Right to Organize (PRO) Act.[128] Among its reforms, the PRO Act would make NLRB's orders self-enforcing and create civil monetary penalties for NLRA violations.[129] Congress could also consider requiring nominees to the Board to meet certain qualifications, such as experience working for the NLRB or practicing labor law in some other capacity.

Congress could face constitutional obstacles in some types of reforms to the NLRB. As discussed above, the Supreme Court has not explicitly overturned *Humphrey's Executor*, but such a decision could potentially allow the President to remove NLRB Board members "at will" in the manner of removal for presidential appointees at "non-independent agencies," such as Cabinet members and other agency heads. A decision based in the President's Article II powers overruling *Humphrey's Executor* may cast doubt on Congress's ability to create for-cause removal protections for positions in future legislation, as well as Congress's ability to address presidential control over executive branch agencies more broadly. Similarly, Congress could be limited in how it may

[121] *See* 29 C.F.R. § 102.178 (2026) (clarifying that "during any period when the Board lacks a quorum normal Agency operation should continue to the greatest extent permitted by law" but that appeals may not be made to the Board).

[122] *See* Assemb. B. 288, 2025–2026 Reg. Sess. (Cal. 2025); S. 8034A, 2025–2026 Leg., Reg. Sess. (N.Y. 2025).

[123] U.S. CONST. art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"). *See also* Lib. Cong., *Modern Doctrine on Supremacy Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/art VI-C2-3-4/ALDE_00013402/ (last visited Mar. 12, 2026) ("Since the mid-twentieth century, the Supreme Court has channeled its Supremacy Clause jurisprudence into the language of federal preemption.").

[124] *See* Order Granting in Part and Denying in Part Plaintiff's Motion for a Preliminary Injunction, NLRB v. California, No. 25-cv-02979 (E.D. Cal. Dec. 26, 2025), Dkt. No. 30; Order Granting Motion for Preliminary Injunction, Amazon.com Servs. LLC v. N.Y. State Pub. Emp. Rels. Bd., No. 25-CV-5311 (E.D.N.Y. Nov. 26, 2025), Dkt. No. 49.

[125] *See* Order Granting in Part and Denying in Part Plaintiff's Motion for a Preliminary Injunction, *NLRB*, No. 25-cv-02979 (E.D. Cal. Dec. 26, 2025).

[126] Protecting American Jobs Act, S. 2568, 119th Cong. (2025).

[127] The National Labor Relations Board Reform Act, S. 991, 118th Cong. (2023).

[128] Richard L. Trumka Protecting the Right to Organize Act of 2023, S. 852/H.R. 20, 119th Cong. (2025).

[129] *See id*.

choose to reform the NLRB by court decisions restricting the NLRB's investigatory and adjudicatory processes or the available remedies under the NLRA under the Fifth or Seventh Amendments. If Congress wished to reduce these potential constitutional conflicts, it could amend the remedies available under the NLRA or the adjudicative process or it could leave the courts to decide.

Author Information

Jimmy Balser
Legislative Attorney

Jon O. Shimabukuro
Legislative Attorney

Disclaimer

Congressional Research Service
Informing the legislative debate since 1914

Social Security Coverage of State and Local Government Employees

Updated April 8, 2026

Congressional Research Service
https://crsreports.congress.gov
R46961

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

R46961

April 8, 2026

Zhe Li
Analyst in Social Policy

Social Security Coverage of State and Local Government Employees

Social Security is the single largest federal program in terms of the number of beneficiaries as well as budget. It pays cash benefits to over 70 million beneficiaries each month, and total benefit payments are more than $136 billion on a monthly basis. Beneficiaries include retired or disabled workers and their eligible family members and eligible family members of deceased workers. People become eligible for Social Security benefits for themselves and their family members by working in jobs that are covered by Social Security. Most jobs in the United States are mandatorily covered by Social Security. An estimated 93% of workers in paid employment and self-employment are covered under the program, and an estimated 186 million people work in covered jobs. Workers in covered jobs and their employers are required to pay Social Security payroll taxes that are the primary source of funding for the program. In 2026, workers and their employers each contribute 6.2% (for a total tax rate of 12.4%) of the worker's earnings up to a maximum earnings level of $184,500. Current payroll tax collections are used to fund current benefit payments. People who work in jobs that are not covered by Social Security (noncovered workers) do not pay Social Security payroll taxes based on those earnings (nor do their employers), and they do not receive Social Security benefits based on those earnings.

Over the years, Congress expanded coverage under the program, making it a nearly universal system. On the basis of equity, some argue that certain noncovered workers should be brought into the system to share in the program's broader social goals. Social Security keeps many beneficiaries out of poverty, which benefits the nation as a whole. In addition, some argue that certain noncovered workers should share in the ongoing costs associated with the startup of the program (the *legacy costs*). In the early years, workers who had paid into the system for a short period received benefits far in excess of their contributions. Because the family members of noncovered workers (e.g., grandparents) likely benefitted from the program in its early years, they argue that noncovered workers should share in the system's legacy costs.

The largest and most high-profile group of noncovered workers is the segment of state and local government employees who are not covered by Social Security through their government employment. Social Security coverage is *voluntary* for state and local government employees covered under public retirement systems that meet certain requirements. These employees may elect Social Security coverage through Section 218 Agreements between the states and the Social Security Administration. Coverage is elected through referendums held at the option of the state. Social Security coverage is *mandatory* only for state and local government employees who are not covered under alternative retirement systems. Most state and local government employees participate in Social Security. In 2023, there were approximately 22.9 million state and local government employees, and about 16.7 million (73%) had Social Security coverage. The other 6.3 million (27%) did not have Social Security coverage through their government employment. The largest share of noncovered state and local government employees work at the local level, and most noncovered local government employees are police officers, firefighters, and teachers.

Proposals to make Social Security coverage mandatory for newly hired state and local government employees have been part of the policy debate for years. These proposals have drawn strong support and opposition for a variety of reasons. Supporters argue that mandatory coverage for newly hired state and local government employees would have a net positive effect on the Social Security trust funds and on federal revenues. Estimates show that the policy change would close 4% of the Social Security system's projected long-range funding shortfall. Supporters also maintain that mandatory Social Security coverage would eliminate gaps in Social Security and pension coverage for workers who move between covered and noncovered positions during their careers. Compared to state and local pension plans in general, Social Security provides better inflation protection, disability benefits, benefits for dependents and survivors, and a progressive benefit formula intended to help workers with lower career-average earnings. Benefit protections provided by Social Security could be particularly important for noncovered workers in states and localities with underfunded pension plans and whose future pensions may be at risk.

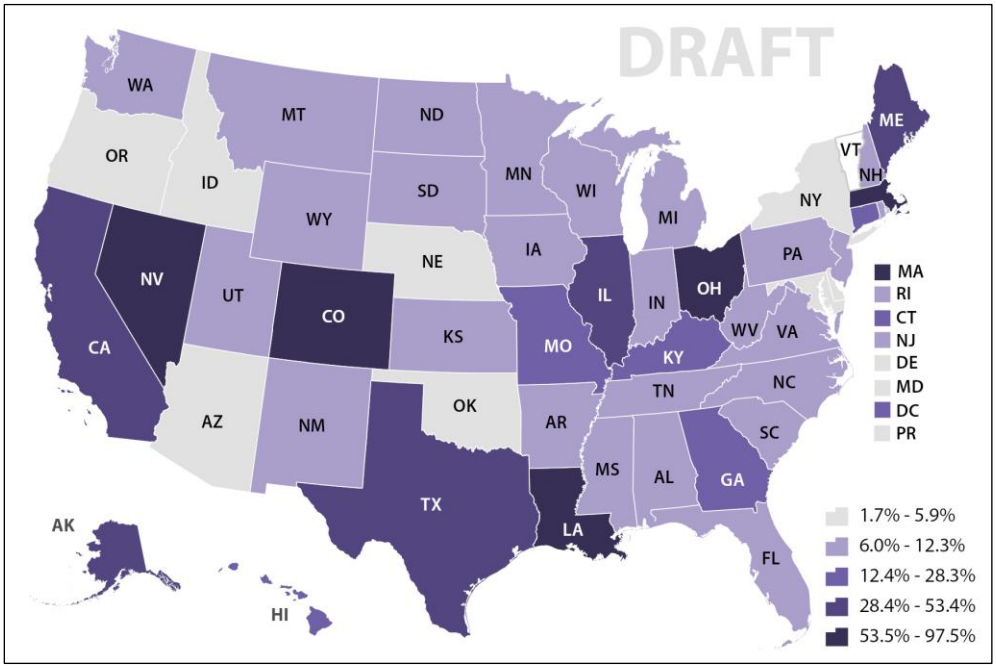
Opponents maintain that mandatory coverage could pose administrative and cost burdens on state and local governments and their employees at a time when many state and local pension systems are underfunded. State and local governments would have to negotiate with employee representatives and legislatures on the redesign of existing retirement systems in response to a Social Security coverage mandate, a process that could take years, and could have to administer existing retirement systems alongside new retirement systems for many decades. Opponent also say mandatory coverage could threaten or undermine existing retirement systems, particularly those tailored to workers in certain occupations such as police officers and

firefighters. The cost impact to state and local governments and their employees would depend on the type of pension benefit structure states and localities adopt in response to a Social Security coverage mandate, among other factors.

Overall, the impact on state and local plans and the net effect on total benefits would vary across plans and across individuals, depending on how states and localities would respond to a coverage mandate, the relative differences between existing pension plans and new or modified plans incorporating Social Security, and other factors. Any future legislative changes to Social Security to address the system's projected funding shortfall and achieve other policy objectives would also be a factor.

Every state has a mix of state and local government employees with and without Social Security coverage, so every state would be affected by a Social Security coverage mandate. Some states would be affected to a larger degree than others given the variation in coverage rates among the states under current law. In 2023, the share of state and local government employees *with* Social Security coverage ranged from 2% to 98% among the states. Overall, eight states accounted for almost three-fourths (75%) of noncovered state and local government employees (*from largest to smallest*: California, Texas, Ohio, Massachusetts, Illinois, Colorado, Louisiana, and Georgia). Three states accounted for almost half (49%) of noncovered state and local government employees (California, Texas, and Ohio).

Figure 1.Share of State and Local Government Employees Not Covered by Social Security, 2023



Source: Data from the Social Security Administration obtained by CRS in February 2026.

Contents

Figures

Tables

Contacts

Introduction

The focus of this report is Social Security coverage among state and local government employees under current law and issues surrounding proposals to make Social Security coverage mandatory for newly hired state and local government employees.[1] To provide context for the discussion, the report begins with background on the Social Security program, including the expansion of coverage over time that has today resulted in coverage for an estimated 93% of workers in paid employment and self-employment. The report identifies the major categories of work/workers not covered by Social Security under current law, including the segment of state and local government employees who have not elected coverage (27% in 2023).[2] It briefly discusses reasons often cited for why Social Security should be a more fully universal system—the social goals of the program and the legacy costs associated with the startup of the program. The report then focuses on state and local government employees.

Background on Social Security

Social Security is the nation's largest federal program in terms of the number of beneficiaries as well as budget. It pays monthly cash benefits to over 70 million people, with more than $136 billion in benefits paid each month.[3] Beneficiaries include retired workers and their eligible family members, disabled workers and their eligible family members, and eligible family members of deceased workers.

Social Security is a work-related program that is funded primarily with dedicated payroll tax revenues. In all cases, a Social Security beneficiary becomes eligible for benefits either by working in a job that is covered by Social Security (a covered worker), by having a close family relationship to a covered worker, or both (among other requirements). For people who work in jobs that are covered by Social Security, participation is mandatory.[4] Covered workers and their employers are required to pay Social Security payroll taxes. In 2026, workers pay 6.2% of earnings in covered employment, up to a maximum earnings level of $184,500. The maximum earnings level is adjusted annually based on average wage growth in the national economy. (The adjustment is made in years when a Social Security cost-of-living adjustment is payable.) Employers pay a corresponding amount—6.2% of the worker's covered earnings up to the annual maximum. Self-employed workers pay 12.4% of net earnings up to the annual maximum.

To become eligible for benefits, a worker must have a sufficient connection to covered employment, which is measured in terms of *Quarters of Coverage (QCs)*. In 2026, a worker earns one QC for every $1,890 in covered earnings up to a maximum of four QCs for the year (i.e., covered earnings of $7,560 or more). The amount needed to earn one QC is adjusted annually based on average wage growth in the national economy.[5] When a worker has earned a sufficient number of QCs, he or she is *insured* under the program. The number of QCs needed for insured status varies depending on the circumstances and type of benefit, ranging from a minimum of six

[1] Generally, mandatory coverage proposals affect *newly hired* state and local government employees, not current employees. Therefore, this report focuses on the mandatory coverage issue with respect to new hires.

[2] It is the option of the state to hold a referendum on coverage among eligible employees covered by a retirement system.

[3] Social Security Administration (SSA), *Monthly Statistical Snapshot, February 2026*, Table 2, https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/index.html.

[4] Social Security coverage is tied to positions, not to individuals.

[5] SSA, "Quarter of Coverage," https://www.ssa.gov/oact/cola/QC.html.

QCs to a maximum of 40 QCs. Insured status allows a worker to establish eligibility for retired-worker or disabled-worker benefits and to establish eligibility for benefits for the worker's family members in the event of the worker's retirement, disability, or death.[6]

Most jobs in the United States are covered by Social Security. The Social Security Administration (SSA) estimates that about 93% of workers in paid employment and self-employment are covered under the Social Security program and that an estimated 186 million people will work in covered employment or self-employment in 2026.[7]

If a job is not covered by Social Security, the worker's earnings are not subject to Social Security payroll taxes. As a result, the earnings do not count toward the worker gaining insured status under the program (i.e., the earnings do not count toward establishing future benefit eligibility for the worker and his or her family members). In addition, the earnings are not included in the computation of benefits.

Nearly Universal System

Social Security began as a compulsory federal old-age benefits program established under Title II of the Social Security Act of 1935 (P.L. 271, 74th Congress). The original program covered employees under the age of 65 in commerce and nonagricultural industry (excluding railroads) in the 48 states that existed at the time, plus Alaska, Hawaii, and the District of Columbia (about 56% of the workforce at the time).[8] Initially, the program provided monthly "old-age benefits" for insured workers aged 65 or older.

Over the years, Congress expanded coverage under the Social Security program, bringing most employees and self-employed workers into the system. Today, most jobs in the United States are covered by Social Security, regardless of whether the work is performed by U.S. citizens or noncitizens, with some exceptions.[9] In some cases, work performed outside the United States by U.S. citizens or resident aliens (noncitizens) is covered by Social Security (for example, if the person is employed by an American employer, employed by a foreign affiliate of an American employer that has elected coverage for its employees, or, under certain circumstances, self-employed).[10] Over the years, Congress also expanded the types of benefits available under the program. For example, Congress extended benefits to a worker's dependents and survivors in 1939 and to disabled workers in 1956.

Major Categories of Work Not Covered

The rules surrounding Social Security coverage and exceptions are extensive.[11] The *major* categories of work/workers that are not covered by Social Security include

[6] For more information, see CRS Report R42035, *Social Security Primer*.

[7] SSA, Office of the Chief Actuary (OCACT), *Fact Sheet on the Old-Age, Survivors, and Disability Insurance Program*, February 9, 2026, https://www.ssa.gov/oact/FACTS/index.html.

[8] William J. Nelson Jr., "Employment Covered Under the Social Security Program, 1935-84," *Social Security Bulletin*, vol. 48, no. 4 (April 1985), Table 2, p. 34, https://www.ssa.gov/policy/docs/ssb/v48n4/v48n4p33.pdf.

[9] The term *United States* is defined as the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the territories of Guam and American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

[10] See Internal Revenue Service (IRS), *Social Security Tax Consequences of Working Abroad*, https://www.irs.gov/individuals/international-taxpayers/social-security-tax-consequences-of-working-abroad.

[11] For more information on the definition of *employment* for Social Security purposes, see (1) Section 210 of the Social (continued...)

- Most civilian federal employees hired before 1984 (federal employees covered under the Civil Service Retirement System [CSRS]),[12]
- Segment of state and local government employees who have not elected coverage (27% of state and local government employees in 2023),[13]
- Railroad workers (the Railroad Retirement System and Social Security are separate but coordinated systems),
- Certain family employment,
- Certain work performed by students,
- Certain members of the clergy and others, and
- Certain work performed by noncitizens.

For some types of work, there are coverage thresholds. If the worker's earnings are below a specified threshold, the work is generally excluded from Social Security coverage. These categories are

- Farm work,
- Self-employed workers,
- Election officials and election workers, and
- Household employees.

Different coverage thresholds apply for each category; in all cases, the threshold is relatively low. For example, the coverage threshold for self-employed workers is $400. Self-employed workers with net earnings below $400 for the year are generally excluded from Social Security coverage.[14]

Social Goals of the Program

Social Security is a *social insurance system* that is primarily self-financing with payroll taxes paid by workers in covered employment and their employers, as well as self-employed individuals. It provides monthly cash benefits to insured workers and their family members when there is a loss of earnings due to the worker's retirement, disability, or death. Social Security provides benefits to people of all ages, including retired workers, disabled workers, spouses, former spouses, surviving spouses, and dependent children. For many beneficiaries, Social Security represents a sizable share of their total income and serves to keep them out of poverty.[15] Given Social Security's role in reducing poverty, which benefits the nation as a whole, some argue that Social Security should be a more fully universal system.[16] That is, on the basis of equity, certain noncovered workers should be brought into the system to share in the program's broader social goals.

Security Act [42 U.S.C. §410]; (2) Title 20, Part 404, of the *Code of Federal Regulations*, Subpart K; and (3) SSA's Program Operations Manual System [POMS], *Coverage and Exceptions*.

[12] For more information, see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*.

[13] Data from SSA obtained by CRS in February 2026.

[14] For more information, see CRS In Focus IF11824, *Social Security: Who Is Covered Under the Program?*

[15] For more information, see CRS Report R47341, *Income for the Population Ages 65 and Older: Evidence from the Health Retirement Study (HRS)*.

[16] For example, Social Security lessens the reliance on need-based programs such as Supplemental Security Income (SSI), which is funded with federal general revenues. SSI provides monthly cash payments to aged, blind, or disabled individuals who have limited income and resources. For more information, see CRS In Focus IF10482, *Supplemental Security Income (SSI)*.

On a related point, noncovered workers do not share in the costs associated with the startup of the program. In the early years of Social Security, workers who had paid into the system for a short period received benefits far in excess of their contributions. The inherited unfunded liability associated with the startup of the program is referred to as the *legacy costs*.[17] It is estimated that about 3 percentage points of the current 12.4% Social Security payroll tax goes toward covering these costs.[18] Benefits paid during the early years of the program often went to the parents, grandparents, and great-grandparents of current noncovered workers. Therefore, on the basis of equity, some argue that certain noncovered workers should be brought into the system to share in the legacy costs.

State and Local Government Employees

The largest and most high-profile group of noncovered workers is the segment of state and local government employees who participate in alternative public retirement systems that do not have a Social Security component. Under current law, state and local government employees are not required to participate in Social Security if they participate in public retirement systems through their employers that meet certain requirements.[19] However, they may elect coverage as a group through a coverage agreement between the state and SSA. These agreements, called *Section 218 Agreements*, are authorized under Section 218 of the Social Security Act (42 U.S.C. §418). Social Security coverage is mandatory only for those state and local government employees who do not participate in public retirement systems that qualify as an alternative to Social Security. SSA data shows that there were approximately 22.9 million state and local government employees in 2023.[20] Of those, about 16.7 million (73%) were covered by Social Security. The other approximately 6.3 million state and local government employees (27%) were not covered by Social Security through their government employment. Over the years, there have been proposals to make Social Security coverage mandatory for newly hired state and local government employees.

The remainder of the report discusses Social Security coverage among state and local government employees under current law and provides a brief legislative history of coverage for these workers. It then discusses proposals to mandate coverage for newly hired state and local government employees and issues to consider with respect to mandatory coverage.

Key Points (Part I): Recap

- Participation in Social Security is mandatory for most workers. An estimated 93% of workers in the United States participate in Social Security, making it a nearly universal system.
- The largest and most high-profile group of noncovered workers is the segment of state and local government employees who do not participate in Social Security through their government employment.
- Participation in Social Security is *voluntary* for state and local government employees who are covered by alternative public retirement systems that meet certain requirements. Participation is *mandatory* only for those state and local government employees who are not covered by such systems.

[17] See Dean R. Leimer, "The Legacy Debt Associated with Past Social Security Transfers," *Social Security Bulletin,* vol. 76, no. 3 (2016).

[18] Alicia H. Munnell, Jean-Pierre Aubry, and Anek Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," Center for Retirement Research at Boston College, CRR WP 2014-9, May 2014, pp. 6-7, available at https://crr.bc.edu/the-impact-of-mandatory-coverage-on-state-and-local-budgets/.

[19] To qualify as an alternative to Social Security, the public retirement system must provide a minimum level of benefits. In general, it must provide a retirement benefit that is comparable to Social Security.

[20] Data from SSA obtained by CRS in February 2026.

- State and local government employees covered by alternative public retirement systems may elect Social Security coverage via referendums held at the option of the state.
- In 2023, there were 22.9 million state and local government employees. Based on data from SSA, 73% of these workers were covered by Social Security. The other 27% of workers were not covered by Social Security through their government employment.
- There have been proposals to make Social Security coverage mandatory for newly hired state and local government employees. On the basis of equity, some argue that Social Security should be a more fully universal system given the program's broader social goals and the system's legacy costs.

State and Local Coverage Under Current Law

Unlike most employers, state and local governments are not required to participate in Social Security. Social Security coverage is *voluntary* for state and local government employees who are covered under alternative public retirement systems that meet certain requirements. If these state and local government employees choose to participate in Social Security, they may elect coverage as a group through the state's Section 218 Agreement with SSA. Coverage is elected through a referendum held by the state. Ultimately, the decision to extend coverage to certain state and local government positions lies with the state, as the state must hold a referendum among eligible employees covered by a retirement system before Social Security coverage can be extended.[21]

Social Security coverage is *mandatory* for state and local government employees who are not covered under alternative public retirement systems, with some exceptions.[22] Every state has a mix of state and local government employees with and without Social Security coverage, and the relative share of covered and noncovered workers varies widely by state. By comparison, Medicare coverage is mandatory for state and local government employees.[23]

Alternative Public Retirement Systems

A public retirement system must meet certain requirements to qualify as an alternative to Social Security. For example, the system must provide a minimum level of benefits. In general, an alternative public retirement system is a pension, annuity, retirement, or similar fund or system maintained by a state or local government that provides a retirement benefit to the employee comparable to the benefit provided under the old-age component of the Old-Age, Survivors, and Disability Insurance (Social Security) program.

In general, there are two types of public retirement systems that may meet the minimum benefit requirement: defined benefit retirement systems and defined contribution retirement systems. Defined benefit plans provide lifetime benefits based on a formula, generally taking into account

[21] As noted in SSA's POMS, "Ultimately, it is within the state's discretion to determine for whom, whether, and when to extend Section 218 coverage, subject to the requirements of the [Social Security] Act" (POMS, Section SL 30001.301, Section 218 Agreements, Paragraph C, https://secure.ssa.gov/apps10/poms.nsf/lnx/1930001301#c).

[22] Under Section 210(a) of the Social Security Act (42 U.S.C. §410(a)), certain categories of employees are not subject to mandatory Social Security coverage, including state and local government employees who fall within these categories. For example, services performed by individuals hired to be relieved from unemployment are not subject to mandatory Social Security coverage. For more information, see IRS Publication 963, *Federal-State Reference Guide*, Revised July 2020, Chapter 5: Social Security and Medicare Coverage, pp. 44-45, https://www.irs.gov/pub/irs-pdf/p963.pdf.

[23] Medicare payroll taxes generally apply to all wages (not limited by the taxable maximum) of all state and local government employees hired or re-hired after March 31, 1986, unless specifically excluded under Section 210(p) of the Social Security Act (42 U.S.C. §410(p)). This requirement was mandated by the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (P.L. 99-272). See IRS Publication 963, pp. 49-50.

the employee's salary, years of service, and an accrual rate (benefit multiplier).[24] Defined contribution plans provide an individual account for each participant. The employer and/or the employee contribute a specific dollar amount or percentage of pay into an account, which is usually invested in stocks and bonds. Upon retirement, the employee receives the balance in the account, which is the sum of all the contributions that have been made plus interest, dividends, and capital gains (or losses), *minus* fees and expenses. Generally, the employee may choose to receive the funds as a series of payments over a period of years (for example, as an annuity) or as a lump sum. In a defined benefit plan, the *employer* bears the financial risk. In a defined contribution plan, the *employee* bears the financial risk. Most state and local government employees are covered by traditional defined benefit plans.[25]

The requirements that public retirement systems (defined benefit, defined contribution, or hybrid plans) must meet to qualify as an alternative to Social Security are explained in Internal Revenue Service (IRS) Publication 963 (*Federal-State Reference Guide*).[26] A defined benefit retirement system, for example, must provide the employee with an annual benefit that is at least equal to the annual primary insurance amount (PIA) the employee would have under Social Security.[27] The benefit must start on or before the employee attains the Social Security full retirement age (FRA),[28] which is 67 for most current workers.[29] A defined benefit plan that provides a benefit that is, for example, at least 1.5% of average compensation during an employee's last three years of employment, multiplied by the employee's years of service, would generally meet the requirement of providing a retirement benefit comparable to Social Security.[30]

Section 218 Agreements

Social Security coverage is extended to state and local government employees through voluntary agreements between the states and SSA, known as Section 218 Agreements.[31] All states have a Section 218 Agreement with SSA. However, the extent of coverage under these agreements varies

[24] A traditional defined benefit formula would be: annual benefit = an accrual rate X the number of years of service X the average of the worker's final years of salary. The accrual rate is a percentage factor typically ranging from 2% to 3% in most traditional defined benefit plans.

[25] For data on how pension plan access and participation rates compare among public- and private-sector employees, see CRS In Focus IF13185, *Worker Participation in Employer-Sponsored Pensions in 2025*.

[26] IRS Publication 963, Chapter 6: Social Security and Public Retirement Systems. See also (1) Section 31.3121(b)(7)-2(e) of the IRS Employment Tax Regulations, https://www.ecfr.gov/current/title-26/chapter-I/subchapter-C/part-31/subpart-B/subject-group-ECFR996050e2e4c4937/section-31.3121(b)(7)-2#p-31.3121(b)(7)-2(e); and (2) IRS Revenue Procedure 91-40, which sets forth rules related to the minimum retirement benefit requirement prescribed under Section 31.3121(b)(7)-2 of the IRS Employment Tax Regulations. IRS Revenue Procedure 91-40 is included as an appendix in IRS Publication 963, and it is available at https://www.ssa.gov/slge/revenue_procedure_91-40.htm.

[27] In the Social Security program, the worker's PIA is the benefit payable at full retirement age (FRA), before any applicable adjustments are taken into account.

[28] The Social Security FRA is the age at which full (unreduced) Social Security retirement benefits are first payable. The FRA ranges from 65 to 67, depending on the worker's year of birth. Workers born in 1960 or later have an FRA of 67. Retirement benefits are payable as early as age 62, but benefits claimed between age 62 and the FRA are permanently reduced to take into account "early retirement."

[29] See Section 31.3121(b)(7)-2(e)(2) of the IRS Employment Tax Regulations at https://www.ecfr.gov/current/title-26/chapter-I/subchapter-C/part-31/subpart-B/subject-group-ECFR996050e2e4c4937/section-31.3121(b)(7)-2#p-31.3121(b)(7)-2(e)(2).

[30] IRS Publication 963, p. 54.

[31] Section 218 Agreements are governed by Section 218 of the Social Security Act (42 U.S.C. §418) and the *Code of Federal Regulations* (20 C.F.R. §§404.1200-404.1219). See also SSA's POMS beginning with the section "Introduction to State and Local Coverage Handbook" at https://secure.ssa.gov/apps10/poms.nsf/lnx/1910000000.

from state to state.[32] A majority of state and local government employees may be covered by Social Security in one state, while a small percentage of workers may be covered in another state. There can be variation within a state as well. For example, teachers in one county may be covered by Social Security, while teachers in a neighboring county may not be covered.

Section 218 Agreements cover positions, not individuals (i.e., Social Security coverage is tied to a particular job, not to a particular individual). If a position is covered by Social Security under a Section 218 Agreement, generally any current or future employee who fills that position is subject to Social Security payroll taxes.[33] A state's Section 218 Agreement specifies which state and local government positions are covered by Social Security.

Under Section 218 Agreements, Social Security coverage is extended to groups of employee positions known as *coverage groups*. Coverage is not extended on an individual basis. Various laws and regulations govern how coverage may be extended to state and local government positions through referendums held by the state among eligible employees covered by a retirement system. All states are authorized to use a *majority vote* referendum process. Twenty-three states are also authorized to use a *divided vote* referendum process (discussed below). Typically, states allow their political subdivisions (such as a school board) to decide whether to hold a referendum on coverage.

Generally, Section 218 Agreements may be modified to increase (but not reduce) the extent of Social Security coverage. Once coverage is provided, it cannot be terminated, and all future employees in covered positions are required to participate in Social Security.

Each of the 50 states, as well as Puerto Rico and the U.S. Virgin Islands, has a state Social Security administrator (state administrator). The state administrator is a designated state employee who is the main resource for information about Social Security (and Medicare) coverage and reporting issues for state and local government employers and employees under the terms of the state's Section 218 Agreement.[34] Among other duties, the state administrator maintains the state's Section 218 Agreement, prepares modifications to the agreement, and serves as a bridge between (1) state and local government employers and (2) SSA and the IRS.[35]

Legislative History Highlights

The original Social Security Act (1935; P.L. 74-271) did not extend Social Security coverage to state and local government employees. State and local government employees were excluded to avoid the constitutional question of whether the federal government had the authority to impose payroll taxes on state and local governments and their employees. In addition, the objective of the program was to cover employees most in need of coverage, and many state and local government

[32] The term *state* includes the 50 states, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. It also includes interstate instrumentalities. An interstate instrumentality is an independent legal entity organized by two or more states to carry out one or more governmental functions, such as police power, taxing power, and/or power of eminent domain. For example, the New Jersey–New York Port Authority is an interstate instrumentality. Approximately 60 interstate instrumentalities have Section 218 Agreements with SSA (IRS Publication 963, p. 1).

[33] See the discussion below regarding divided vote referendums/divided retirement systems authorized in certain states.

[34] A list of state Social Security administrators is available at http://www.ncsssa.org/statessadminmenu.html. For information on SSA contacts regarding Section 218 Agreements, see "SSA Regional Office State and Local Coverage Specialists" at https://www.ssa.gov/slge/specialists.htm.

[35] See SSA, "State Social Security Administrator," https://www.ssa.gov/slge/state_ssa.htm. For information on the management of Section 218 Agreements, see U.S. Government Accountability Office (GAO), *Social Security Administration: Management Oversight Needed to Ensure Accurate Treatment of State and Local Government Employees*, GAO-10-936, September 2010, http://www.gao.gov/new.items/d10938.pdf.

employees were already covered under pension plans. Over time, coverage was extended to state and local government employees as outlined below.[36] In 1951, certain state and local government employees first became eligible for Social Security coverage.[37] Before 1991, Social Security coverage was generally optional for state and local government employees. In 1991, Social Security coverage became mandatory for most state and local government employees who were not covered under public retirement systems.[38]

- **1950**

Among other provisions, the Social Security Act Amendments of 1950 (P.L. 81-734) extended Social Security coverage to various groups of workers, including workers in Puerto Rico and the U.S. Virgin Islands (i.e., those in the general workforce).[39]

It also extended voluntary coverage to state and local government employees *not* covered under retirement systems (an estimated 1.5 million people at the time).[40] State and local government employees covered under retirement systems were excluded from voluntary Social Security coverage. Section 218 was added to the Social Security Act to allow the 48 states that existed at the time plus Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands to elect Social Security coverage for certain state and local government employees through voluntary agreements between the states and the federal government. Coverage became effective January 1, 1951.

The 1950 amendments permitted states to terminate coverage for state and local groups provided the coverage had been in effect for at least five years and notice of intent was given two years in advance. Termination of Social Security coverage was permanent.

- **1954**

Among other provisions, the Social Security Amendments of 1954 (P.L. 83-761) extended voluntary Social Security coverage to state and local government employees covered under retirement systems (except police officers and firefighters).

Under the 1954 amendments, police officers and firefighters covered under retirement systems continued to be excluded from voluntary Social Security coverage. The exclusion was left in place because most of the organizations representing police officers and firefighters were opposed to the coordination of their systems with the Social Security system, even on a voluntary basis.[41]

---

[36] For key dates in the history of coverage for state and local government employees, see also IRS Publication 963, p. 2.

[37] For state and local government employee coverage data for 1951-1981, see Bert Kestenbaum, "State and Local Government Employees Covered Under Social Security, 1977-81," *Social Security Bulletin*, vol. 45, no. 12 (December 1982), https://www.ssa.gov/policy/docs/ssb/v45n12/v45n12p11.pdf.

[38] Those who oppose mandatory Social Security coverage for newly hired state and local government employees sometimes argue that it would raise constitutional issues and might be challenged in court. In 1998, the General Accounting Office (now the Government Accountability Office) wrote, "we believe that mandatory coverage is likely to be upheld under current U.S. Supreme Court decisions." See GAO, *Social Security: Implications of Extending Mandatory Coverage to State and Local Employees*, GAO/HEHS-98-196, August 1998, pp. 19-20, http://www.gao.gov/archive/1998/he98196.pdf. A discussion of any potential legal issues associated with mandatory coverage for newly hired state and local government employees is beyond the scope of this CRS report.

[39] Coverage was extended to the U.S. Virgin Islands on an automatic basis. Puerto Rico had to elect coverage. The 1950 amendments permitted coverage to be extended to Puerto Rico provided the governor of Puerto Rico certified to the President of the United States that the legislature of Puerto Rico resolved (via concurrent resolution) to elect the extension. Social Security coverage became effective in Puerto Rico and the U.S. Virgin Islands on January 1, 1951.

[40] Social Security Act Amendments of 1950, P.L. 81-734, §106 (Coverage of State and Local Employees).

[41] Wilbur J. Cohen, Robert M. Ball, and Robert J. Myers, "Social Security Act Amendments of 1954: A Summary and Legislative History," *Social Security Bulletin*, vol. 17, no. 9 (September 1954), p. 4, at https://www.ssa.gov/policy/docs/ssb/v17n9/index.html.

The 1954 amendments specified that state and local government employees covered under retirement systems could elect Social Security coverage if a referendum by secret written ballot was held among the members of the retirement system and a majority of those eligible to vote in the referendum voted in favor of coverage.[42] Coverage became effective January 1, 1955.[43]

The 1954 amendments made Social Security coverage available to about 3.5 million state and local government employees. Social Security coverage was now available to almost all state and local government employees. The only sizable group not eligible for Social Security coverage was about 200,000 police officers and firefighters who had their own retirement systems.[44]

- **1956**

Among other provisions, the Social Security Amendments of 1956 (P.L. 84-880) allowed certain states to divide any state or local retirement system into two divisions: one division for the positions of employees who want Social Security coverage and one division for the positions of employees who do not want Social Security coverage. Each division may be treated as a separate retirement system.[45] Under the 1956 amendments, eight states (Florida, Georgia, New York, North Dakota, Pennsylvania, Tennessee, Washington, and Wisconsin), the then-territory of Hawaii, and their political subdivisions were permitted to operate *divided retirement systems* in which some positions are covered by Social Security and some positions are not covered. When a divided retirement group votes to elect Social Security coverage, coverage is extended only to current employees who choose to participate in the Social Security system. Coverage is not extended to current employees who choose not to participate in Social Security. However, all *future* employees in the group's positions are covered by Social Security on a mandatory basis. Under current law, 23 states are authorized to operate divided retirement systems.[46]

In addition, the 1956 amendments permitted police officers and firefighters covered under retirement systems in five states to elect Social Security coverage (Florida, North Carolina, Oregon, South Carolina, and South Dakota).[47]

- **1983**

Before April 1983, states that elected Social Security coverage had the option to withdraw from the program. A state could terminate coverage for state and local groups provided the coverage had been in effect for at least five years and written notice was given to the Secretary of Health

[42] In a majority vote referendum, a majority of all the eligible employees covered by the retirement system (not a majority of the eligible employees casting votes) must vote in favor of coverage.

[43] Social Security Amendments of 1954, P.L. 83-761, §101(h) (Employees Covered by State or Local Retirement Systems).

[44] James E. Marquis, "Old-Age and Survivors Insurance: Coverage Under the 1954 Amendments," *Social Security Bulletin*, vol. 18, no. 1 (January 1955), p. 7, https://www.ssa.gov/policy/docs/ssb/v18n1/index.html.

[45] Social Security Amendments of 1956, P.L. 84-880, §104(e) (Certain State and Local Employees).

[46] Most recently, Kentucky and Louisiana were added to the list of states authorized to operate divided retirement systems as part of the Social Security Protection Act of 2004 (P.L. 108-203, §416). The 23 states authorized to hold divided vote referendums are listed in Section 218(d)(6)(C) of the Social Security Act (42 U.S.C. §418(d)(6)(C)). In addition, under Section 218(g)(2) of the Social Security Act (42 U.S.C. §418(g)(2)), all interstate instrumentalities may divide a retirement system based on whether the employees in positions under that system want coverage.

[47] Social Security Amendments of 1956, P.L. 84-880, §104(g) (Policemen and Firemen in the States of Florida, North Carolina, Oregon, South Carolina, and South Dakota).

and Human Services two years in advance.[48] There was no requirement in the law that employees be notified when a notice of termination had been filed or when coverage had been terminated.[49]

Among other provisions, the Social Security Amendments of 1983 (P.L. 98-21) prohibited states from terminating coverage for state and local government employees if the termination had not become effective before the date of enactment of the legislation (April 20, 1983).[50] The 1983 amendments also allowed state and local groups whose coverage had already been terminated to elect coverage again. Under prior law, groups whose coverage had been terminated were prohibited from regaining coverage.[51]

The House report accompanying the 1983 legislation explains that the provision was in response to an increase in the number of termination notices, attributed in part to the Social Security system's financing problems in the late 1970s and early 1980s. The House report states:

> The number of governments filing termination notices did increase in conjunction with widespread concern about the financial conditions of social security that preceded the 1977 Amendments. While this rate of filing slowed down after the 1977 Amendments, considerable acceleration in filing for terminations for State and local governments has occurred since 1980, again in conjunction with widespread concern about the financial viability of the trust funds, and about the economy in general.
>
> During the five-year period from 1977 through 1981, when termination activity was greater than in the previous ten years, coverage was terminated for 96,000 State and local government employees; as of December, 1982 coverage had been terminated for 595 State entities employing 190,000 workers. In contrast, for the two-year period of 1983-84, terminations are pending for 634 State and local entities employing 227,000 workers.
>
> [The] Committee strongly feels that the ability to terminate coverage for State and local government employees is inequitable both for the employees who lose coverage and for the vast majority of the nation's workforce who continue to pay into the system.[52]

In addition, the 1983 amendments mandated Social Security coverage for newly hired *federal* employees (i.e., those hired January 1, 1984, or later).

- **1990**

Among other provisions, the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) made Social Security coverage mandatory for most state and local government employees not covered under public retirement systems. Students employed by their educational institutions were

[48] At the time, SSA was part of the U.S. Department of Health and Human Services. The Social Security Independence and Program Improvements Act of 1994 (P.L. 103-296) established SSA as an independent agency.

[49] U.S. Congress, House Committee on Ways and Means, *Social Security Act Amendments of 1983*, report to accompany H.R. 1900, 98th Cong., 1st sess., March 4, 1983, H. Rept. 98-25, Part 1, p. 18.

[50] Social Security Amendments of 1983, P.L. 98-21, §103 (Duration of Agreements for Coverage of State and Local Employees).

[51] The State of California challenged the 1983 law prohibiting the termination of coverage on the basis that it deprived states of contractual rights without just compensation, thus violating the Fifth Amendment of the Constitution. The U.S. Supreme Court rejected California's arguments and, on June 19, 1986, ruled that the provision was constitutional under the authority of Congress to provide for the general welfare. Bowen v. Pub. Agencies Opposed to Social Security Entrapments, 477 U.S. 41 (1986).

[52] U.S. Congress, House Committee on Ways and Means, *Social Security Act Amendments of 1983*, report to accompany H.R. 1900, 98th Cong., 1st sess., March 4, 1983, H. Rept. 98-25, Part 1, pp. 18-19.

excluded from mandatory coverage.[53] Coverage became effective for service performed after July 1, 1991.[54]

- **1994**

Among other provisions, the Social Security Independence and Program Improvements Act of 1994 (P.L. 103-296) gave all states the authority through their Section 218 Agreements to provide Social Security and Medicare coverage or Medicare-only coverage for police officer and firefighter positions already covered under retirement systems (effective August 16, 1994). With congressional authorization in place, states could begin modifying the language of their Section 218 Agreements and begin holding referendums to extend coverage to these positions.

Social Security Coverage by State

Data from SSA shows that there were more than 22.9 million state and local government employees in the United States in 2023. The majority of these workers had Social Security coverage based on their state and local government employment. Specifically, 73% of state and local government employees (about 16.7 million workers) had Social Security coverage. The remaining 27% (about 6.3 million workers) did not have Social Security coverage.[55] The largest share of noncovered state and local government employees work at the local level, and most noncovered local government employees are police officers, firefighters, and teachers.[56]

As shown in **Figure 2**, the share of state and local government employees without Social Security coverage in 2023 varied widely by state, ranging from 2.9% in Oregon to 97.5% in Ohio.[57]

[53] Students employed by educational institutions operated by state or local governments may be covered by Social Security under the terms of a state's Section 218 Agreement with SSA.

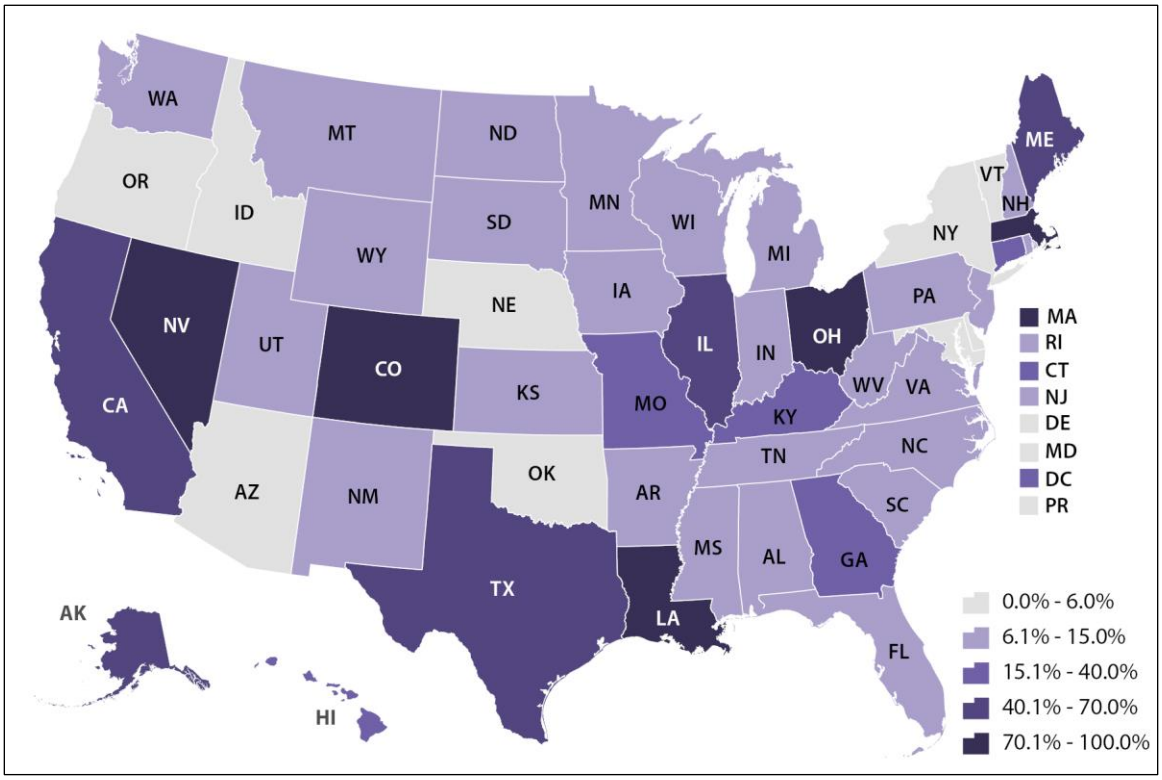
[54] Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, §11332 (Coverage of Certain State and Local Employees Under Social Security).

[55] These workers did not have Social Security coverage based on their state and local government employment. In some cases, they may have Social Security coverage based on other employment, or they may have a family connection to a Social Security–covered worker that makes them potentially eligible for Social Security spousal benefits, for example.

[56] IRS Publication 963, p. 1.

[57] In 2023, about 1.7% of government employees in Puerto Rico were not covered by Social Security. The Social Security coverage data are suppressed for Vermont in 2023 to prevent data disclosure. In 2021, about 2.5% of state and local government employees in Vermont did not participate in the Social Security system.

Figure 2. Share of State and Local Government Employees Not Covered by Social Security, 2023



Source: Data from the Social Security Administration obtained by CRS in February 2026.

The following statistics are based on the data shown in **Table 1**.

- In 27 states and Puerto Rico, 90.0% or more of state and local government employees had Social Security coverage.[58]
- In eight states, fewer than 50.0% of state and local government employees had Social Security coverage (Alaska, California, Colorado, Louisiana, Massachusetts, Nevada, Ohio, and Texas).
- Eight states accounted for three-fourths (75%) of noncovered state and local government employees (*from most to least:* California, Texas, Ohio, Massachusetts, Illinois, Colorado, Louisiana, and Georgia).
- Three states accounted for almost half (49%) of noncovered state and local government employees (California, Texas, and Ohio).

[58] Vermont is included in the states that have more than 90.0% of state and local government employees had Social Security coverage.

Table 1. Social Security Coverage of State and Local Government Employees, by State, in 2023

	State and Local Government Employees	Covered Workers: State and Local Government Employees *With* Social Security Coverage		Noncovered Workers: State and Local Government Employees *Without* Social Security Coverage	
State	**Number**	**Number**	**Percentage**	**Number**	**Percentage**
Alabama	369,300	341,200	92.3%	28,100	7.6%
Alaska	75,400	35,100	46.5%	40,300	53.4%
Arizona	342,900	324,700	94.6%	18,200	5.3%
Arkansas	190,400	173,000	90.8%	17,400	9.1%
California	2,165,100	1,008,500	46.5%	1,156,600	53.4%
Colorado	488,300	144,700	29.6%	343,600	70.3%
Connecticut	263,200	192,700	73.2%	70,500	26.7%
Delaware	64,200	62,100	96.7%	2,100	3.2%
District of Columbia	81,900	66,400	81.0%	15,500	18.9%
Florida	1,121,800	992,900	88.5%	128,900	11.4%
Georgia	663,100	475,000	71.6%	188,100	28.3%
Hawaii	106,500	82,500	77.4%	24,000	22.5%
Idaho	153,200	146,500	95.6%	6,700	4.3%
Illinois	924,700	509,500	55.0%	415,200	44.9%
Indiana	484,900	432,200	89.1%	52,700	10.8%
Iowa	298,900	270,900	90.6%	28,000	9.3%
Kansas	293,700	272,200	92.6%	21,500	7.3%
Kentucky	351,200	261,500	74.4%	89,700	25.5%
Louisiana	282,900	76,200	26.9%	206,700	73.0%
Maine	97,800	53,900	55.1%	43,900	44.8%
Maryland	526,900	495,600	94.0%	31,300	5.9%
Massachusetts	515,400	15,200	2.9%	500,200	97.0%
Michigan	643,000	569,900	88.6%	73,100	11.3%
Minnesota	468,600	436,600	93.1%	32,000	6.8%
Mississippi	245,700	228,800	93.1%	16,900	6.8%
Missouri	445,300	339,800	76.3%	105,500	23.6%
Montana	96,600	87,900	90.9%	8,700	9.0%
Nebraska	151,700	145,600	95.9%	6,100	4.0%
Nevada	167,400	21,000	12.5%	146,400	87.4%
New Hampshire	98,600	87,000	88.2%	11,600	11.7%
New Jersey	643,400	584,600	90.8%	58,800	9.1%

	State and Local Government Employees	Covered Workers: State and Local Government Employees *With* Social Security Coverage		Noncovered Workers: State and Local Government Employees *Without* Social Security Coverage	
State	**Number**	**Number**	**Percentage**	**Number**	**Percentage**
New Mexico	202,100	181,800	89.9%	20,300	10.0%
New York	1,727,400	1,654,800	95.7%	72,600	4.2%
North Carolina	658,400	610,900	92.7%	47,500	7.2%
North Dakota	82,300	73,900	89.7%	8,400	10.2%
Ohio	800,500	19,800	2.4%	780,700	97.5%
Oklahoma	249,900	238,000	95.2%	11,900	4.7%
Oregon	278,900	270,800	97.0%	8,100	2.9%
Pennsylvania	703,500	654,100	92.9%	49,400	7.0%
Puerto Rico	175,900	172,800	98.2%	3,100	1.7%
Rhode Island	49,300	43,500	88.2%	5,800	11.7%
South Carolina	304,900	283,200	92.8%	21,700	7.1%
South Dakota	84,800	78,900	93.0%	5,900	6.9%
Tennessee	477,600	435,300	91.1%	42,300	8.8%
Texas	2,095,600	987,300	47.1%	1,108,300	52.8%
Utah	285,300	256,800	90.0%	28,500	9.9%
Vermont	42,400	(X)	(X)	(X)	(X)
Virginia	704,100	657,300	93.3%	46,800	6.6%
Washington	552,600	509,800	92.2%	42,800	7.7%
West Virginia	112,700	104,400	92.6%	8,300	7.3%
Wisconsin	426,300	373,700	87.6%	52,600	12.3%
Wyoming	77,800	72,700	93.4%	5,100	6.5%
Other[a]	9,100	(X)	(X)	(X)	(X)
Total	22,923,400	16,658,900	72.6%	6,264,500	27.3%

Source: Data from the Social Security Administration obtained by CRS in February 2026.

Notes: Percentages may not sum to 100% due to rounding. An (X) indicates that the value has been suppressed to prevent data disclosure.

a. Includes people employed by American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands.

Mandatory Coverage Proposals

Over the years, there have been proposals to make Social Security coverage mandatory for newly hired state and local government employees. Generally, such proposals are consistent with actions taken by Congress to expand Social Security (and Medicare) coverage. As outlined above, in 1983, Congress mandated Social Security coverage for newly hired *federal* employees, and Congress prohibited states from terminating coverage for state and local government employees once it had been elected. In 1986, Congress mandated Medicare coverage for newly hired state

and local government employees. In 1990, Congress mandated Social Security coverage for most state and local government employees who are not covered under public retirement systems.

Mandatory Social Security coverage for newly hired state and local government employees has been proposed in a variety of contexts, ranging from the recommendations of presidential commissions to legislation introduced by Members of Congress. In 2010, for example, President Barack Obama established the National Commission on Fiscal Responsibility and Reform.[59] The commission (also known as the "Fiscal Commission" or the "Simpson-Bowles Commission" after co-chairs Alan Simpson and Erskine Bowles) was directed to make recommendations to improve the nation's fiscal outlook. In its final report, the commission included a number of recommendations that would have had a direct effect on Social Security tax revenues and benefits. Among other provisions, the commission recommended that newly hired state and local government employees be covered under the Social Security system. The commission noted that, as states face prolonged fiscal challenges and an aging workforce, maintaining separate retirement systems outside of Social Security could pose risks for plan sponsors and participants. In the commission's view, mandatory Social Security coverage could mitigate these risks, as well as a potential future bailout risk for the federal government.[60]

In another example, Senator Bob Corker and Senator Lamar Alexander introduced the Fiscal Sustainability Act of 2013 (S. 11, 113th Congress). Among other provisions, the legislation would have made Social Security coverage mandatory for newly hired state and local government employees starting in 2021. There was no congressional action on the measure.

Issues Surrounding Mandatory Coverage

Proposals to mandate Social Security coverage for newly hired state and local government employees have been part of the Social Security policy debate for years. Such proposals draw strong support and opposition from stakeholders. There are a number of issues to consider with respect to mandatory coverage for newly hired state and local government employees. This section highlights some of the major issues:

- projected effect on the Social Security trust funds;
- projected effect on federal revenues;
- comparability of noncovered pensions and Social Security benefits;
- Social Security benefits for individuals with noncovered earnings;
- special considerations for certain occupational groups (such as police officers and firefighters);
- Social Security protections for workers and family members (disability insurance protection, portability, benefits for dependents and survivors, cost-of-living adjustments (COLAs), progressive benefit formula); and
- effect on state and local plans (administrative and cost issues, funding status of state and local plans).

[59] Executive Order 13531, "National Commission on Fiscal Responsibility and Reform," 75 *Federal Register* 7927, February 18, 2010, https://www.federalregister.gov/documents/2010/02/23/2010-3725/national-commission-on-fiscal-responsibility-and-reform.

[60] *The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform*, December 1, 2010, p. 52, https://www.ssa.gov/history/reports/ObamaFiscal/TheMomentofTruth12_1_2010.pdf.

Projected Effect on the Social Security Trust Funds

Under current law, the Social Security system is facing a projected funding shortfall. The Social Security trust funds are projected to be unable to pay full scheduled benefits in a timely manner in less than two decades. In its 2025 Annual Report, the Social Security Board of Trustees projects that, based on its intermediate assumptions, program costs will exceed income by about 28% on average over the next 75-year period.[61]

When considering Social Security policy changes, lawmakers take into account many factors, including the proposal's projected effect on the Social Security trust funds. SSA's Office of the Chief Actuary (OCACT) projects that mandatory Social Security coverage for newly hired state and local government employees would have a net positive effect on the Social Security trust funds on average over the next 75-year period. OCACT projects that the policy change would close 4% of the system's projected long-range funding shortfall (based on the intermediate assumptions of the 2025 Trustees Report).[62]

Projected Effect on Federal Revenues

Social Security operates with a trust fund financing mechanism. As required by law, the Social Security payroll taxes paid by covered workers and their employers are (1) *deposited* into the General Fund of the U.S. Treasury, where they are available for spending on general government operations, and (2) *credited* to the Social Security trust funds in the form of special-issue U.S. Treasury securities. The holdings of the Social Security trust funds represent the amount of money the U.S. Treasury's General Fund owes to the Social Security trust funds. There is no separate pool of cash set aside for Social Security purposes.[63]

Work that is not covered by Social Security represents foregone payroll tax revenues to the federal government. A Congressional Budget Office (CBO) report on options for reducing federal budget deficits includes the option of making Social Security coverage mandatory for state and local government employees hired after December 31, 2024. Revenue estimates for this option show that it would generate $148.8 billion in revenues over 10 years (FY2025-FY2034).[64] This option would have little effect on Social Security spending in the short-term because most state and local government employees who would be hired during this period would not begin receiving benefits for many years. Therefore, the estimates do not include any effects on outlays. However, beyond the 10-year window, an increase in Social Security spending would partly offset the additional revenues generated by newly covered state and local government employees.

Comparability of Noncovered Pensions and Social Security

To qualify as an alternative to Social Security, public retirement systems must provide noncovered workers with a minimum level of benefits. In general, they must provide retirement

[61] *The 2025 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds*, June18, 2025, https://www.ssa.gov/OACT/TR/2025/index.html. See Table IV.B5 (page 75) for the projected difference between the summarized income rate and summarized cost rate for OASDI under the intermediate assumptions for the period 2025-2099. For more information on the projected financial outlook for the Social Security program, see CRS In Focus IF10522, *Social Security's Funding Shortfall*.

[62] OCACT, Proposed Provision F1: Starting in 2026, Cover Newly Hired State and Local Government Employees, https://www.ssa.gov/OACT/solvency/provisions/charts/chart_run444.html.

[63] For more information, see CRS In Focus IF10564, *Social Security Trust Fund Investment Practices*.

[64] CBO, *Options for Reducing the Deficit: 2025 to 2034*, December 2024, https://www.cbo.gov/system/files/2024-12/60557-budget-options.pdf.

benefits that are comparable to Social Security retirement benefits. To help plans determine if they are in compliance with the minimum standards needed to qualify as an alternative to Social Security, the IRS has established safe harbor provisions (design parameters) for defined benefit plans and defined contribution plans. Safe harbor designs are outlined in IRS Employment Tax Regulations and IRS Revenue Procedure 91-40.[65]

A 2021 study by the Center for Retirement Research at Boston College (CRR) looked at whether state and local pension plans currently satisfy these standards, given that many public pensions have grown less generous in recent years and a few plans could exhaust their assets.[66] The CRR researchers used Social Security coverage data from surveys of plan administrators and benefit data from plan actuarial valuation reports. Based on the 12 states in the sample, the CRR study found that virtually all plans satisfy the safe harbor requirements and that participation in a safe harbor plan produces about the same level of benefits at age 67 as Social Security.[67]

The CRR researchers also compared the value of *lifetime* benefits. They looked at whether state and local pension plans for noncovered employees provide Social Security–equivalent resources throughout retirement, given differences in public pensions and Social Security that affect lifetime retirement resources. For example, the CRR researchers point out that state and local plans often set long vesting periods[68] and are increasingly unlikely to grant full COLAs after retirement. On the other hand, they allow members to collect full benefits at much younger ages than Social Security.[69]

Accounting for those differences, the CRR study found that "a significant portion of noncovered state and local plans fall short of Social Security for some of their members, with the extent of the shortfall depending on workers' characteristics and specific benefit plan designs. Moreover, underfunding and the possibility of a few plans exhausting their trust fund assets reinforce the findings regarding benefit generosity."[70] At the same time, the study acknowledges that Social Security also faces projected funding shortfalls, which can complicate comparisons of benefit generosity. With respect to ensuring Social Security–equivalent protections for all state and local government employees, the CRR researchers note that one option would be to update the safe

[65] See Section 31.3121(b)(7)-2(e) of the IRS Employment Tax Regulations at https://www.ecfr.gov/current/title-26/chapter-I/subchapter-C/part-31/subpart-B/subject-group-ECFR996050e2e4c4937/section-31.3121(b)(7)-2#p-31.3121(b)(7)-2(e). See IRS Revenue Procedure 91-40 at https://www.ssa.gov/slge/revenue_procedure_91-40.htm. For example, IRS Revenue Procedure 91-40 outlines a set of safe harbor formulas for defined benefit retirement systems. Benefits calculated under one of these formulas are deemed to meet the minimum retirement benefit requirement. In addition, procedures are set out by which an employer may determine whether retirement benefits calculated under other formulas meet the minimum retirement benefit requirement of the regulations with respect to an employee.

[66] Laura D. Quinby, Jean-Pierre Aubry, and Alicia H. Munnell, "Do Public Workers Without Social Security Get Comparable Benefits?," CRR, April 2021, https://crr.bc.edu/briefs/do-public-workers-without-social-security-get-comparable-benefits/. The analysis and findings discussed in this CRR brief are in relation to new hires in defined benefit plans. Most state and local government employees are covered by traditional defined benefit plans.

[67] Quinby, Aubry, and Munnell, "Do Public Workers Without Social Security Get Comparable Benefits?," p. 2.

[68] A vesting period is the minimum period an employee is required to work to be eligible for a future retirement benefit.

[69] Quinby, Aubry, and Munnell, "Do Public Workers Without Social Security Get Comparable Benefits?," p. 4.

[70] Quinby, Aubry, and Munnell, "Do Public Workers Without Social Security Get Comparable Benefits?," p. 4. CRR published another two related studies thereafter. One study found that medium-tenure workers (6 to 20 years of tenure) who spent the early part of their career in noncovered government employment were at most risk, representing about 16% of noncovered public workers (or between 750,000 to 1 million annually). See Jean-Pierre Aubry et al., "What Share of Noncovered Public Employees Will Earn Benefits that Fall Short of Social Security?," CRR, April 2022, https://crr.bc.edu/wp-content/uploads/2022/04/wp_2022-4.pdf. The other study using four different datasets found that around one-third of noncovered workers fell into the medium-tenure group. See Jean-Pierre Aubry et al., "How Many Public Workers Without Social Security Could Fall Short?," CRR, April 2022, https://crr.bc.edu/wp-content/uploads/2022/03/SLP82.pdf.

harbor requirements for defined benefit plans to specify "reasonable" vesting periods and provide full COLAs. Another option would be to bring all state and local government employees into the Social Security system.[71]

Social Security Benefits for Individuals with Noncovered Earnings

The current-law Social Security benefit formula may provide unintended overgenerous benefits to individuals who had earnings from jobs not covered under Social Security. Workers with limited Social Security-covered earnings but substantial noncovered earnings usually (1) qualify for a pension based on noncovered earnings (also known as a *noncovered pension*) and (2) appear to be low earners or dependents (e.g., spouses or widow[er]s) under the Social Security system. (Noncovered earnings are shown as zeros in Social Security-covered earnings records.) Because the Social Security benefit formula is progressive, it can provide likely unintended overgenerous benefits to many workers who have substantial noncovered earnings.

In the past, the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO) were two separate provisions that intended to approximately remove these "overgenerous" benefits to beneficiaries who were also entitled to a noncovered pension. That is, the provisions were designed to place Social Security beneficiaries who had some noncovered earnings in approximately the same position they would have been in had all their earnings been covered by the program. Beginning in January 2024, the WEP and GPO reductions are no longer applied to Social Security benefits.[72] Approximately two-thirds of WEP and GPO cases involved former state and local government employees.[73] Mandatory Social Security coverage for newly hired state and local government employees would eventually eliminate these benefit advantages.

Windfall Elimination Provision (WEP) and Government Pension Offset (GPO)

The Social Security program used to include two provisions that affected beneficiaries who received pensions from work that was not covered by Social Security: the WEP and GPO. These provisions were enacted by Congress to address equity issues created by the exclusion of workers from Social Security coverage (e.g., some state and local government employees). The WEP, which was enacted in 1983, affected the Social Security benefits that a person received based on his or her own work record (as a retired or disabled worker) as well as the benefits paid to his or her eligible family members. The GPO, which was enacted in 1977 and modified in 1983, affected the Social Security benefits that a person received as the spouse or surviving spouse of a Social Security-covered worker.[74] The Social Security Fairness Act of 2023 (SSFA, P.L. 118-273), signed into law on January 5, 2025, repealed both provisions for monthly benefits payable after December 2023.

From 1984 to 2023, the WEP reduced Social Security benefits of certain retired or disabled workers (and their family members) who were also entitled to pension benefits based on earnings from noncovered jobs (including certain foreign pensions). The Social Security benefit formula is intended to help workers who spend their careers in low-paying jobs by providing them with relatively higher benefits in relation to their career-average earnings in covered employment than the benefits for workers with high career-average earnings. However, the formula could not differentiate between those who worked in low-paid jobs throughout their careers and other workers who appeared to have been low paid because they worked many years in jobs not covered by Social Security. The

[71] Quinby, Aubry, and Munnell, "Do Public Workers Without Social Security Get Comparable Benefits?," p. 5.

[72] See CRS In Focus IF12890, *The Social Security Fairness Act of 2023*.

[73] The remaining one-third of WEP and GPO cases were mainly for federal civilian employees who were first hired before 1984. See Glenn R. Springstead, "The Social Security Windfall Elimination Provision: Issues and Replacement Alternatives," *Social Security Bulletin*, vol. 79, no. 3 (August 2019), pp. 1-19, https://www.ssa.gov/policy/docs/ssb/v79n3/.

[74] The WEP was enacted as part of the Social Security Amendments of 1983 (P.L. 98-21). The GPO was enacted as part of the Social Security Amendments of 1977 (P.L. 95-216) and modified as part of the Social Security Amendments of 1983 (P.L. 98-21).

WEP was aimed to remove this windfall that these latter beneficiaries would otherwise have received from Social Security.

From 1977 to 2023, the GPO adjusted the Social Security spousal or widow(er) benefits of most people who also received federal, state, or local government pensions based on earnings not covered by Social Security. The GPO was intended to replicate the dual entitlement rule for beneficiaries whose entire careers were covered by the program. Under the dual entitlement rule, a person's Social Security spousal or widow(er) benefit is reduced by the amount of his or her own Social Security retired- or disabled-worker benefit (i.e., a 100% offset). The GPO reduced certain individuals' Social Security spousal or widow(er) benefits by two-thirds of their noncovered government pensions (i.e., a 67% offset). The GPO was designed to place spouses and widow(er)s who received noncovered government pensions in approximately the same position as spouses and widow(er)s whose entire careers were covered by Social Security.

Supporters of the WEP and GPO said that the provisions were reasonable means to prevent overgenerous benefits to certain people due to their noncovered employment. However, critics pointed out that these provisions were not well understood. They argued that many people affected by the provisions were unprepared for smaller Social Security benefits than they had expected in making retirement plans. They further pointed out that affected individuals considered the provisions to be unfair and somewhat arbitrary with respect to how the benefit reductions were computed. Before the passage of the SSFA, lawmakers regularly introduced legislation to repeal or modify these provisions.[75]

Special Considerations for Certain Occupational Groups

Under the Social Security program, reduced retirement benefits are first payable at age 62. Full (unreduced) retirement benefits are first payable at the full retirement age (age 67 for most current workers). In addition, Social Security retirement benefits are computed using the worker's highest 35 years of wage-indexed earnings in covered employment. If a worker has fewer than 35 years in covered employment, zero earnings are counted in the benefit computation for the "missing" years, resulting in lower base monthly benefits.[76]

Unlike Social Security, some public pension plans have eligibility rules and other design features that are tailored to workers in certain occupations—such as police officers and firefighters—to reflect the circumstances of those occupations, including rigorous physical demands and higher disability rates. Public pension plans for police officers and firefighters, for example, typically provide full pension benefits at younger ages and with fewer years of service compared to other public pension plans and Social Security.

Critics of mandatory coverage for newly hired state and local government employees maintain that such differences could present challenges with respect to integrating public pensions with Social Security. They point out that, while Social Security may provide enhanced benefit protections for some state and local government employees, certain groups may be better off in separate retirement systems (i.e., outside of Social Security).

This view was reflected in the 1950s when Congress extended voluntary coverage to state and local government employees already covered under retirement systems as part of the Social Security Amendments of 1954 (P.L. 83-761). In 1954, police officers and firefighters covered under retirement systems were explicitly excluded from voluntary Social Security coverage at the request of various police and firefighter organizations throughout the country. The 1954 Senate report on the legislation states:

> The bill continues the present exclusion of policemen and firemen who are covered by a State or local retirement system. Policemen and firemen, because of the special demands made by their work, usually have special provisions in their retirement systems (retirement

[75] See CRS Insight IN12451, *The Social Security Fairness Act of 2023 (H.R. 82): Background for Congress*.

[76] For more information, see CRS Report R42035, *Social Security Primer*.

> at age 50 or 55, for example) and most of them believe that it would be unwise to attempt to coordinate these provisions with the provisions of the old-age and survivors insurance system.[77]

Similarly, during House floor debate on the legislation, Representative Jere Cooper addressed a question about why police officers and firefighters were excluded from voluntary Social Security coverage by the House Ways and Means Committee. Representative Cooper replied:

> The firemen and policemen requested to be left out.... The very nature of their employment is such that they do not continue as firemen and policemen until they are 65 in many cases and in many instances it was pointed out that they have retirement systems of their own which they prefer and they requested to be left out.[78]

With respect to occupational groups that may require special considerations, the integration of newly hired *federal* employees into Social Security in the 1980s can provide a relevant example.

FERS Accommodations for Certain Occupational Groups

The Federal Employees' Retirement System (FERS) can serve as an example of how to integrate an existing public pension plan tailored to workers in certain occupations with Social Security, given differences in eligibility requirements (such as retirement age and years of service) and other plan features.

In 1983, Congress mandated Social Security coverage for federal employees hired January 1, 1984, or later. At the time, federal employees were covered under CSRS, which does not have a Social Security component. FERS was created as a separate retirement system for federal employees hired in 1984 or later, and it includes Social Security as one of three components: the FERS basic retirement annuity and the FERS supplement; Social Security; and the Thrift Savings Plan.[79]

Under FERS, certain categories of workers—including federal law enforcement officers, federal firefighters, and air traffic controllers—are permitted to retire earlier and accrue pension benefits at higher rates than regular civilian federal employees.[80] Law enforcement personnel, for example, can retire at age 50 with 20 years of service or at any age with 25 years of service.[81]

FERS also provides a temporary supplemental benefit (the FERS supplement) for workers who retire from federal service before age 62 (i.e., before they become eligible for permanently reduced Social Security retirement benefits). The FERS supplement is available to regular civilian federal employees who retire at (1) age 55 or older with 30 or more years of service, or (2) age 60 with 20 or more years of service. Workers in certain occupational groups are eligible for the supplement at earlier ages. The supplement is available to federal law enforcement officers, federal firefighters, and air traffic controllers who retire at age 50 or older with 20 or more years of service. The FERS supplement is equal to the worker's estimated Social Security

[77] U.S. Congress, Senate Committee on Finance, *Social Security Amendments of 1954*, report to accompany H.R. 9366, 83rd Cong., 2nd sess., July 27, 1954, S. Rept. 1987, p. 6.

[78] House debate, *Congressional Record*, vol. 100, part 6 (June 1, 1954), p. 7433.

[79] For more information, see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*.

[80] CSRS also incorporates special rules for certain categories of workers, including federal law enforcement personnel.

[81] Law enforcement personnel are subject to mandatory retirement at age 57 or as soon as 20 years of service have been completed after age 57. See 5 U.S.C. §8335(b) for CSRS and 5 U.S.C. §8425(b) for FERS.

benefit based on his or her federal government employment. It is payable only up to age 62, regardless of whether the person claims Social Security benefits.[82]

The accommodations under FERS for federal employees in certain occupational groups can provide an *example* of how state and local pension plans tailored to certain occupational groups could be integrated with Social Security. For any given coverage group, the effect on participants would depend on the design features of the new or modified plan that incorporates a Social Security component relative to the design features of the existing plan.

Protections for Workers and Family Members

Mandatory Social Security coverage for newly hired state and local government employees could simplify retirement planning and benefit coordination for workers who divide their careers between covered and noncovered employment. In addition, it would prevent gaps in Social Security or pension coverage, resulting in better retirement, survivor, and disability insurance protections for workers who move between covered and noncovered positions. The following sections highlight some of the protections provided by Social Security for workers and family members that are generally not available under state and local pension plans.

Disability Insurance Protection

Workers who move between jobs covered by Social Security and noncovered positions can experience gaps in disability protection. To be eligible for Social Security disability benefits, among other requirements, a worker must meet a *duration work test* (to show a sufficient connection to covered employment for fully insured status) and a *recent work test* (to show a recent connection to covered employment). Under both tests, the requirements vary depending on the worker's age.[83] Under the duration work test, for example, workers who become disabled at age 42 or later generally need five years or more of covered employment. Under the recent work test, for example, workers aged 31 or older must generally have worked in covered employment for at least five years in the 10-year period immediately before becoming disabled.

When a young worker leaves covered employment and moves to a noncovered state or local government position, his or her insured status under Social Security may lapse. It may take five years or more to become insured under the public pension plan, resulting in a period with no disability insurance protection. Similarly, when a worker leaves a noncovered state or local government position and moves to a job covered by Social Security, he or she may have to wait five years or more before gaining insured status under the Social Security program.[84]

Portability

Most jobs in the United States are covered by Social Security. When a worker moves from one covered job to another, he or she continues (1) to accrue Social Security quarters of coverage needed to gain insured status under the program and (2) to build upon an earnings record that determines the amount of future benefits. The portability of Social Security allows workers to maintain coverage under the system as they switch jobs throughout their careers. In addition, a

[82] For more information on special rules that apply to federal law enforcement officers, federal firefighters, and air traffic controllers under CSRS and FERS, see CRS Report R42631, *Retirement Benefits for Federal Law Enforcement Personnel*.

[83] SSA, Number of Credits Needed for Disability Benefits, https://www.ssa.gov/benefits/retirement/planner/credits.html#h3. For more information, see CRS In Focus IF10506, *Social Security Disability Insurance (SSDI)*.

[84] Munnell, Aubry, and Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," pp. 7-8.

worker's earnings (up to age 60) are indexed to wage growth as part of the benefit computation process. Indexing past earnings to wage growth allows Social Security benefits to reflect the general rise in the standard of living that occurred during the person's working years.

By contrast, the portability of state and local defined benefit plans is usually limited to positions within the same public pension system. Benefits are generally based on some measure of final salary and years of service. A worker who changes jobs frequently may not stay in a state or local government position long enough to become vested in the pension plan. For workers who do stay long enough to qualify for benefits in the future, benefits are generally based on the worker's earnings when he or she left the job. Many plans do not index earnings as part of the benefit computation process (i.e., earnings are counted at face value). This can result in substantially lower benefits for a worker who leaves the job years before claiming benefits.[85]

Benefits for Dependents and Survivors

Generally, Social Security provides better benefit protections for the worker's dependents and survivors (including children and spouses) compared to state and local pension plans. For example, Social Security provides a spousal benefit equal to 50% of the worker's basic monthly benefit (the worker's PIA), subject to adjustment based on the spouse's age when claiming benefits and other applicable factors. Spousal benefits are payable to the worker's current spouse and to any former (divorced) spouses who meet the eligibility requirements. Benefits paid to current and/or former spouses do not affect the worker's monthly benefit amount. In addition, Social Security provides a widow(er) benefit equal to 100% of the deceased worker's PIA, subject to any applicable adjustments. Widow(er) benefits are payable to the deceased worker's surviving spouse and to any former surviving spouses who meet the eligibility requirements.[86]

State and local pension plans generally do not provide comparable benefits for dependents and survivors. For example, most state and local pension plans do not provide benefits for the spouse of a retired worker while the worker is alive. In addition, most plans provide only modest benefits to a surviving spouse when the worker dies before retirement (such as a refund of the worker's contributions or a lump sum, whichever is greater). When the worker dies after retirement, benefits are provided for a surviving spouse only if the worker chooses a joint-and-survivor annuity option. A joint-and-survivor annuity is payable for the lifetime of the worker or the worker's spouse, whichever is longer. Generally, the worker accepts lower payments under this option because payments continue for a longer period.[87]

Cost-of-Living Adjustments (COLAs)

Generally, Social Security provides better inflation protection compared to state and local pension plans. Social Security provides an automatic, annual COLA based on the change in prices measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). COLAs are based on a formula specified in the Social Security Act and are not subject to a cap. Automatic annual COLAs help Social Security benefits maintain their purchasing power over time.[88]

---

[85] Munnell, Aubry, and Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," p. 8.

[86] For more information on Social Security benefits for the worker's dependents and survivors, including basic eligibility requirements, see Table 3 (Social Security Benefits for the Worker's Family Members) in CRS Report R42035, *Social Security Primer*.

[87] Munnell, Aubry, and Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," p. 8.

[88] For more information, see CRS Report 94-803, *Social Security: Cost-of-Living Adjustments*.

State and local pension plans generally provide some cost-of-living adjustments, and plans that operate outside of the Social Security system tend to have greater inflation protection. In some cases, however, COLAs may be provided on an ad hoc basis or they may be subject to a cap.[89]

Progressive Benefit Formula

The Social Security benefit formula has a progressive structure in which lower-wage workers receive a higher *replacement rate* from Social Security compared to higher-wage workers, meaning that their initial monthly Social Security benefits replace a higher percentage of their pre-retirement earnings. For higher-wage workers, initial monthly Social Security benefits replace a lower percentage of their pre-retirement earnings. With its progressive benefit structure, Social Security redistributes income from workers with higher career-average earnings to workers with lower career-average earnings.[90]

Most state and local government employees are covered by traditional defined benefit plans. Under defined benefit plans, an employee's benefits are based on a formula that generally takes into account the employee's salary, years of service, and an accrual rate (benefit multiplier). While the specific benefit formula will vary by plan, the benefit formula in traditional defined benefit plans does not have redistributive features.

An individual's earning level could be considered an additional factor in the degree to which mandatory Social Security coverage could provide enhanced benefit protections for noncovered workers and their family members. With its progressive benefit structure, Social Security could be particularly advantageous for noncovered workers with lower earnings.

Net Effect on Total Benefits

Mandatory Social Security coverage for newly hired state and local government employees could improve protections for workers and their family members. Specific outcomes would depend on a variety of factors, including how state and local governments would modify existing public pension plans in response to the mandate. For example, state and local governments could reduce some pension benefits that are currently available under state and local plans to keep overall pension costs down. Workers could also be required to pay higher contributions under a new or modified plan that incorporates a Social Security component. In addition, Congress could enact changes to Social Security's contribution and benefit structure to address the system's projected funding shortfall and other policy objectives. Such changes could result in higher payroll taxes and lower benefits for Social Security–covered workers compared to current law. The net effect on a worker's total benefits would depend on a variety of factors, many of which remain to be determined, and specific outcomes would vary across state and local plans depending on the response of plan sponsors.

[89] Munnell, Aubry, and Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," pp. 8-9. There is wide variation in the design of COLA provisions in state and local pension plans. For more information, including a description of COLA provisions in selected state retirement plans, see National Association of State Retirement Administrators, "Cost-of-Living Adjustments," June 2021, https://www.nasra.org/files/Issue%20Briefs/NASRACOLA%20Brief.pdf.

[90] For more information, see CRS In Focus IF11747, *Social Security: Benefit Calculation Overview*.

Effect on State and Local Plans

Most state and local governments offer a traditional defined benefit plan for their employees.[91] If Congress were to mandate Social Security coverage for newly hired state and local government employees, it is not clear how plan sponsors would respond to the mandate. For example, state and local governments could move away from defined benefit plans toward defined contribution plans, thereby shifting the financial risk from the employer to the employee.[92] When newly hired federal employees were mandatorily covered by Social Security in the 1980s, the federal government closed the existing federal retirement system (CSRS, a defined benefit plan) to new participants and created a new federal retirement system (FERS) that has both defined benefit and defined contribution components. FERS has three elements: (1) the FERS basic retirement annuity and the FERS supplement; (2) Social Security; and (3) the Thrift Savings Plan.

If Congress were to mandate Social Security coverage for newly hired state and local government employees, the basic options for state and local governments would include (1) maintaining the current pension structure for newly hired employees, (2) providing a different (presumably lower) benefit structure for newly hired employees within an existing pension plan, (3) closing the existing pension plan to new participants (making it a "closed system") and creating a new pension plan for newly hired employees with a different (presumably lower) benefit structure, and (4) eliminating pension benefits (apart from Social Security) for newly hired employees.

State and local governments would have to decide what pension benefits to offer newly hired employees who would be covered by Social Security. Generally, some of the changes that states and localities might consider include changes to the defined benefit formula (such as counting more years in the calculation of the worker's final average salary and lowering the accrual rate), altering early retirement benefits, creating defined contribution plans, or creating hybrid plans that offer a combination of defined benefit and defined contribution pension benefits. The amount of contributions that employers and employees would be required to pay under the new arrangements would have to be determined. It could take several years to determine and fully implement the changes.

"Closed System" Option

The "closed system" option referenced above—closing the existing pension plan to new participants (i.e., contributors) and creating a new pension plan for newly hired employees—may raise funding concerns for the existing pension plan. The resulting decrease in contributions could add financial strain to pension systems that are currently underfunded and do not have sufficient assets on hand. For example, a plan that is underfunded and ceases to have new participants will find that plan assets will have been used up and that some benefits for some participants do not have a funding source. Sponsors of pension plans that are not fully funded would have to eventually make up for the funding shortfalls that exist within their plans.

Potential sources of funding to make up for shortfalls include state or local general revenues, increased contributions from current employees, and greater returns on pension plan investments. Currently, many states and localities are facing revenue shortfalls and may be reluctant to set

[91] See Board of Governors of the Federal Reserve System, "State and Local Pension Funding Status and Ratios by State, 2002 – 2022," December 20, 2024, https://www.federalreserve.gov/releases/z1/dataviz/pension/comparative_view/line_chart/.

[92] Defined benefit plans guarantee a monthly benefit in retirement for life. In defined contribution plans, employees use the funds in their accounts as a source of income in retirement. Defined contribution plans do not provide guarantees of lifetime income unless participants purchase an annuity. In any case, these plans do not guarantee a certain level of account assets or monthly annuity payable from the account.

aside funds to cover pension benefits payable several years in the future. It may be difficult or impossible to require increased employee contributions from current employees. Pension plan sponsors may be tempted to increase the riskiness of their investments to capture market gains. However, in the event of a market downturn, riskier pension fund investments would lose value, worsening the situation.

As an example from the federal government, CSRS is a closed system, and FERS is open to new participants. FERS annuities are fully funded by the sum of employee and employer contributions and interest earned by the Treasury bonds held by the Civil Service Retirement and Disability Fund (CSRDF). The federal government makes supplemental payments into the CSRDF on behalf of employees covered by CSRS, because employee and agency contributions and interest earnings do not meet the full cost of the benefits earned by employees covered by that system.[93]

Administrative and Cost Issues

State and local governments would have to negotiate with employee representatives and legislatures on the redesign of existing retirement systems in response to a Social Security coverage mandate. When Congress mandated Social Security coverage for newly hired federal employees in the 1980s, it took three years to establish a new federal retirement system (FERS) for affected employees.[94] The General Accounting Office (now the Government Accountability Office) has suggested that four years might be required to complete negotiations among employee representatives and legislatures on adapting existing plans to Social Security coverage.[95]

Some argue that a Social Security coverage mandate would impose ongoing administrative burdens and costs on state and local governments. For example, state and local governments would potentially have to administer existing retirement systems that operate outside of Social Security alongside new retirement systems for employees required to participate in the program. For example, when Social Security coverage was mandated for federal employees hired in 1984 or later, Congress created a new retirement system (FERS). The federal government administers the existing retirement system (CSRS) and the related CSRS offset program alongside FERS. The federal government will continue to operate CSRS and the CSRS offset program until the death of the last worker or survivor covered under the program, which the U.S. Office of Personnel Management estimates will occur around 2090.[96]

The congressional mandate to make Social Security coverage mandatory for newly hired *federal* employees affected one major pension system. By comparison, a coverage mandate for newly hired state and local government employees could affect many public pension plans within a state. The number of public pension plans in a state can vary considerably, as does the extent of Social Security coverage among state and local government employees under current law. Among the states, the share of state and local government employees *with* Social Security coverage ranged from 2% to 98% in 2023. In 27 states and Puerto Rico, 90.0% or more of state and local government employees had Social Security coverage. In eight states, fewer than 50.0% of state and local government employees had Social Security coverage. In some states, a coverage

[93] For more information, see CRS Report RL30023, *Federal Employees' Retirement System: Budget and Trust Fund Issues*.

[94] Congress enacted the mandatory coverage provision in April 1983, effective for federal employees hired January 1, 1984, or later. Congress enacted the Federal Employees' Retirement System Act of 1986 (P.L. 99-335) in June 1986.

[95] GAO, *Social Security: Implications of Extending Mandatory Coverage to State and Local Employees*, GAO/HEHS 98-196, August 1998, http://www.gao.gov/archive/1998/he98196.pdf.

[96] For more information, see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*.

mandate could affect many public pension plans with different plan sponsors and different plan features.

In addition, state and local governments could experience higher costs associated with employer contributions under the new pension plans integrated with Social Security. Overall costs to state and local governments and their employees could increase, decrease, or remain the same depending on the type of pension benefit structure states and localities adopt in response to mandatory participation in Social Security. Factors affecting potential costs include the 6.2% Social Security payroll tax that employers and employees would each be required to pay (for a combined 12.4% Social Security payroll tax) and the amount of other employer and employee contributions required under the plans.

One study on the impact of mandatory Social Security coverage on state and local budgets points out that cost is the main reason public employers and employees oppose mandatory coverage. The study states:

> While virtually all recent proposals to extend coverage apply only to new hires, opponents recognize that once the transition is complete state and local governments would face the full impact of the cost. Lost in the fervor is the notion that any increase in ultimate cost of the combined Social Security/public pension system depends crucially on how plan sponsors respond to the introduction of Social Security.[97]

Funding Status of State and Local Plans

Many state and local government employers and employees oppose mandatory Social Security coverage based on concerns that mandatory coverage could increase pension system costs significantly at a time when many state and local pension systems are underfunded. When a plan is underfunded, the value of the plan's assets is less than accrued pension liabilities for current workers and retirees. Recent analysis by CRR on the current funded status of public pension plans found that the aggregate actuarial funded ratio increased by 2 percentage points from 73% in FY2020 to 75% in FY2021 (based on their projections). The aggregate actuarial funded ratio is the aggregate ratio of assets to liabilities for all public pension plans analyzed in the study. Despite the projected improvement, the CRR researchers point out that the funded ratio in 2021 is still about 1 percentage point below levels reported more than a decade ago in 2010.[98] In 2024, the Federal Reserve published data on the funding status and funded ratios for state and local defined benefit pension plans from 2002 to 2022. In 2022, funded ratios varied widely by state, ranging from 34% in New Jersey to 99% in Wisconsin. Overall, the aggregate funded ratio was about 62% in 2022—approximately five percentage points lower than in 2007, the year before the Great Recession began.[99]

Another recent study on state and local government pension plans describes the funding status of state and local plans as follows:

> Before 2001, nearly all public-sector pension plans were fully funded, according to the Governmental Accounting Standards Board (GASB). Specifically, nearly all plans were projected to have sufficient assets to cover plan liabilities, assuming an 8 percent investment return. By 2013, however, almost every plan reported significant underfunding.

[97] Munnell, Aubry, and Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," p. 9.

[98] Jean-Pierre Aubry and Kevin Wandrei, "2021 Update: Public Plan Funding Improves as Workforce Declines," CRR, June 2021, https://crr.bc.edu/briefs/2021-update-public-plan-funding-improves-as-workforce-declines/.

[99] Board of Governors of the Federal Reserve System, "State and Local Pension Funding Status and Ratios by State, 2002 – 2022," December 20, 2024, https://www.federalreserve.gov/releases/z1/dataviz/pension/comparative_view/line_chart/.

> Two key factors drove the underfunding. The first affected the economy as a whole: financial crises occurred in 2001 and from 2007 to 2009, with the latter especially significant. The second factor was intrinsic to the plans themselves: insufficient contributions and overly optimistic actuarial assumptions.[100]

The study looked at recent pension reforms aimed at reducing pension costs. It focused on traditional defined benefit pensions in 14 states that employ a majority of noncovered state and local government employees. Specifically, the study looked at three design parameters commonly featured in pension reforms in recent years: the vesting period, the period used to calculate the worker's final average salary (the FAS period), and the accrual rate (benefit multiplier). The study found that as states have sought to reduce pension expenses, they have (1) tightened eligibility requirements by increasing vesting periods and (2) lowered benefits by increasing the FAS period and reducing the accrual rate used in the benefit formula. In addition, it found that the changes did not affect all categories of state and local government employees equally. For example, changes in the FAS period affected public safety workers and general government employees at the local level more than teachers.[101]

In the context of state and local plan underfunding, mandatory Social Security coverage for newly hired state and local government employees could be viewed unfavorably on the basis that it would place added administrative and cost burdens on state and local governments and their employees. Alternatively, as noted by the 2010 Fiscal Commission, it could be viewed as a way to mitigate risks for plan sponsors and employees. The commission further noted that it could mitigate potential future bailout risks for the federal government.[102]

From the worker's perspective, mandatory Social Security coverage could be viewed as providing an added level of benefit protection for people whose future noncovered pensions may be at risk. Unlike private-sector employers, state and local pension plans do not participate in a pension insurance system. Most private-sector employers participate in the Pension Benefit Guaranty Corporation (PBGC), which is a government-run insurance company that pays pension benefits to retirees in bankrupt private-sector pension plans.[103] State and local pension plans cannot transfer pension plan liabilities to a PBGC-like entity if they cannot pay benefits. Unlike private-sector employers, however, state and local governments can raise taxes or reduce spending in other areas to fund state and local pensions.

Overall Impact on State and Local Plans

If Congress were to mandate Social Security coverage for newly hired state and local government employees, the overall impact on state and local plans would depend on a variety of factors, many of which remain to be determined. For example, the specific design features of a new or modified pension plan with a Social Security component would affect costs. In addition, any future increases in Social Security payroll taxes enacted by Congress to address the system's projected funding shortfall would be a factor. The impact of mandatory Social Security coverage on state and local plans would vary depending on how plan sponsors would respond to the mandate.

---

[100] Glenn R. Springstead, "Vesting Requirements and Key Benefit-Formula Features of State and Local Government Pension Plans," *Social Security Bulletin*, vol. 81, no. 1 (February 2021), p. 5, https://www.ssa.gov/policy/docs/ssb/v81n1/index.html.

[101] Springstead, "Vesting Requirements and Key Benefit-Formula Features," p. 21.

[102] *The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform*, p. 52.

[103] For more information, see CRS In Focus IF10492, *An Overview of the Pension Benefit Guaranty Corporation (PBGC)*.

Key Points (Part II): Recap

Proposals to mandate Social Security coverage for newly hired state and local government employees are generally consistent with actions taken by Congress over the years to expand coverage. Some states would be more affected than others, as three states accounted for almost half of all noncovered state and local government employees. Arguments on both sides of the debate include:

- Supporters maintain that mandatory coverage would prevent gaps in Social Security or pension coverage, resulting in better retirement, survivor, and disability insurance protections for workers who move between covered and noncovered positions. In addition, compared to state and local pension plans in general, Social Security has features that are advantageous for the worker and eligible family members, such as better inflation protection, disability benefits, benefits for dependents and survivors, and a progressive benefit formula. Benefit protections provided by Social Security could be particularly important for noncovered workers in states and localities with underfunded pension plans and whose future pensions may be at risk.
- Opponents maintain that mandatory coverage could pose administrative and cost burdens on state and local governments and their employees at a time when many state and local pension systems are underfunded. They say it could also threaten or undermine existing retirement systems, particularly those tailored to workers in certain occupations. For example, public pension plans for police officers and firefighters typically provide full pension benefits at younger ages and with fewer years of service compared to other public pension plans and Social Security. In addition, plan sponsors could shift away from defined benefit plans toward defined contribution plans, thereby shifting risk from the employer to the employee.

The overall impact on state and local plans and the net effect on total benefits would vary across plans and across individuals depending on a variety of factors, such as how state and local governments would respond to a coverage mandate and any future legislative changes to Social Security.

Conclusion

Over the years, Congress has expanded Social Security coverage to include most workers in the United States, creating a nearly universal system. Unlike most employers, state and local governments are not required to participate in Social Security if they offer public retirement systems that meet certain requirements. For these workers, Social Security coverage is an option, not a requirement. While a majority of state and local government employees participate in Social Security (73% in 2023), a sizable segment of these workers are not covered by Social Security through their government employment (27% in 2023). Proposals to mandate coverage for newly hired state and local government employees have been part of the Social Security policy debate for years. There is strong support and opposition to such proposals for a variety of reasons.

For some, mandatory coverage of newly hired state and local government employees is a question of equity—in their view, noncovered state and local government employees should participate in Social Security given the program's role in keeping members of society out of poverty and the system's legacy costs. Some supporters argue that mandatory coverage would improve the financial status of the Social Security trust funds, have a net positive effect on federal revenues, and provide better benefit protections for workers and their family members. The benefit protections provided by Social Security could be particularly important for noncovered workers in states and localities with underfunded pension plans and whose future pensions may be at risk.

Opponents of mandatory coverage for newly hired state and local government employees maintain that it could pose administrative and cost burdens on state and local governments at a time when many state and local pension plans face funding issues. They maintain that a Social Security coverage mandate could threaten or undermine existing retirement systems, particularly those that are tailored to workers in certain occupations such as police officers and firefighters.

The overall impact on state and local plans and the net effect on total benefits would vary across plans and across individuals, depending on how state and local governments would respond to a coverage mandate and the relative differences between existing plans and new or modified plans

incorporating Social Security, among other factors. Any future legislative changes to Social Security payroll taxes and benefits would also be a factor.

Every state has a mix of state and local government employees with and without Social Security coverage, so every state would be affected by a Social Security coverage mandate. Some states would be affected to a larger degree than others given the variation in coverage rates among the states under current law. In 2023, the share of state and local government employees *with* Social Security coverage ranged from 2% to 98% among the states. Overall, eight states accounted for three-fourths (75%) of noncovered state and local government employees, and three states accounted for almost half (49%) of noncovered state and local government employees.

Additional Resources

The following resources are available on the website of the Social Security Administration:

- *State and Local Government Employers—Information*
  https://www.ssa.gov/slge/index.htm
- *Introduction to State and Local Coverage Handbook* in the Program Operations Manual System
  https://secure.ssa.gov/apps10/poms.nsf/lnx/1910000000

The following resources are available on the website of the Internal Revenue Service:

- *State and Local Government Employees Social Security and Medicare Coverage*
  https://www.irs.gov/government-entities/federal-state-local-governments/state-and-local-government-employees-social-security-and-medicare-coverage
- IRS Publication 963, *Federal-State Reference Guide*
  https://www.irs.gov/pub/irs-pdf/p963.pdf

Author Information

Zhe Li
Analyst in Social Policy

Acknowledgments

The original report was authored by former CRS Specialist Dawn Nuschler.

Disclaimer

GAO Highlights

FEDERAL DEBT MANAGEMENT

Treasury Is Meeting Borrowing Needs but the Deteriorating Fiscal Outlook Poses Risks

GAO-26-107529 March 2026

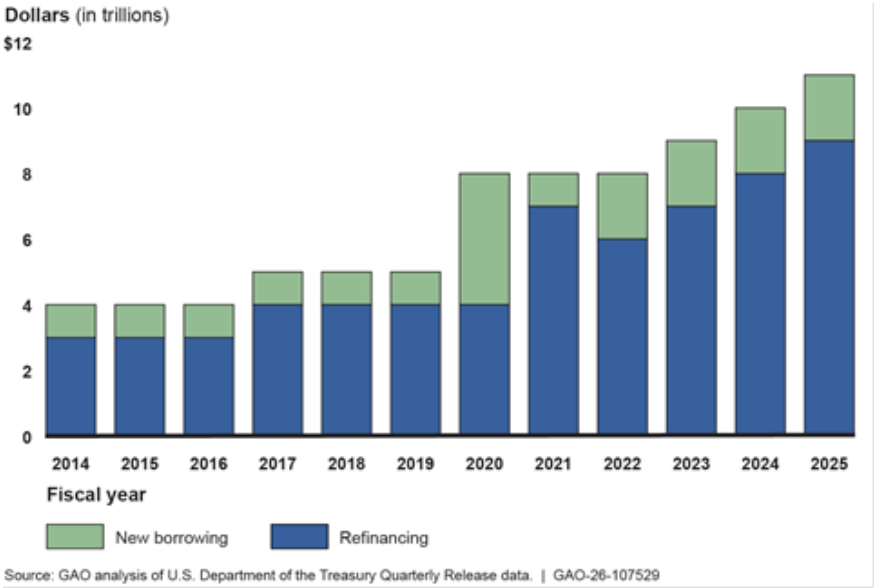
A report to the Chair of the Subcommittee on Oversight, Committee on Ways and Means, House of Representatives

For more information, contact: James R. McTigue, Jr. at mctiguej@gao.gov

What GAO Found

Since fiscal year 2014, the Department of the Treasury has increased the size and frequency of its debt auctions to finance persistent government deficits and refinance existing debt. In fiscal year 2025, Treasury held 444 auctions of bills, notes, and bonds to borrow $1.9 trillion for government operations and refinance $9.1 trillion of maturing debt. Treasury issues debt on a regular and predictable schedule to minimize investor uncertainty. It also uses other strategies to help keep borrowing costs lower than they might otherwise be.

New Borrowing and Refinancing of Treasury Securities, Fiscal Years 2014–2025



Source: GAO analysis of U.S. Department of the Treasury Quarterly Release data. | GAO-26-107529

Treasury auctions continue to attract sufficient demand from a variety of investors. As of September 30, 2025, domestic investment funds—such as money market funds, mutual funds, and hedge funds—were the largest buyers at auctions, followed by broker-dealers and foreign investors.

Treasury's debt management practices alone cannot address important risks that could reduce investor demand for Treasury securities and raise government borrowing costs. In some cases, Congress would need to take action to address the underlying causes of these risks.

- **Unsustainable federal debt levels** could cause investors to demand higher interest rates to compensate for increased risk—adding to growing federal interest costs.
- **Debt limit impasses** increase the risk of a government default, which would diminish the perception of Treasury securities as safe assets.
- **A potential diminished international role for the U.S. dollar** would weaken demand for Treasury securities among foreign investors that hold dollars as reserves, use them for global trade, or use them for other financial transactions.

Why GAO Did This Study

As of February 2026, debt held by the public was over $31 trillion. The Congressional Budget Office projects that federal deficits will average over $2 trillion annually through 2036, further adding to U.S. debt.

To finance federal borrowing, Treasury must sell large amounts of Treasury securities at auction. The interest rates that investors are willing to accept at these auctions determines the government's borrowing costs. Thus, Treasury's issuance decisions and auction results are important to monitor as Treasury seeks to borrow at the lowest cost over time.

GAO was asked to review Treasury's debt management practices. This report describes debt management challenges and assesses Treasury's strategies to manage them, describes changes in debt composition, auctions, and investor demand from fiscal years 2014 through 2025, and describes other debt management risks facing Treasury.

GAO analyzed Treasury data, reviewed Treasury documents and market analyses, and interviewed Treasury officials and market participants.

What GAO Recommends

GAO has previously recommended that Congress (1) have a strategy to address the nation's unsustainable fiscal path (GAO-20-561) and (2) replace the current debt limit process with an approach that clearly links decisions on debt to decisions on revenue and spending (GAO-15-476).

Addressing these risks would help ensure the continued broad-based demand for Treasury securities and support Treasury's goal of financing the government at the lowest cost over time. As of February 2026, Congress has not yet taken the recommended actions.

GAO Highlights

INTERNATIONAL COLLABORATION

U.S. Banking Agencies' Participation in Climate Risk Network

GAO-26-108020 March 2026

A report to congressional requesters.

For more information, contact: Michael E. Clements at clementsm@gao.gov

What GAO Found

The Network of Central Banks and Supervisors for Greening the Financial System (NGFS) is an international network of central banks and financial supervisors that works to address climate risk management in the financial sector. Its steering committee forms working groups, which in 2024 issued 19 publications, including updates to climate-scenario analyses and guidance on sustainable investment. NGFS is funded by voluntary, in-kind member contributions and external project support.

The Board of Governors of the Federal Reserve (Federal Reserve), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC) joined NGFS in 2020, 2021, and 2022, respectively, to better understand climate-related financial risks and collaborate internationally. They withdrew in 2025, generally citing (1) changed agency priorities, (2) a determination that continued participation was inconsistent with their statutory mandates to ensure safety and soundness of financial institutions, and (3) NGFS's increasing focus on broader environmental risks.

The banking agencies participated in NGFS meetings and working groups, responded to surveys, and reviewed draft publications. Costs related to NGFS participation were for staff time and did not include providing funding to NGFS, according to GAO's document review and interviews with officials. Officials reported that the agencies shared limited information with NGFS, did not provide nonpublic supervisory data or adopt NGFS recommendations, and retained records in accordance with agency retention policies. NGFS-related records are confidential and not disclosed, except as compelled by law, according to the NGFS charter.

Federal Reserve, FDIC, and OCC Participation in 2022–2024 NGFS Working Groups

		Federal Reserve	OCC	FDIC
Workstreams	Supervision	✓	✓	✓
	Scenario design and analysis	✓	✓	✓
	Monetary policy	✓		
	Net zero for central banks	✓		
Task forces	Adaptation			
	Capacity building and training		✓	✓
	Biodiversity loss and nature-related risks	✓	✓	✓
Expert networks	Legal	✓	✓	
	Research	✓	✓	
	Data	✓	✓	

Source: GAO analysis of Board of Governors of the Federal Reserve System (Federal Reserve), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and Network of Central Banks and Supervisors for Greening the Financial System (NGFS) information. | GAO-26-108020

Notes: The Workstream on Supervision incorporates climate-related risks within regulatory practices. The Workstream on Net Zero for Central Banks integrates sustainability into corporate operations. The Task Force on Adaptation promotes measures to respond to climate-related variables, which moderate harm or take advantage of opportunities.

Why GAO Did This Study

Established in 2017, NGFS serves as a forum for sharing best practices and conducting analysis on climate risk management in the financial sector. It has advocated for mobilizing capital for low-carbon investments. As of January 2026, it had 149 members from more than 92 countries.

GAO was asked to examine the banking agencies' membership in NGFS. This report describes why the Federal Reserve, OCC, and FDIC joined and later withdrew, and the extent to which the agencies participated in activities and shared information with NGFS while they were members.

GAO reviewed the NGFS charter, annual reports, and publications. GAO also reviewed agency documentation on NGFS membership, activities, and records retention policies. In addition, GAO reviewed written responses from NGFS and interviewed representatives from the three banking agencies, and three industry and climate change organizations.

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

Decision

Matter of: Commodity Futures Trading Commission—Applicability of the Congressional Review Act to Letter No. 25-14

File: B-337960

Date: April 9, 2026

DIGEST

On May 21, 2025, the Commodity Futures Trading Commission (CFTC) issued CFTC Letter No. 25-14, titled *RE: Staff Interpretation Regarding Certain Cross-Border Definitions* (CFTC Letter or Letter). The CFTC Letter provides a staff interpretation on the applicability of certain statutory and regulatory provisions to the entity that requested the Letter.

The Congressional Review Act (CRA) requires that before a rule can take effect, an agency must submit the rule to both the House of Representatives and the Senate, as well as the Comptroller General. CRA adopts the Administrative Procedure Act (APA) definition of a rule and therefore does not cover those types of agency actions that APA defines separately, including orders. We conclude that the CFTC Letter is an order and therefore not a rule subject to CRA's submission requirements. The Letter concerns a case-specific determination of a specific set of facts using existing statutory and regulatory criteria with an immediate effect only on the individual entity. In addition, we note that even if the Letter met the APA definition of a rule, it would fall within CRA's exception for rules of particular applicability, applying statutory and regulatory provisions only to a specific entity, and would similarly not be subject to CRA's submission requirements.

DECISION

On May 21, 2025, the Commodity Futures Trading Commission (CFTC) issued CFTC Letter No. 25-14, titled *RE: Staff Interpretation Regarding Certain Cross-Border Definitions* (CFTC Letter or Letter).[1] We received a request for a

[1] CFTC, Letter No. 25-14, *RE: Staff Interpretation Regarding Certain Cross-Border Definitions* (May 21, 2025), *available at* https://www.cftc.gov/csl/25-14/download (last visited Mar. 16, 2026).

decision as to whether the CFTC Letter is a rule for purposes of the Congressional Review Act (CRA).[2] As discussed below, we conclude that the CFTC Letter is not a rule subject to CRA's submission requirements.

Our practice when rendering decisions is to contact the relevant agencies to obtain factual information and their legal views on the subject of the request.[3] Accordingly, we reached out to CFTC on December 18, 2025, and received CFTC's response on January 16, 2026.[4]

BACKGROUND

CFTC Jurisdiction Over Certain Foreign Activities

CFTC oversees the U.S. derivatives markets, which include futures, options, and swaps.[5] CFTC also has jurisdiction over certain foreign activities. For example, the Commodity Exchange Act (CEA)[6] grants CFTC authority to regulate the foreign futures activity of persons "located in the United States."[7] In addition, the CEA, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act,[8] gives CFTC authority over swaps activity outside of the United States if the activity has "a direct and significant connection with activities in, or effect on, commerce of the United States."[9]

---

[2] Letter from Senator Jack Reed, Senator Tina Smith, and Senator Dick Durbin to Comptroller General (Dec. 2, 2025).

[3] GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), *available at* https://www.gao.gov/products/gao-24-107329.

[4] Letter from Managing Associate General Counsel for Appropriations Law, GAO, to Acting General Counsel, CFTC (Dec. 18, 2025); Letter from Acting General Counsel, CFTC, to Managing Associate General Counsel for Appropriations Law, GAO (Jan. 16, 2026) (CFTC Response).

[5] CFTC, *Agency Financial Report, Fiscal Year 2025* (Jan. 16, 2026), at 6, *available at* https://www.cftc.gov/media/13096/2025AFR/download (last visited Mar. 16, 2026).

[6] Pub. L. No. 74-675, 49 Stat. 1491 (June 15, 1936), 7 U.S.C. §§ 1–26.

[7] *See* 7 U.S.C. § 6(b).

[8] Pub. L. No. 111-203, § 722(d), 124 Stat. 1376, 1673 (July 21, 2010).

[9] *See* 7 U.S.C. § 2(i).

CFTC has implemented this authority in regulations and guidance. For example, with respect to foreign futures and options activities, CFTC requires certain entities to register with CFTC, including: (1) foreign brokers that provide entities "located in the United States, its territories or possessions" with access to foreign futures or foreign options, who must generally register as futures commission merchants[10]; and (2) foreign boards of trade that provide direct access to entities "located in the United States."[11] Relatedly, foreign located persons engaging in the activity of a futures commission merchant only on behalf of persons "located outside the United States, its territories, or possessions" are not required to register with CFTC as a futures commission merchant.[12]

With respect to CFTC's cross-border swaps jurisdiction, CFTC published guidance in 2013 defining a "U.S. person," and explaining that this definition generally encompasses those persons whose swap activities have a direct and significant connection with activities in, or effect on, commerce of the United States within the meaning of the CEA.[13] In 2020, CFTC adopted regulations at 17 C.F.R. § 23.23 that

---

[10] *See* 17 C.F.R. §§ 30.1(c) (defining "[f]oreign futures or foreign options customer" as "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options"), 30.4(a) (generally prohibiting entities from soliciting or accepting orders from foreign futures or foreign options customers unless they register with CFTC); CFTC Letter, at 1–2. Futures commission merchants are "[i]ndividuals, associations, partnerships, corporations, and trusts that solicit or accept orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any exchange and that accept payment from or extend credit to those whose orders are accepted." CFTC, *Futures Glossary*, *available at* https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm (last visited Mar. 16, 2026) (*citing* 7 U.S.C. § 1a(28)).

[11] *See* 17 C.F.R. §§ 48.2(c) (defining "direct access" as granting certain authority "to an identified member or other participant located in the United States"), 48.3(a) (generally prohibiting a foreign board of trade from permitting direct access unless and until CFTC has issued an "Order of Registration" to the board); CFTC Letter, at 1–2.

[12] *See* 17 C.F.R. § 3.10(c)(1)(ii) (defining "[f]oreign located person" as "a person located outside the United States, its territories, or possessions"), (c)(2)(ii) (generally exempting foreign located persons who engage in the activities of a futures commission merchant only on behalf of foreign located persons or international financial institutions from the registration requirements and from the statutory and regulatory provisions applicable solely to registered futures commission merchants or to persons required to be so registered); CFTC Letter, at 2–3.

[13] *Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations*, 78 Fed. Reg. 45292, 45308, 45316–17 (July 26, 2013) (2013 Guidance); *see* CFTC Letter, at 3–4.

superseded the 2013 guidance in certain respects, included a separate definition of "U.S. person," and defined "[n]on-U.S. person" as "any person that is not a U.S. person."[14]

CFTC Letter

The CFTC Letter was issued jointly by CFTC's Market Participants Division and Division of Market Oversight in response to a request from a private entity, SCB Limited (SCB).[15] SCB requested that the Divisions issue an interpretative letter confirming that SCB would qualify as a "non-U.S. person" as defined by 17 C.F.R. § 23.23(a)(10), not a "U.S. person" as defined by the 2013 Guidance, a "foreign located person" as defined by 17 C.F.R. § 3.10(c)(1)(ii), not a "person located in the United States" for purposes of 17 C.F.R. § 30.1(c), and not a "participant located in the United States" for purposes of 17 C.F.R. § 48.2(c).[16] SCB provided relevant facts on its current business structure, operations, and activities, and also described future plans to expand its activities in the United States.[17]

An interpretative letter is "written advice or guidance issued by the staff of a Division of [CFTC] or the Office of the General Counsel."[18] CFTC's regulations state that "[a]n interpretative letter binds only the issuing Division or the Office of the General Counsel, as applicable, and does not bind the Commission or other Commission staff."[19] On the other hand, "[a]n interpretative letter may be relied upon by persons in addition to the [b]eneficiary."[20] The Market Participants Division oversees

---

[14] CFTC Letter, at 4–5; *see Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants*, 85 Fed. Reg. 56924, 56932–39 (Sept. 14, 2020); 17 C.F.R. § 23.23(a)(10), (23).

[15] CFTC Letter, at 1.

[16] *Id.*

[17] *Id.* at 5–6.

[18] 17 C.F.R. § 140.99(a)(3).

[19] *Id.*; CFTC Response, at 1; *see* CFTC Letter, at 7–8 (stating that the Letter's "interpretation represents the position of the Divisions and does not necessarily represent the views of the Commission"; that the Letter and interpretation "are based upon the facts and circumstances represented to the staff of the Divisions"; that [a]ny different, changed, or omitted material facts or circumstances may require a different position or render this letter void"; and that "the Divisions retain the authority to condition further, modify, suspend, terminate, or otherwise restrict the interpretation provided herein, in their discretion").

[20] 17 C.F.R. § 140.99(a)(3); CFTC Response, at 3.

derivatives market intermediaries and designated self-regulatory organizations.[21] The Division's activities include examining intermediaries and designated self-regulatory organizations, maintaining appropriate standards for registration of intermediaries, and issuing concise and timely interpretations and guidance for intermediaries.[22] The Division of Market Oversight oversees the health and market structure of the derivatives markets regulated by CFTC, as well as the exchanges and facilities on which those derivatives trade.[23] The Division's activities include assessing various entities' compliance with the CEA and CFTC regulations, as well as reviewing and making recommendations to the Commission on registration applications for foreign boards of trade, swap execution facilities, and other entities.[24]

The CFTC Letter discusses the relevant statutory and regulatory background, including relevant sections of the CEA and CFTC regulations, past rulemakings, the 2013 Guidance, and previous CFTC staff letters.[25] The Letter also summarizes the relevant facts regarding SCB's situation.[26]

Based on the facts presented, the Letter confirms that: (1) SCB is not a "person located in the United States" for purposes of the "foreign futures or foreign options customer" definition in 17 C.F.R. § 30.1(c); (2) SCB is not a "participant located in the United States" for purposes of 17 C.F.R. § 48.2(c); (3) SCB is a "foreign located person" for purposes of 17 C.F.R. § 3.10(c)(1)(ii); and (4) SCB is a "non-U.S. person" and not a "U.S. person" as defined by 17 C.F.R. § 23.23(a) and the 2013 Guidance.[27] The Letter goes on to explain the effects of these determinations on the application of CFTC's regulations to SCB's swap activities.[28] For example, the Letter states that SCB's swap dealing activity would not count toward the threshold for registering as a swap dealer, and its swap transactions would not be subject to

---

[21] CFTC, *Market Participants Division (MPD)*, *available at* https://www.cftc.gov/About/CFTCOrganization/MPD (last visited Mar. 16, 2026).

[22] *Id.*

[23] CFTC, *Division of Market Oversight (DMO)*, *available at* https://www.cftc.gov/About/CFTCOrganization/DMO (last visited Mar. 16, 2026).

[24] *Id.*

[25] CFTC Letter, at 1–5.

[26] *Id.* at 5–6.

[27] *Id.* at 6–7.

[28] *Id.*

certain reporting requirements.[29] In addition, the Letter explains the effect of its determinations on non-U.S. exchanges and brokers if they facilitate SCB's futures or swaps activity, stating that such entities would not need to register with CFTC solely on the basis of doing business with SCB.[30] The Letter further states that SCB's proposed plans to expand its activities in the United States would not impact SCB's status under the relevant CFTC regulations.[31]

Congressional Review Act (CRA)

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires federal agencies to submit a report on each new rule to both houses of Congress and the Comptroller General for review before the rule can take effect.[32] The report must contain a copy of the rule, "a concise general statement relating to the rule," and the rule's proposed effective date.[33] CRA allows Congress to review and disapprove rules issued by federal agencies for a period of 60 days using special procedures.[34] If a resolution of disapproval is enacted, then the new rule has no force or effect.[35]

CRA adopts the definition of a rule under the Administrative Procedure Act (APA), which states that a rule is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."[36] However, CRA excludes three categories of APA rules from coverage: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.[37]

---

[29] *Id.* at 7.

[30] *Id.*

[31] *Id.*

[32] 5 U.S.C. § 801(a)(1)(A).

[33] *Id.*

[34] *See* 5 U.S.C. § 802.

[35] 5 U.S.C. § 801(b)(1).

[36] 5 U.S.C. §§ 551(4); 804(3).

[37] 5 U.S.C. § 804(3).

CFTC did not submit a CRA report to Congress or the Comptroller General on the CFTC Letter.[38] In its response to us, CFTC stated that the Letter does not meet the APA definition of a rule because it is a staff letter and does not constitute an "agency statement."[39]

DISCUSSION

At issue here is whether the CFTC Letter meets CRA's definition of a rule, which adopts APA's definition of a rule with three exceptions. As explained below, we conclude that the Letter is an order, not a rule, under APA, and therefore is not subject to CRA's submission requirements. In addition, we conclude that even were the Letter to meet the APA definition of a rule, it would fall within CRA's first exception for rules of particular applicability and would similarly not be subject to CRA's submission requirements.

The CFTC Letter is an Agency Action Under APA

APA provides for two types of agency actions that are mutually exclusive: rules and orders.[40] An agency action meeting the definition of an order cannot be a rule under APA and thus cannot be a rule for purposes of CRA.[41] Both rules and orders are actions taken by an "agency" as defined in APA.[42] CFTC is an agency under APA,[43] and the Letter was issued by two CFTC Divisions. Therefore, the Letter constitutes an action taken by an agency under APA.

CFTC states in its response that the Letter is neither a rule nor an order because it represents only the views of the Divisions that issued it and is not binding on the Commission itself or other agency staff.[44]

---

[38] CFTC Response, at 1.

[39] CFTC Response, at 2.

[40] *E.g.*, B-337370, Aug. 28, 2025 (*citing* 5 U.S.C. § 551(5)–(6); B-334995, July 6, 2023).

[41] *E.g.*, B-337370, Aug. 28, 2025 (*citing* B-335030, May 8, 2024).

[42] *See* 5 U.S.C. § 551(1), (13).

[43] *See*, *e.g.*, *Investment Co. Institute v. CFTC*, 720 F.3d 370, 376, 381 (D.C. Cir. 2013) (treating CFTC rule as "agency action" under APA and assessing whether the rule violated APA requirements).

[44] CFTC Response, at 2–3.

We have previously determined that actions taken by less than the full agency can still constitute agency actions for purposes of APA. For example, in B-334540, Oct. 31, 2023, we examined whether a Staff Accounting Bulletin (Bulletin) issued by two offices within the Securities and Exchange Commission (SEC) was a rule under CRA. SEC asserted that the Bulletin was not an agency action because it represented the views of the two offices and was not binding on the Commission.[45] We noted that the Bulletin was issued by agency staff, published on the agency's website, and that it described how the two SEC offices interpreted accounting-related disclosure requirements.[46] We determined that because one of the offices was responsible for monitoring compliance with those requirements, it was reasonable to conclude that entities might change their behavior to comply with the staff interpretations found in the Bulletin.[47] Accordingly, we concluded that the Bulletin constituted agency action.[48] We similarly concluded in several other decisions that Supervision and Regulatory Letters issued by staff of the Board of Governors of the Federal Reserve System (FRB) constituted action by FRB.[49]

The CFTC Letter, like the SEC Bulletin, was published on the agency's website and issued by staff responsible for overseeing regulated entities and monitoring compliance with relevant requirements. The Market Participants Division oversees derivatives market intermediaries and maintains registration standards for those entities, while the Division of Market Oversight oversees derivatives markets and related exchanges and facilities, reviews and makes recommendations on registration applications, and assesses various entities' compliance with the CEA and CFTC regulations.[50] Therefore, the CFTC Letter, like the SEC Bulletin, has an impact on regulated entities, given that the Letter binds the two issuing Divisions and SCB and other entities may rely on the Letter.[51] Our previous decisions therefore support our conclusion that the Letter constitutes agency action under APA.

---

[45] B-334540, Oct. 31, 2023.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] B-336217, Aug. 6, 2024; *see also* B-331560, Apr. 16, 2020; B-331324, Oct. 22, 2019; B-330843, Oct. 22, 2019.

[50] CFTC, *Market Participants Division*; CFTC, *Division of Market Oversight (DMO)*.

[51] *See* 17 C.F.R. § 140.99(a)(3).

The opinion of the U.S. Court of Appeals for the Fifth Circuit in *Clarke v. CFTC*[52] further supports our conclusion. In that case, the court reviewed the Division of Market Oversight's withdrawal of another type of CFTC staff letter, known as a "no-action letter."[53] The court concluded that both the no-action letter and subsequent withdrawal constituted agency action under APA notwithstanding that they were issued by a single CFTC division.[54]

The CFTC Letter is an Order Under APA

APA defines an order as "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing."[55] While rules result from rulemaking, orders result from adjudications, which are "case-specific, individual determination[s] of a particular set of facts that ha[ve] immediate effect on the individual(s) involved."[56] Adjudications apply existing criteria and processes from an agency's regulations and the statutes they implement to a given set of facts.[57] In contrast, rulemaking involves the broad application of general principles, and rules have only prospective effect.[58]

---

[52] 74 F.4th 627 (5th Cir. 2023).

[53] *Id.* at 633. No-action letters are issued by a CFTC Division or Office of the General Counsel stating that the staff will not recommend enforcement action to the Commission for failure to comply with a specific statutory provision or provision of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted. 17 C.F.R. § 140.99(a)(2). Similar to interpretative letters, "[a] no-action letter binds only the issuing Division or the Office of the General Counsel, as applicable, and not the Commission or other Commission staff." *Id.*

[54] *See Clarke*, 74 F.4th at 636–37.

[55] 5 U.S.C. § 551(6).

[56] *E.g.*, B-334309, Nov. 30, 2023 (*citing United States v. Florida East Coast Railway Co.*, 410 U.S. 224, 245–46 (1973); *Neustar, Inc. v. FCC*, 857 F.3d 886, 893 (D.C. Cir. 2017)).

[57] *E.g.*, B-337582, Nov. 20, 2025 (*citing* B-334995, July 6, 2023).

[58] B-334309, Nov. 30, 2023; *see Neustar*, 857 F.3d at 893, 895; *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 216–17 (1988) (Scalia, J., concurring) (explaining that "rules have legal consequences only for the future" while "[a]djudication . . . has future as well as past legal consequences").

For example, in B-337370, Aug. 28, 2025, we examined a determination by the Environmental Protection Agency (EPA) concluding that eight areas in five states had failed to attain the applicable National Ambient Air Quality Standards (NAAQS) by the specified attainment date. EPA further stated that, by operation of law, those areas would be reclassified to a new category of nonattainment and would have to attain the relevant standard by a specified date.[59] We concluded that EPA's action was an order under APA because it involved final determinations that the areas had failed to attain the applicable NAAQS by the required date and that those determinations resulted from EPA's application of the Clean Air Act requirements and EPA regulations to a specific set of facts.[60]

The CFTC Letter bears all the hallmarks of an order resulting from adjudication. The Letter represents the final disposition of SCB's request for an interpretative letter. The Letter applies the relevant provisions of the CEA and CFTC's regulations to SCB's specific facts to determine that SCB is not a "person located in the United States," is not a "participant located in the United States," is a "foreign located person," is a "non-U.S. person," and is not a "U.S. person" under various CFTC regulations and guidance.[61] The Letter goes on to explain the effect of these determinations on the application of CFTC's regulations to SCB's swap activities and on non-U.S. exchanges and brokers if they facilitate SCB's futures or swaps activity.[62] For example, SCB's swap dealing activity would not count toward the threshold for registering as a swap dealer and its swap transactions would not be subject to certain reporting requirements.[63] The Letter therefore has immediate effect on SCB because it clarifies SCB's status under certain CFTC regulations and the applicability of certain CFTC requirements given that status. Because the Letter involves a case-specific determination of a specific set of facts using existing statutory and regulatory criteria and has immediate effect on the individual entity involved, it constitutes an adjudicatory order under APA.

That the Letter may announce a new interpretation of CFTC's extraterritorial jurisdiction that could apply prospectively to entities other than SCB does not affect our conclusion. Courts have recognized that "[s]tatutory interpretation can be rendered in the form of an adjudication, not only in a rulemaking" and "[t]he fact that an order rendered in an adjudication may affect agency policy and have general

---

[59] B-337370, Aug. 28, 2025.

[60] *Id.*

[61] CFTC Letter, at 6–7.

[62] *Id.*

[63] *Id.* at 7.

prospective application, does not make it rulemaking subject to APA."[64] For example, in *Conference Group, LLC v. FCC*, the Federal Communications Commission (FCC) "decided that the audio bridging services provided by [an entity were] properly classified as 'telecommunications' under the Communications Act of 1934, as amended, and thereby obligate[d] it and 'similarly situated' providers to contribute directly to the Universal Service Fund," a fund set up to preserve and advance universal service.[65] The court determined that the statutory interpretation in the order "was neither a legislative nor an interpretative rule. Rather it was simply an interpretation given in the course of an informal adjudication."[66] In reaching this conclusion, the court noted that FCC relied primarily on the relevant statutory definitions, as interpreted in various orders and implementing regulations, as well as the agency's relevant classification precedent.[67] The court rejected the contention that FCC's statement that its interpretation applied to similarly situated providers transmuted the adjudication into a rulemaking.[68] The court stated that the precedential effect of the order would be the same without the phrase given that "[t]he nature of adjudication is that similarly situated non-parties may be affected by the policy or precedent applied, or even merely announced in dicta."[69]

We have applied this same reasoning in our CRA decisions. For example, in B-334400, Feb. 9, 2023, we examined an EPA document in which the agency denied petitions from small refineries seeking exemption from certain requirements due to disproportionate economic hardship. EPA stated that its denial was based on its revised interpretation of what constituted disproportionate economic hardship.[70] Citing *Neustar, Conference Group*, and other court opinions, we concluded that neither EPA's change in interpretation nor the fact that the denial could affect the disposition of future exemption petitions rendered the denial a rule under APA.[71]

---

[64] *Neustar*, 857 F.3d at 894 (*quoting Conference Group, LLC v. FCC*, 720 F.3d 957, 958, 966 (D.C. Cir. 2013)) (internal quotation marks omitted).

[65] *Conference Group*, 720 F.3d at 958–59.

[66] *Id.* at 965.

[67] *Id.*

[68] *Id.*

[69] *Id.* (*quoting Goodman v. FCC*, 182 F.3d 987, 994 (D.C. Cir. 1999)) (internal quotation marks omitted).

[70] B-334400, Feb. 9, 2023.

[71] B-334400, Feb. 9, 2023; *see also* B-334309, Nov. 30, 2023.

Here, the Letter's interpretation of the agency's jurisdiction over SCB's activities and the determinations regarding the application of certain statutory and regulatory requirements may prospectively affect other entities similarly situated to SCB, who may look to the Letter to assess their own status and compliance. This is particularly likely given that CFTC interpretative letters bind the issuing Divisions and "may be relied upon by persons in addition to the" requesting entity.[72] However, as in *Conference Group* and B-334400, such effects on non-parties are part of the nature of adjudication, and do not render the CFTC Letter a rule under APA.

Likewise, the Letter's explanation of how the determinations on SCB's status under certain CFTC regulations would affect non-U.S. exchanges and brokers that facilitate SCB's activities does not transform the Letter into a rule. We have previously examined agency actions with downstream effects on other entities and nevertheless concluded that those actions were orders and not rules. For example, in B-334995, July 6, 2023, we determined that a revision to the U.S. Food and Drug Administration's (FDA's) risk evaluation and mitigation strategy (REMS) for the drug mifepristone was an order. We reached that conclusion even though the REMS appeared to indirectly impose duties and obligations on pharmacies, doctors and patients.[73] Similarly, in B-337380, Sept. 11, 2025, and B-337582, Nov. 20, 2025, we determined that letters announcing that the U.S. Department of the Interior (Interior) would acquire certain land in trust for specific Tribes were orders. The fact that the letters described potential downstream effects on other entities resulting from these decisions, such as increased costs to local agencies and loss of tax revenue, did not affect our conclusion.[74]

In this case, the CFTC Letter explains the effect of its determinations with respect to SCB on non-U.S. exchanges and brokers if they facilitate SCB's futures or swaps activity, stating that such entities would not need to register with CFTC solely on the basis of doing business with SCB.[75] Such statements are similar to those in Interior's letters in B-337380 and B-337582, in that they merely describe the downstream effects of the agency's determinations with respect to the subject of the Letter—in this case the determinations regarding SCB's status under various CFTC regulations. CFTC's regulations already prescribe how an entity's status determines whether non-U.S. exchanges and brokers facilitating that entity's futures and swaps activity need to register with CFTC.[76] Therefore, like FCC's statement in *Conference Group* regarding the effect of the agency's interpretation on similarly situated non-parties, the effect of the Letter's determinations regarding SCB on non-

[72] *See* 17 C.F.R. § 140.99(a)(3).

[73] B-334995, July 6, 2023.

[74] B-337380, Sept. 11, 2025; B-337582, Nov. 20, 2025.

[75] CFTC Letter, at 7.

[76] *See* 17 C.F.R. §§ 3.10(c)(1)(ii), 3.10(c)(2)(ii), 30.1(c), 30.4(a), 48.2(c), 48.3(a).

U.S. exchanges and brokers would be the same even without the Letter's explanation.

Rule of Particular Applicability

We note that even if the CFTC Letter met the APA definition of a rule, it would still not be subject to CRA as it would fall within CRA's first exception for rules of particular applicability. Such rules are addressed to specific, identified persons or entities and determine actions those persons or entities may or may not take, considering the facts and circumstances specific to those persons or entities.[77]

In each of the decisions cited above where we determined that the relevant agency action was an order and not a rule under APA, we further determined that even if the action were a rule, it would fall within this exception.[78] For example, in B-337370, we concluded that EPA's determination would be a rule of particular applicability because it was addressed to specific entities—the eight nonattainment areas—and addressed their failure to attain the ozone standard by the applicable attainment date based on the facts presented and the relevant statutory and regulatory provisions. Like the EPA determination in B-337370, the CFTC Letter is addressed to a specific entity, SCB, and makes determinations regarding SCB's status based on the specific facts presented and the relevant statutory and regulatory provisions, in this case the CEA and CFTC regulations.

Further, just as we have determined in past decisions that agency actions were orders notwithstanding potential downstream effects on entities other than the subject of the action, we have also concluded that even if such actions were rules, they would be rules of particular applicability despite those effects.[79] In those decisions, we noted that the relevant actions were addressed to specific, identified entities and not the downstream entities that might also be affected.[80] As discussed above, the CFTC Letter concerns a specific entity, SCB, and addresses SCB's

---

[77] *E.g.*, B-334995, July 6, 2023.

[78] *See* B-337582, Nov. 20, 2025; B-337380, Sept. 11, 2025; B-337370, Aug. 28, 2025; B-334309, Nov. 30, 2023; B-334995, July 6, 2023.

[79] *See* B-337582, Nov. 20, 2025; B-337380, Sept. 11, 2025; B-334995, July 6, 2023.

[80] *See* B-334995, July 6, 2023 ("While the statute contemplates that a REMS could contain requirements for pharmacies and doctors, those entities are not directly subject to enforcement of those requirements by FDA. Rather, it is the sponsors who are required to distribute the drug in accordance with the REMS.") (internal citations omitted); B-337380, Sept. 11, 2025 ("[T]he Decision Letter only applies to the Koi Nation, even if downstream effects from the determinations may extend to additional parties, such as state, county, and local governments, as well as other tribes in the surrounding area."); B-337582, Nov. 20, 2025.

status under certain CFTC regulations. Accordingly, we similarly conclude that the Letter would be a rule of particular applicability notwithstanding the Letter's discussion of how the determinations regarding SCB would affect non-U.S. exchanges and brokers that facilitate SCB's activities.

CONCLUSION

The CFTC Letter is an order, and therefore not a rule subject to CRA's submission requirements. We note that even were the Letter to meet the APA definition of a rule, it would fall under CRA's first exception for rules of particular applicability and would similarly not be subject to CRA's submission requirements.

Edda Emmanuelli Perez
General Counsel

GAO Highlights

CONSUMER PROTECTION

Government-wide Strategy Expeditiously Needed to Counter Scams

GAO-26-109023 March 25, 2026

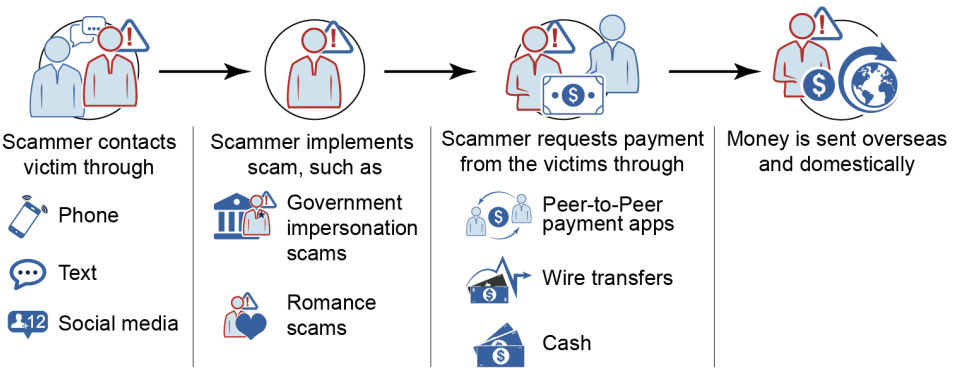
A testimony before the Joint Economic Committee, United States Congress

For more information, contact: Seto J. Bagdoyan at BagdoyanS@gao.gov

What GAO Found

Scams occur in a variety of forms and are a growing risk to consumers.

Examples of a Scam Execution Process



Sources: GAO analysis of publicly available information on scams, including from the Federal Trade Commission and Federal Bureau of Investigation; Icons-Studio, sdecoret/stock.adobe.com, GAO (icons). | GAO-26-109023

Note: Other types of contact methods, scams, and payment methods exist.

At least 13 federal agencies engage in a range of activities related to countering scams. The agency activities cover a spectrum of roles intended to prevent, detect, and respond to scams. However, each agency largely carries out these activities independently. None of the 13 federal agencies that GAO spoke with were aware of a government-wide strategy to guide efforts to combat scams, nor did GAO independently identify such a strategy. In its April 2025 report, GAO recommended that the Federal Bureau of Investigation (FBI) lead a federal effort, in collaboration with other agencies, to develop and implement a government-wide strategy to counter scams and coordinate related activities. The FBI recently outlined actions to address this recommendation.

The Consumer Protection Financial Bureau (CFPB), FBI, and Federal Trade Commission (FTC) collect and report on consumer complaints both directly and from other agencies. Data limitations prevent agencies from determining a total number of scam complaints and financial losses. Accordingly, there is no single, government-wide estimate of the total number of scams and financial losses. Similarly, federal agencies have not produced a common, government-wide definition of scams. A government-wide estimate would capture the scale of scams, and a common definition is necessary for producing such an estimate and for developing a government-wide strategy.

In its April 2025 report, GAO made separate recommendations to CFPB, FBI, and FTC to (1) develop a common definition of scams, (2) harmonize data collection, (3) report an estimate of the number of scam complaints each receives and (4) produce a single, government-wide estimate of the number of consumers affected by scams. In a recent update, the FBI and FTC outlined various concerns with these recommendations, such as differing authorities and mandates among agencies. However, GAO maintains that these recommendations remain valid. In October 2025, CFPB stated that it will monitor FBI and FTC actions before determining if any actions of its own are warranted.

Why GAO Did This Study

Scams, a method of committing fraud, involve the use of deception or manipulation intended to achieve financial gain. Scams often cause individual victims to lose large sums—in some cases their entire life savings. Federal agencies such as the FBI and FTC have responsibilities that include preventing and responding to scams against Americans.

This statement discusses (1) federal agencies' activities to prevent and respond to scams and the need for a comprehensive, government-wide strategy to guide their efforts and (2) federal agencies' activities to compile scam-related consumer-complaint data and estimate the total number of scams and related financial losses. It also provides updates on the status of 3 agencies' actions to address applicable recommendations.

This statement is based on GAO's April 2025 report on federal efforts to combat scams (GAO-25-107088). For that report, GAO analyzed publicly available information (including prior GAO reports) and relevant agency documents. GAO also interviewed officials from 13 different federal agencies involved in countering scams.

What GAO Recommends

In April 2025 GAO made 16 total recommendations to CFPB, FBI, and FTC. The FBI disagreed with three recommendations, including those related to the development of a government-wide estimate and a definition of scams. FTC neither agreed nor disagreed with the five recommendations made to it. CFPB did not respond with comments. The agencies' responses to certain recommendations are discussed in this statement.

GAO Highlights

DEBT LIMIT

Prolonged Negotiations Increase Taxpayer Costs and Disrupt Financial Markets

GAO-26-107872 March 2026

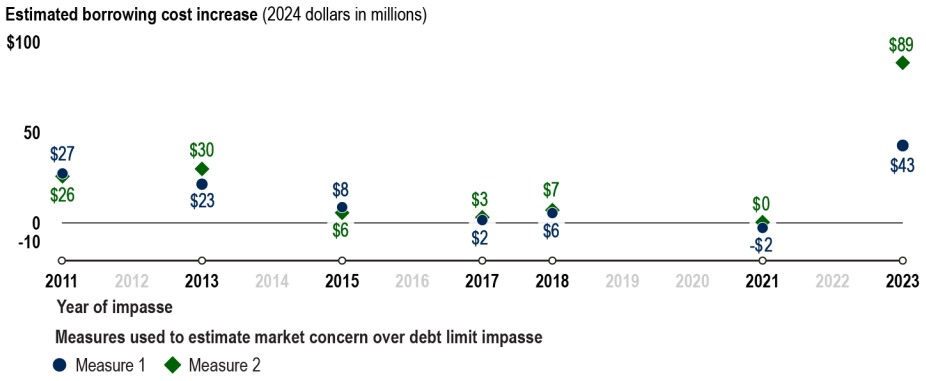
A report to Congress.

For more information, contact: Michael E. Clements at clementsm@gao.gov, Michael Hoffman at hoffmanme@gao.gov, or James R. McTigue Jr. at mctiguej@gao.gov.

What GAO Found

Debt limit impasses impose avoidable costs. As a projected date nears when the U.S. will be unable to meet all its financial obligations—the X date—investors often demand higher yields on new Treasury securities maturing near that date to compensate for the added risk. This increases the government's borrowing costs. GAO estimates that Treasury securities issued during periods of acute market concern over impasses between 2011 and 2023—the most recent impasses with complete data available at the time of GAO's analysis—incurred a total of roughly $107 million to $161 million in increased immediate borrowing costs (in 2024 dollars), depending on the measure used to estimate market concern. Impasses also impose additional, hard-to-quantify costs, including long-term costs from reduced investor confidence in the Treasury market.

Estimated Immediate Treasury Borrowing Costs Associated with Debt Limit Impasses



Source: GAO analysis of data from the Department of the Treasury, the Federal Reserve Bank of St. Louis, and Bloomberg. | GAO-26-107872

Note: For each impasse, GAO used two distinct measures of market concern to estimate increased borrowing costs. For more details, see fig. 2 in GAO-26-107872.

Debt limit impasses have also reduced the market value of outstanding Treasury securities. Market participants avoided securities maturing near a projected X-date, as those maturing after this date would be the first to default if the impasse were not resolved in time. GAO's analysis found that these securities lost value relative to comparable ones maturing just before the X-date.

Impasse disruptions to Treasury markets can spread to short-term funding markets and funds closely tied to Treasury securities. In 2011 and 2013, such disruptions included higher borrowing rates and money market fund outflows. These disruptions prompted market participant actions to limit risk and manage future impasse effects. However, other disruptions can occur after impasses are resolved, as fluctuations in the Department of the Treasury's cash balance create volatility in some markets.

GAO's prior work has identified longstanding concerns about the debt limit (GAO-25-107089). The current debt limit process creates an unnecessary risk of U.S. default, with potentially devastating consequences for individuals, financial institutions, and the broader economy. The costs and market disruptions documented in this report further underscore the need for debt limit reform.

Why GAO Did This Study

Congress imposes a legal limit on federal borrowing, known as the debt limit. Under the current process, Congress can approve spending increases or tax cuts without also ensuring that Treasury has sufficient borrowing authority to finance these decisions. In recent years, when the federal government has approached the debt limit, prolonged congressional negotiations on increasing or suspending the limit have repeatedly brought it close to being unable to continue paying obligations stemming from past spending and revenue decisions. If Treasury exhausts its borrowing authority and runs out of cash, a default will occur.

In this report, GAO examines how debt limit impasses—where outstanding debt reached the limit and Congress did not immediately raise or suspend it—between 2011 and 2023 affected Treasury's borrowing costs and U.S. financial markets more broadly.

GAO analyzed financial market data and developed a suite of econometric models to estimate increased borrowing costs attributable to these impasses. GAO also reviewed relevant research, documentation, and laws. In addition, GAO interviewed agency officials and 17 financial market participants, selected to reflect a range of institution types and sizes.

What GAO Recommends

GAO previously outlined alternatives to the current debt limit process and recommended that Congress replace it with an approach that links debt decisions to spending and revenue decisions at the time they are made (GAO-15-476 and GAO-25-107089). GAO maintains that it is imperative that Congress take this action to prevent the recurring adverse effects of debt limit impasses.

OFFICE OF MANAGEMENT AND BUDGET

CIRCULAR NO. A-108

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act

1. Purpose

This Office of Management and Budget (OMB) Circular describes agency responsibilities for implementing the review, reporting, and publication requirements of the Privacy Act of 1974 ("the Privacy Act"),[1] and related OMB policies. This Circular supplements and clarifies existing OMB guidance, including OMB Circular No. A-130, *Managing Information as a Strategic Resource*,[2] *Privacy Act Implementation: Guidelines and Responsibilities*,[3] *Implementation of the Privacy Act of 1974: Supplementary Guidance*,[4] and *Final Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988*.[5] All OMB guidance is available on the OMB website.[6]

This Circular establishes general requirements. Agencies shall coordinate with OMB when implementing these general requirements and shall consult other OMB guidance documents and OMB's Office of Information and Regulatory Affairs (OIRA) for the most up-to-date information.

2. Authorities

OMB issues this Circular pursuant to the following authorities:

a. Privacy Act of 1974;[7]

b. Paperwork Reduction Act of 1995;[8] and

c. Federal Information Security Modernization Act of 2014.[9]

3. Applicability

This Circular applies to all agencies and records subject to the Privacy Act.[10]

---

[1] 5 U.S.C. § 552a.

[2] OMB Circular No. A-130, Managing Information as a Strategic Resource (July 28, 2016), *available at* https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a130/a130revised.pdf. The reissuance of Circular A-108 replaces the reporting and publication requirements in Appendix I of the 2000 version of Circular A-130. *See id.* at n.115.

[3] Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

[4] Implementation of the Privacy Act of 1974: Supplementary Guidance, 40 Fed. Reg. 56,741 (Dec. 4, 1975), *available at* https://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation1974.pdf.

[5] Final Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988, 54 Fed. Reg. 25,818 (June 19, 1989), *available at* https://www.whitehouse.gov/sites/default/files/omb/inforeg/final_guidance_pl100-503.pdf.

[6] OMB's privacy guidance is available at https://www.whitehouse.gov/omb/inforeg_infopoltech.

[7] 5 U.S.C. § 552a.

[8] 44 U.S.C. §§ 3501-3521.

[9] *Id.* §§ 3551-3558.

[10] *See* 5 U.S.C. § 552a(a)(1), (4).

4. Background

The Privacy Act of 1974, which has been in effect since September 27, 1975, sets forth a series of requirements governing Federal agency practices with respect to certain information about individuals. Although the Privacy Act places principal responsibility for compliance on agencies, the statute requires the Director of OMB to develop guidelines and provide continuing assistance to and oversight of implementation by agencies.[11]

On July 1, 1975, OMB issued OMB Circular No. A-108, *Responsibilities for the Maintenance of Records About Individuals by Federal Agencies*, along with *Privacy Act Implementation: Guidelines and Responsibilities* ("Privacy Act Guidelines").[12] Circular A-108 provided guidance on agencies' responsibilities under the Privacy Act, while the Privacy Act Guidelines provided more detailed implementation guidance for the statute. On September 30, 1975, OMB issued a supplement to Circular A-108 providing expanded guidance on the reporting requirements of the Privacy Act.[13] This additional guidance on reporting requirements, which was subsequently updated,[14] superseded the preliminary guidance on reporting requirements contained in the Privacy Act Guidelines.

On December 12, 1985, OMB issued OMB Circular No. A-130, *Management of Federal Information Resources*.[15] Circular A-130 established policies for the management of Federal information resources, including procedural and analytic guidelines for implementing specific aspects of the policies. Circular A-130 rescinded Circular A-108 and replaced it with an Appendix I, *Federal Agency Responsibilities for Maintaining Records About Individuals*. Appendix I to Circular A-130 reissued the pertinent guidance in the rescinded Circular A-108 and provided further explanation of the requirements in the Privacy Act. OMB has revised Circular A-130 several times since its inception, including by incorporation of the requirements of the Computer Matching and Privacy Protection Act of 1988.[16]

With the reissuance of Circular A-108, OMB is revising and relocating the guidance that since 1985 had been included in Appendix I to Circular A-130. The reissued Circular A-108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act*, replaces the November 28, 2000 version of Appendix I to Circular A-130 and supplements OMB's Privacy Act Guidelines, which remain in effect. OMB has also revised and reissued Circular A-

[11] *See id.* § 552a(v).
[12] Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.
[13] OMB Circular No. A-108, Transmittal Memorandum No. 1, *Responsibilities for the maintenance of records about individuals by Federal agencies* (Sept. 30, 1975).
[14] *See, e.g.*, OMB Circular No. A-108, Transmittal Memorandum No. 3, *Privacy Act implementation and revised guidance on new systems report* (May 17, 1976).
[15] OMB Circular A-130, *Management of Federal Information Resources*, 50 Fed. Reg. 52,730 (Dec. 24, 1985).
[16] *See* OMB Circular A-130, *Management of Federal Information Resources*, 58 Fed. Reg. 36,068 (July 2, 1993).

130, *Managing Information as a Strategic Resource*, which provides guidance on the management of agencies' privacy programs.[17]

5. Definitions

For the purpose of this Circular:

a. The terms "agency," "individual," "maintain," "matching program," "non-Federal agency," "recipient agency," "record," "routine use," "source agency," and "system of records," are defined in the Privacy Act.[18]

b. ***Data Integrity Board***. The term "Data Integrity Board" means the board of senior officials designated by the head of an agency that is responsible for, among other things, reviewing the agency's proposals to conduct or participate in a matching program and conducting an annual review of all matching programs in which the agency has participated.[19] At a minimum, the Data Integrity Board includes the Inspector General of the agency, if any, and the senior official designated by the head of the agency as responsible for implementation of the Privacy Act[20] (*i.e.*, the Senior Agency Official for Privacy).

c. ***Matching agreement***. The term "matching agreement" means a written agreement between a recipient agency and a source agency (or a non-Federal agency) that is required by the Privacy Act for parties engaging in a matching program.[21]

d. ***Matching notice***. The term "matching notice" means the notice published by an agency in the *Federal Register* upon the establishment, re-establishment, or modification of a matching program that describes the existence and character of the matching program.[22] A matching notice identifies the agencies involved, the purpose(s) of the matching program, the authority for conducting the matching program, the records and individuals involved, and additional details about the matching program.

e. ***Senior Agency Official for Privacy***. The term "Senior Agency Official for Privacy" means the senior official, designated by the head of each agency, who has agency-wide responsibility for privacy, including implementation of privacy protections; compliance with Federal laws, regulations, and policies relating to privacy; management of privacy risks at the agency; and a central policy-making role in the agency's development and evaluation of legislative, regulatory, and other policy proposals.

---

[17] OMB Circular No. A-130, Managing Information as a Strategic Resource (July 28, 2016), *available at* https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a130/a130revised.pdf.
[18] *See* 5 U.S.C. § 552a(a)(1)-(5), (7)-(11).
[19] *See id.* § 552a(u).
[20] *See id.* § 552a(u)(2).
[21] *See id.* § 552a(o).
[22] *See id.* § 552a(e)(12).

f. ***System of records notice***. The term "system of records notice" (SORN) means the notice(s) published by an agency in the *Federal Register* upon the establishment and/or modification of a system of records describing the existence and character of the system.[23] A SORN identifies the system of records, the purpose(s) of the system, the authority for maintenance of the records, the categories of records maintained in the system, the categories of individuals about whom records are maintained, the routine uses to which the records are subject, and additional details about the system as described in this Circular. As explained in this Circular, a SORN may be comprised of a single *Federal Register* notice addressing all of the required elements that describe the current system of records, or it may be comprised of multiple *Federal Register* notices that together address all of the required elements.

6. Publishing System of Records Notices

a. ***General***. The Privacy Act requires agencies to publish a SORN in the *Federal Register* describing the existence and character of a new or modified system of records.[24] A SORN is comprised of the *Federal Register* notice(s) that identifies the system of records, the purpose(s) of the system, the authority for maintenance of the records, the categories of records maintained in the system, the categories of individuals about whom records are maintained, the routine uses to which the records are subject, and additional details about the system. The requirement for agencies to publish a SORN allows the Federal Government to accomplish one of the basic objectives of the Privacy Act – fostering agency accountability through public notice.

b. ***When to Publish a System of Records Notice***. Agencies are required to publish a SORN in the *Federal Register* when establishing a new system of records and must also publish notice in the *Federal Register* when making significant changes to an existing system of records. As a general matter, significant changes are those that are substantive in nature and therefore warrant a revision of the SORN in order to provide notice to the public of the character of the modified system of records. The following are examples of significant changes:

(1) A substantial increase in the number, type, or category of individuals about whom records are maintained in the system. For example, a system covering physicians that is being expanded to include other types of health care providers (e.g., nurses or technicians) would require a revised SORN. Increases attributable to normal growth in a single category of individuals generally would not require a revised SORN.

(2) A change that expands the types or categories of records maintained in the system. For example, a benefit system that originally included only earned income information that is being expanded to include unearned income information would require a revised SORN.

(3) A change that modifies the scope of the system. For example, the combining of two or more existing systems of records.

[23] *See id.* § 552a(e)(4).
[24] *See id.*

(4) A change that modifies the purpose(s) for which the information in the system of records is maintained.

(5) A change in the agency's authority to maintain the system of records or maintain, collect, use, or disseminate the records in the system.

(6) A change that modifies the way in which the system operates or its location(s) in such a manner as to modify the process by which individuals can exercise their rights under the statute (*e.g.*, to seek access to or amendment of a record).

(7) A change to equipment configuration (either hardware or software), storage protocol, type of media, or agency procedures that expands the availability of, and thereby creates substantially greater access to, the information in the system. For example, a change in the access controls that substantially increases the accessibility of the information within the agency.

(8) A new routine use or significant change to an existing routine use that has the effect of expanding the availability of the information in the system.[25]

(9) The promulgation of a rule to exempt a system of records from certain provisions of the Privacy Act.[26]

This is not an exhaustive list of significant changes that would require a revised SORN. Other changes to a system of records would require a revised SORN if the changes are substantive in nature and therefore warrant additional notice. If an agency has questions about whether particular changes to a system of records are significant, the agency shall contact OIRA for assistance.

c. ***What to Publish in a System of Records Notice***. Each notice of a new or modified system of records shall be drafted using the Office of the Federal Register SORN templates, which are provided in the appendices to this Circular. When an agency establishes a new system of records, the SORN is comprised of a single *Federal Register* notice that includes all of the required elements that are identified in Appendix II to this Circular, *Office of the Federal Register SORN Template – Full Notice*. When an agency modifies an existing system of records, the agency may choose to publish a *Federal Register* notice that includes all of the required elements identified in Appendix II, or a notice that includes the elements that are identified in Appendix III to this Circular, *Office of the Federal Register SORN Template – Notice of Revision*, as well as any other elements that are being revised.

[25] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,963 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

[26] A Privacy Act exemption rule that is part of a report of a new or significantly modified system of records may also be reviewed by OMB under applicable regulatory review procedures (see section 11 of this Circular for information about Privacy Act exemption rules).

d. ***Who Publishes a System of Records Notice***. The agency responsible for maintaining a system of records (including by providing for the operation of a system of records by a contractor on behalf of the agency) publishes the SORN.[27] Publication shall occur at the agency level, rather than the sub-agency, component, or program level. If a system of records will be maintained by a sub-agency or component of an agency, the broader agency shall publish the SORN and specify the sub-agency or component of the agency that will maintain the system of records. For example, the Department of the Treasury publishes SORNs covering systems of records maintained by the Internal Revenue Service.

e. ***Timing of a System of Records Notice***.[28] A new or revised SORN is effective upon publication in the *Federal Register*, with the exception of any new[29] or significantly modified routine uses. As soon as a SORN is published in the *Federal Register* the agency may begin to operate the system of records – the agency may collect, maintain, and use records in the system, and the agency may disclose records pursuant to any of the conditions of disclosure in subsection (b) of the Privacy Act other than a new or significantly modified routine use. Any new or significantly modified routine uses require a minimum of 30 days after publication in the *Federal Register* before the routine uses are effective and may be used as the basis for disclosure of a record in the system.[30]

   Agencies shall publish notice of any new or significantly modified routine use sufficiently in advance of the proposed effective date of the routine use to permit time for the public to comment and for the agency to review those comments. In no circumstance may an agency use a new or significantly modified routine use as the basis for a disclosure fewer than 30 days following *Federal Register* publication.[31]

   If an agency receives public comments on a published SORN, the agency shall review the comments to determine whether any changes to the SORN are necessary. If the agency determines that significant changes to the SORN are necessary, the agency shall publish a revised SORN. If the agency determines that significant changes to the routine uses or additional routine uses are necessary, the agency shall provide an additional 30-day public comment and review period.

f. ***Rescindment of a System of Records Notice***. When an agency stops maintaining a previously established system of records, the agency shall publish a notice of rescindment in the *Federal Register*. Each notice of rescindment shall be drafted using the *Office of the Federal Register Notice of Rescindment Template*, which is provided in Appendix IV to this Circular. The notice of rescindment shall identify the system of records, explain why the SORN is being rescinded, and provide an account of what will happen to the records that

[27] The exception to this requirement is in the case of a SORN for a government-wide system of records. For a government-wide system of records, the agency with government-wide responsibility shall publish the SORN (see section 6(i) of this Circular for information about government-wide systems of records).

[28] Agencies may not publish a SORN in the *Federal Register* until they have provided advance notice of the proposal to OMB and Congress pursuant to the reporting instructions in section 7 of this Circular.

[29] New routines uses include any routine uses that the agency is newly applying to the specific system, including routine uses that may already have been established for other systems of records.

[30] *See* 5 U.S.C. § 552a(e)(11).

[31] *See id.*

were previously maintained in the system. If the records in the system of records will be combined with another system of records or maintained as part of a new system of records, the notice of rescindment shall direct members of the public to the SORN for the system that will include the relevant records.

There are many reasons why agencies may need to rescind a SORN. For example, the Privacy Act provides that an agency may only collect or maintain in its records information about individuals that is relevant and necessary to accomplish a purpose that is required by statute or executive order.[32] If a system of records is comprised of records that no longer meet that standard, the Privacy Act may require that the agency stop maintaining the system and expunge the records in accordance with the requirements in the SORN and the applicable records retention or disposition schedule approved by the National Archives and Records Administration.

g. ***Format and Style of a System of Records Notice***. Agencies shall draft SORNs in plain language with an appropriate level of detail to ensure that the public is properly informed about the character of the system of records.[33] Agencies shall follow the publication format in the Office of the Federal Register SORN templates, which are provided in the appendices to this Circular. In addition, agencies shall consult the Office of the Federal Register's *Document Drafting Handbook* for general guidance on drafting *Federal Register* notices.[34]

h. ***Scope of a System of Records***. The Privacy Act requires agencies to publish a separate SORN for each system of records. Before developing a SORN, agencies shall carefully consider the proper scope of the system of records. Agencies have discretion in determining what constitutes a system of records for purposes of preparing a notice.[35] However, agencies shall consider the following general factors when determining whether a group of records will be treated as a single system or multiple systems for the purposes of the Privacy Act:

(1) The agency's ability to comply with the requirements of the Privacy Act and facilitate the exercise of the rights of individuals.[36]

(2) The informative value of the notice. Agencies shall consider whether a single SORN or multiple SORNs would provide the most informative notice to the public about the existence and character of the system(s).[37]

---

[32] *See id.* § 552a(e)(1).

[33] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,962 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

[34] Document Drafting Handbook, Office of the Federal Register, National Archives and Records Administration, *available at* http://www.archives.gov/federal-register/write/handbook/.

[35] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,952, 28,962-63 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

[36] *See id*.

[37] *See id*. at 28,962-63.

(3) The agency's ability to be responsive to individual access requests. Agencies shall consider whether a single SORN or multiple SORNs would provide the best notice to individuals regarding how and where they may request access to their records maintained in the system(s) and would allow the agency to most effectively respond to such requests.[38]

(4) The purpose(s) and use(s) of the records.[39] If different groups of records are used for distinct purposes, it may be appropriate to treat those different groups of records as separate systems. Although different groups of records may serve a general common purpose, agencies shall also consider whether different routine uses or security requirements apply to the different groups, or whether the groups are regularly accessed by different employees of the agency.

(5) The cost and convenience to the agency, but only to the extent consistent with the above considerations regarding compliance and individual rights.[40]

Considerable latitude is left to agencies in defining the scope or grouping of records that constitute a system of records. An agency may choose to consider the entire group of records for a particular program as a single system, or the agency may consider it appropriate to segment a group of records (*e.g.*, by function or geographic unit) and treat each segment as a system of records to provide better notice to the public.[41] When an agency chooses to segment a group of records into separate systems of records, the agency shall nevertheless ensure that the SORN for each segment clearly describes any linkages that exist between the different systems of records based on the retrieval of the records. For example, if records described in different SORNs are in fact linked together through a central indexing or retrieval capability such that an employee or contractor retrieving records described in one SORN would necessarily also retrieve and gain access to records described in another SORN, the agency shall explain this linkage in the "Policies and Practices for Retrieval of Records" section of both SORNs.

i. ***Government-Wide System of Records***. A government-wide system of records is a system of records where one agency has regulatory authority over records in the custody of multiple agencies, and the agency with regulatory authority publishes a SORN that applies to all of the records regardless of their custodial location. The application of a government-wide SORN ensures that privacy practices with respect to the records are carried out uniformly across the Federal Government in accordance with the rules of the responsible agency. For a government-wide system of records, all agencies – not just the agency with government-wide responsibilities – are responsible for complying with the terms of the SORN and the applicable requirements in the Privacy Act, including the access and amendment provisions that apply to records under an agency's control.

[38] *See id*.
[39] *See id*.
[40] *See id.* at 28,952.
[41] *See id*.

As a general matter, a government-wide system of records is appropriate when one agency has government-wide responsibilities that involve administrative or personnel records maintained by other agencies. For example, the Office of Personnel Management has published a number of government-wide SORNs relating to the operation of the Federal Government's personnel programs. Agencies shall coordinate with OIRA whenever they are considering the need for a new government-wide system of records.

All government-wide systems of records necessarily affect multiple agencies that will have custody of the records in the system. Accordingly, one step of OMB's review of a new or modified government-wide system of records will involve an interagency review process that allows other affected agencies to review the proposal and provide comments. Once the agency with regulatory authority has published a government-wide SORN, no other agency shall publish a SORN that duplicates the existing government-wide SORN, unless such publication has been approved by OMB.

j. ***System of Records Operated by a Contractor***.[42] When an agency provides by contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall cause the requirements of the Privacy Act to be applied to the system, limited only by the agency's authority to do so.[43] In such cases, the system operated by the contractor is, in effect, deemed to be maintained by the agency.[44] The agency shall publish a SORN for the system, establish an appropriate routine use to permit disclosure of records to the contractor for the purpose of operating the system, and, to the extent consistent with the agency's authority, incorporate enforceable clauses in the contract and statement of work to ensure that the contractor complies with all applicable requirements of the statute and OMB policies.

Agencies shall design their procurement practices to ensure that all contracts that involve the creation, collection, use, processing, storage, maintenance, dissemination, disclosure, or disposal of information that identifies and is about individuals are reviewed and approved by the Senior Agency Official for Privacy before award to help evaluate whether a system of records will be established and, if so, to include appropriate clauses in the contract.[45] The Senior Agency Official for Privacy shall have access to a complete and accurate list of all of the agency's contracts involving information that identifies and is about individuals, and shall establish a process to ensure that the language of each contract is sufficient and that the applicable requirements in the Privacy Act and OMB policies are enforceable on the contractor and its employees consistent with the agency's authority.

---

[42] In cases where an agency acts as a service provider for one or multiple agencies, all agencies involved must ensure compliance with applicable Privacy Act requirements.

[43] *See* 5 U.S.C. § 552a(m).

[44] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,976 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

[45] *See id.*

k. ***Routine Uses***. A routine use is a particular kind of disclosure of a record outside of the agency maintaining the system of records.[46] To qualify as a routine use, the disclosure must be for a purpose that is compatible with the purpose for which the information was originally collected.[47] The routine use provision of the Privacy Act functions as one of the exceptions to the statute's general prohibition against the disclosure of a record without the written consent of the individual to whom the record pertains.[48]

The Privacy Act requires agencies to describe each routine use of the records contained in the system of records, including the categories of users of the records and the purpose of the use.[49] Agencies may only establish routine uses for a system by explicitly publishing the routine uses in the relevant SORN.[50] Agencies are strongly encouraged to publish all routine uses applicable to a system of records in a single *Federal Register* notice for that system. However, some agencies choose to publish a separate notice of routine uses that are applicable to many systems of records at the agency, and then incorporate them by reference into the notices for specific systems to which they apply. When incorporating such routine uses by reference, agencies shall ensure that the routine use section of the SORN clearly indicates which of the separately published routine uses apply to the system of records and includes the *Federal Register* citation where they have been published.

Routine uses shall be narrowly tailored to address a specific and appropriate use of the records. Agencies shall describe each routine use with sufficient clarity and specificity to ensure that members of the public who are unfamiliar with the system or the agency's program can understand the uses to which the records are subject.[51] Overly broad or ambiguous language would undermine the purpose of the routine use notice requirement and shall be avoided. A routine use that only applies to certain records in a system of records should indicate its limited scope.

Before establishing a routine use, an agency must determine that it has the necessary authority to make disclosures under the routine use and that the routine use is appropriate. As explained in OMB's Privacy Act Guidelines, a routine use may be appropriate when the use of the record is necessary for the efficient conduct of government, and when the use is both *related to* and *compatible with* the original purpose for which the information was collected (*e.g.*, the development of a sampling frame for an evaluation study or other statistical purposes).[52] Moreover, the concept of compatibility comprises both *functionally equivalent* uses of the information as well as other uses of the information that are *necessary and proper* (*e.g.*, a disclosure to the National Archives and Records Administration to

---

[46] *See* Implementation of the Privacy Act of 1974: Supplementary guidance, 40 Fed. Reg. 56,741, 56,742 (Dec. 4, 1975), *available at* https://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation1974.pdf.
[47] *See* 5 U.S.C. § 552a(a)(7).
[48] *See id.* § 552a(b)(3).
[49] *See id.* § 552a(e)(4)(D).
[50] *See id.*
[51] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,963 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.
[52] *See id.* at 28,953-54.

conduct records management activities pursuant to specific statutory authority).[53]

Agencies shall publish notice of any new or significantly modified routine uses sufficiently in advance of the proposed effective date of the routine uses to permit time for the public to comment and for the agency to review those comments.[54] In all cases, the Privacy Act requires agencies to publish any new or modified routine use at least 30 days before the effective date of the routine use.[55] An agency shall not disclose any records pursuant to a new or modified routine use until after the 30-day comment period has ended and the agency has considered any comments from the public and determined that no further modifications are necessary.

If an agency determines that an existing routine use is no longer necessary or appropriate, the agency shall immediately discontinue all disclosures under the routine use and shall publish a revised SORN in the *Federal Register* rescinding the routine use. Moreover, if an agency determines that the routine uses in a SORN do not accurately and completely describe all routine use disclosures to which the records in the system are subject, the agency shall discontinue any disclosures that are not accurately and completely described and revise the routine uses in the SORN to accurately and completely describe those disclosures.

l. ***Information Collections and Privacy Act Statements***. If an agency will be collecting information as part of a new or modified system of records, the agency may need to comply with additional requirements, including those in the Paperwork Reduction Act,[56] the E-Government Act of 2002,[57] and related OMB guidance. Agencies (and their contractors) shall meet all applicable requirements before they begin collecting the information. For guidance on whether and how these statutes and OMB policies apply to a collection activity, agencies shall consult OMB guidance and contact OIRA.

Moreover, if an agency asks individuals to supply information that will become part of a system of records, the agency is required to provide a Privacy Act statement on the form used to collect the information or on a separate form that can be retained by the individual.[58] The agency shall provide a Privacy Act statement in such circumstances regardless of whether the information will be collected on a paper or electronic form, on a website, on a mobile application, over the telephone,[59] or through some other medium. This requirement ensures that the individual is provided with sufficient information about the request for information

---

[53] *See* Guidance on the Privacy Act Implications of "Call Detail" Programs to Manage Employees' Use of the Government's Telecommunications Systems, 52 Fed. Reg. 12,990, 12,993 (Apr. 20, 1987), *available at* https://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/guidance_privacy_act.pdf.

[54] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,966 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

[55] *See* 5 U.S.C. § 552a(e)(11).

[56] 44 U.S.C. §§ 3501-3521.

[57] 44 U.S.C. § 3501 note.

[58] *See* 5 U.S.C. § 552a(e)(3).

[59] When information is collected over the telephone, the agency shall orally provide the required information and provide a means by which the individual can receive the information in writing.

to make an informed decision on whether or not to respond.[60]

The Privacy Act statement shall include a plain-language description of:

(1) the authority (whether granted by statute or executive order) that authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) the principal purpose(s) for which the information is intended to be used;

(3) the published routine uses to which the information is subject;[61]

(4) the effects on the individual, if any, of not providing all or any part of the requested information; and

(5) an appropriate citation (and, if practicable, a link) to the relevant SORN(s).

7. Reporting Systems of Records to OMB and Congress

a. ***General***. The Privacy Act requires each agency that proposes to establish or significantly modify a system of records to provide adequate advance notice of any such proposal to OMB, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.[62] This advance notice is separate from the public comment period for new or modified routine uses required by subsection (e)(11) of the Privacy Act and discussed in section 6 of this Circular. Agencies provide advance notice to OMB and the committees of jurisdiction in Congress in order to permit an evaluation of the probable or potential effect of such a proposal on the privacy or other rights of individuals.[63]

b. ***Advance Notice of a New or Modified System of Records***. Agencies shall report to OMB and Congress any proposal to establish or significantly modify a system of records at least 30 days prior to the submission of the notice to the *Federal Register* for publication. OMB will have 30 days to review the proposal and provide any comments to the agency. The 30-day review period is separate from – and may not run concurrently with – the publication period in the *Federal Register*. Only significant changes to a system of records that require a

---

[60] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,961 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

[61] When describing the routine uses in the Privacy Act statement, agencies shall tailor the scope and content of the description in order to provide the most effective notice to the public. Agencies generally need not restate the full text of the published routine uses or provide a lengthy list of routine uses to which the information is subject. Rather, agencies may provide a plain-language summary of the routine uses and provide a link to the website where the full list of routine uses is available. *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,961-62 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

[62] *See* 5 U.S.C. § 552a(r).

[63] *See id.*

revision to the SORN, as described in section 6 of this Circular, need to be reported to OMB and Congress; changes that are not significant do not need to be reported.

Advance notice to OMB and Congress is required by subsection (r) of the Privacy Act. The purpose of the advance notice to OMB and Congress is to permit an evaluation of the potential effect of the proposal on the privacy and other rights of individuals.[64] Although the review period will generally require no more than 30 days, OMB has the discretion to extend the 30-day review period based on the specific circumstances of the proposal. If an agency has questions about the timing of the review, the agency shall consult with OIRA.

In circumstances where it is not feasible for the agency to wait until the 30-day review period for OMB and Congress has expired to publish the notice in the *Federal Register*, the agency may submit a formal written request from the Senior Agency Official for Privacy to OIRA for an expedited advance review period (see section 7(d) of this Circular for information about expedited review requests).

Illustration of Standard Review Process for Systems of Records[65]

Agency Action	Explanation	Timing
The agency submits report to OMB and Congress at least 30 days before publication of the notice in the *Federal Register*.	OMB and Congress have the opportunity to evaluate the probable or potential effect of such a proposal on the privacy or other rights of individuals.	Day 1
After incorporating any comments from OMB – and unless OMB provides instructions to the contrary – the agency may publish the notice in the *Federal Register* and solicit comments from the public.	Notices published in the *Federal Register* after review by OMB and Congress are effective upon publication, with the exception of any new or modified routine uses. New or modified routine uses require a minimum of 30 days after publication in the *Federal Register* before they can become effective.	Day 31
The 30-day public comment period closes and the agency reviews and considers any comments received. If no changes to the notice are necessary, the notice remains effective and any new or modified routine uses become effective.	If the agency receives public comments, the agency shall review the comments to determine whether any changes to the notice are necessary. If the agency determines that significant changes are necessary, the agency will need to begin the review process again.	Day 61

[64] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,977 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

[65] OMB is providing this table to illustrate the steps of the standard review process. The actual timing of the process will depend on the specific circumstances of the proposal, the agency's internal review and clearance procedures, the review process for any Privacy Act exemption rules, and the logistics of *Federal Register* publication.

c. ***Instructions for Reporting a New or Modified System of Records***. Agencies are required to report to OMB and Congress any proposal to establish or significantly modify a system of records. Agencies shall report proposals to the committees of jurisdiction in Congress by messenger or by mailing the reports to the addresses provided below. Agencies shall report proposals to OMB using OMB's specific web-based portal, as described below. Agencies shall not mail or messenger paper versions of the report to OMB. Submission of the report to OMB will officially start the 30-day advance review period.

(1) *House of Representatives*. Agencies shall submit reports to the chair of the House Committee on Oversight and Government Reform, 2157 Rayburn House Office Building, Washington, DC 20515.

(2) *Senate*. Agencies shall submit reports to the chair of the Senate Committee on Homeland Security and Governmental Affairs, 340 Dirksen Senate Office Building, Washington, DC 20510.

(3) *OMB*. Agencies shall submit reports to OMB using the web-based portal jointly developed by OIRA and the General Services Administration's (GSA) Regulatory Information Service Center (RISC). This web-based portal, the RISC/OIRA Consolidated Information System (ROCIS), was developed to facilitate the submission and review of regulations and other agency materials.[66] For detailed instructions on how to use ROCIS to submit reports to OMB, agencies shall consult the user manuals available on the ROCIS website or register for the training classes conducted by RISC at GSA headquarters.[67]

d. ***Request for Expedited Review of a New or Modified System of Records***. Although agencies are required to provide adequate advance notice of any proposal to establish or significantly modify a system of records, there may be circumstances where it is not feasible for the agency to wait until the 30-day review period has expired to publish a notice in the *Federal Register*. In such cases, the agency may submit a formal written request from the Senior Agency Official for Privacy to OIRA for an expedited OMB review period. The request shall be included in the transmittal letter that the agency submits to OIRA in ROCIS. The request shall demonstrate the agency's specific and compelling need for the expedited review, indicate why the agency cannot meet the established review period, and explain the consequences if the request is not granted.

When OIRA grants an agency's request for expedited review, the agency will be allowed to publish the notice in the *Federal Register* after the expedited OMB review period. When OIRA does not grant an agency's request for expedited review, the normal OMB review process will proceed. Agencies shall note that OMB may not waive the explicit requirement

[66] *See* RISC/OIRA Consolidated Information System (ROCIS), *available at* https://www.rocis.gov/.

[67] All ROCIS user manuals and training information are available on the ROCIS website at https://www.rocis.gov/rocis/login.do.

in the Privacy Act for a 30-day *Federal Register* public notice before the adoption of a new or modified routine use,[68] nor may OMB waive the adequate advance notice that is required to Congress.[69]

e. ***Content of the Report of a New or Modified System of Records***. The report of a new or significantly modified system of records includes a transmittal letter, a narrative statement, a draft *Federal Register* notice, any Privacy Act exemption rules, and any supplementary documents.

(1) *Transmittal Letter*. The transmittal letter serves as a brief cover letter accompanying the report. The transmittal letter shall:

(A) Be signed by the Senior Agency Official for Privacy.

(B) Contain the name, email address, and telephone number of the individual who can best answer questions about the proposed system of records.

(C) Contain the agency's assurance that the proposed system of records fully complies with the Privacy Act and OMB policies.

(D) Contain the agency's assurance that the proposed system of records does not duplicate any existing agency or government-wide systems of records.

(2) *Narrative Statement*. The narrative statement provides a brief overview of the proposed system of records making reference to the other materials in the report without simply restating information provided in those materials. The narrative statement shall:

(A) Describe the purpose(s) for which the agency is establishing or modifying the system of records and explain how the scope of the system is commensurate with the purpose(s) of the system.

(B) Identify the specific authority (statute or executive order) under which the system of records will be maintained. The agency shall avoid citing authority that is overly general; rather, the agency shall cite the specific programmatic authority for collecting, maintaining, using, and disseminating the information.

(C) An evaluation of the probable or potential effect of the proposal on the privacy of individuals whose information will be maintained in the system of records.[70] If the agency has conducted one or more privacy impact assessment(s) with respect to information technology that will be used to

[68] *See* 5 U.S.C. § 552a(e)(11).
[69] *See id.* § 552a(r).
[70] 5 U.S.C. § 552a(r) provides that agencies report a proposal to OMB and Congress in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

collect, maintain, or disseminate the information in the system of records, the privacy impact assessment(s) will likely provide the information necessary to meet this requirement, and may be submitted in lieu of drafting a separate evaluation.

(D) Explain how each new or modified routine use satisfies the compatibility requirement of the Privacy Act.[71]

(E) Identify any information collections approved by OMB or submitted to OMB for approval that will be used to collect information that will be maintained in the system of records, and provide the relevant names, OMB control numbers, and expiration dates. If the request for OMB approval of an information collection is pending, the agency may simply state the name of the collection and the date it was submitted to OMB for review.

(3) *Federal Register Notice*. The draft new or revised notice in the format prescribed by the Office of the Federal Register SORN templates, which are provided in the appendices to this Circular.

(4) *Exemption Rule*. Any new Privacy Act exemption rules or changes to published exemption rules in *Federal Register* format that the agency proposes to issue that will apply to records in the new or significantly modified system of records.

(5) *Supplementary Documents*. The supplementary documents include:

(A) For significantly modified systems, the agency shall include a list of the substantive changes to the previously published version of the notice and/or a version of the previously published notice that has been marked up to show the changes that are being proposed.

(B) The agency shall include any other supplementary documents requested by OMB.

f. ***Reporting General Changes to Multiple Systems of Records***. When an agency makes a general change to agency programs or information technology that applies in a similar way to multiple systems of records (*e.g.*, enabling remote access to systems, moving systems from a conventional data center to a cloud-based storage environment, adding a routine use to all systems of records), the agency may submit a single, consolidated report to OMB and Congress describing the changes. However, the agency shall ensure that any changes are properly reflected in all published SORNs.

[71] *See* 5 U.S.C. § 552a(a)(7).

8. Publishing Matching Notices

a. ***General***. The Privacy Act requires recipient agencies (or source agencies in a matching program where a non-Federal agency is the recipient agency) to publish a notice in the *Federal Register* upon the establishment, re-establishment,[72] or modification of a matching program.[73] A matching notice identifies the agencies involved, the purpose(s) of the matching program, the authority for conducting the matching program, the records and individuals involved, and additional details about the matching program. The requirement for agencies to publish a matching notice allows the Federal Government to foster transparency and accountability with respect to agencies' matching programs.

b. ***When to Publish a Matching Notice***. Agencies are required to publish a matching notice in the *Federal Register* at least 30 days prior to the establishment, re-establishment, or significant modification of the matching program.[74] Notice is not required for the one-year renewal of a matching program by the agency's Data Integrity Board.[75] If the agency is re-establishing a matching program and continuing the program past the expiration of the current matching agreement (including any one-year renewal approved by the Data Integrity Board), the agency shall publish a notice of the re-establishment at least 30 days prior to the expiration of the existing matching agreement.

Agencies are only required to publish a revised matching notice when they are making significant changes to the matching program. As a general matter, significant changes are those that are substantive in nature and therefore warrant a revision of the matching notice in order to provide notice to the public of the modified matching program. The following are examples of significant changes:

(1) A change that modifies the purpose(s) of the matching program.

(2) A change in the agency's authority to conduct the matching program.

(3) A change that expands the types or categories of records that are used in the matching program, or a significant increase in the number of records that are being matched.

(4) A change that expands the categories of individuals whose records are used in the matching program.

---

[72] The *re-establishment* of a matching program occurs when an agency re-establishes a matching program upon the expiration of a matching agreement. The re-establishment of a matching program requires the publication of a matching notice in the *Federal Register* and needs to be reported to OMB and Congress (see section 9 of this Circular for information about reporting matching programs). In contrast, the *renewal* of a matching program occurs when an agency's Data Integrity Board renews a matching agreement for one additional year pursuant to 5 U.S.C. § 552a(o)(2)(D). The renewal of a matching program does not require the publication of a matching notice and does not need to be reported to OMB or Congress.

[73] *See* 5 U.S.C. § 552a(e)(12).

[74] *See id.*

[75] *See id.* § 552a(o)(2)(D).

(5) A change to the source and/or recipient agencies that are involved in the matching program.

This is not an exhaustive list of significant changes that would require a revised matching notice. Other changes to a matching program would require a revised notice if the changes are substantive in nature and therefore warrant additional notice. If an agency has questions about whether particular changes to a matching program are significant, the agency shall contact OIRA for assistance.

c. ***What to Publish in a Matching Notice***. Each matching notice shall be drafted using the Office of the Federal Register matching notice templates, which are provided in the appendices to this Circular. When an agency establishes or re-establishes a matching program, the matching notice is comprised of a single *Federal Register* notice that includes all of the required elements that are identified in Appendix V to this Circular, *Office of the Federal Register Matching Notice Template – Full Notice*. When an agency modifies an existing matching program, the agency may choose to publish a *Federal Register* notice that includes all of the required elements identified in Appendix V, or a notice that includes the elements that are identified in Appendix VI to this Circular, *Office of the Federal Register Matching Notice Template – Notice of Revision*, as well as any other elements that are being revised.

d. ***Who Publishes a Matching Notice***. The recipient agency (or source agency in a matching program where a non-Federal agency is the recipient agency) is responsible for meeting the publication requirements associated with a matching program. However, where a recipient agency is not the actual beneficiary of the matching program, it may, to the extent legally permissible, negotiate with the actual beneficiary agency for reimbursement of the costs incurred in publishing the matching notice. Publication shall occur at the agency level, rather than the sub-agency, component, or program level. If a matching program will be conducted by a sub-agency or component of an agency, the broader agency shall publish the matching notice and specify the sub-agency or component that will conduct the program.

e. ***Timing of a Matching Notice***.[76] A new or revised matching notice is not effective until at least 30 days after its publication in the *Federal Register*. If an agency receives public comments on a published matching notice, the agency shall review the comments to determine whether any changes to the matching notice are necessary. If the agency determines that significant changes to the matching notice are necessary, the agency shall publish a revised matching notice and provide an additional 30-day public comment and review period.

f. ***Format and Style of a Matching Notice***. Agencies shall draft matching notices in plain language with an appropriate level of detail to ensure that the public is properly informed about the matching program. Agencies shall follow the publication format in the Office of the Federal Register matching notice templates, which are provided in the appendices to this

[76] Agencies may not publish a matching notice in the *Federal Register* until they have provided advance notice of the proposal to OMB and Congress pursuant to the reporting instructions in section 9 of this Circular.

Circular. In addition, agencies shall consult the Office of the Federal Register's *Document Drafting Handbook* for general guidance on drafting *Federal Register* notices.[77]

9. Reporting Matching Programs to OMB and Congress

a. ***General***. The Privacy Act requires each agency that proposes to establish, re-establish, or significantly modify a matching program to provide adequate advance notice of any such proposal to OMB, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.[78] This advance notice is separate from the public comment period for matching notices required by subsection (e)(12) of the Privacy Act and discussed in section 8 of this Circular. Agencies provide advance notice to OMB and the committees of jurisdiction in Congress in order to permit an evaluation of the probable or potential effect of such a proposal on the privacy or other rights of individuals.[79]

b. ***Advance Notice of a New or Modified Matching Program***. Agencies shall report to OMB and Congress any proposal to establish, re-establish, or significantly modify a matching program at least 30 days prior to the submission of the notice to the *Federal Register* for publication. If the agency is re-establishing a matching program and continuing the program past the expiration of the current matching agreement (including any one-year renewal approved by the Data Integrity Board), the agency shall report the proposal to re-establish the matching program at least 60 days prior to the expiration of the existing matching agreement.

OMB will have 30 days to review the proposal to establish, re-establish, or significantly modify a matching program and provide any comments to the agency. This 30-day review period is separate from – and may not run concurrently with – the publication period in the *Federal Register*. Only significant changes to a matching program that require a revision to the matching notice, as described in section 8 of this Circular, need to be reported to OMB and Congress; changes that are not significant do not need to be reported.

Advance notice to OMB and Congress is required by subsection (r) of the Privacy Act. The purpose of the advance notice to OMB and Congress is to permit an evaluation of the potential effect of the proposal on the privacy and other rights of individuals.[80] Although the review period will generally require no more than 30 days, OMB has the discretion to extend the 30-day review period based on the specific circumstances of the proposal. If an agency has questions about the timing of the review, the agency shall consult with OIRA.

---

[77] Document Drafting Handbook, Office of the Federal Register, National Archives and Records Administration, *available at* http://www.archives.gov/federal-register/write/handbook/.

[78] *See* 5 U.S.C. § 552a(r).

[79] *See id.*

[80] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,977 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

Illustration of Standard Review Process for Matching Programs[81]

Agency Action	Explanation	Timing
The agency submits report to OMB and Congress at least 30 days before publication of the notice in the *Federal Register*, and at least 60 days before the expiration of the matching agreement in the case of a re-established matching program.	OMB and Congress have the opportunity to evaluate the probable or potential effect of such a proposal on the privacy or other rights of individuals.	Day 1
After incorporating any comments from OMB – and unless OMB provides instructions to the contrary – the agency may publish the notice in the *Federal Register* and solicit comments from the public.	Matching notices published in the *Federal Register* are not effective until a minimum of 30 days after publication.	Day 31
The 30-day public comment period closes and the agency reviews and considers any comments received. If no changes to the notice are necessary, the notice is effective.	If the agency receives public comments, the agency shall review the comments to determine whether any changes to the notice are necessary. If the agency determines that significant changes are necessary, the agency will need to begin the review process again.	Day 61

c. ***Instructions for Reporting a New or Modified Matching Program***. Agencies are required to report to OMB and Congress any proposal to establish, re-establish, or significantly modify a matching program. Agencies shall report proposals to the committees of jurisdiction in Congress by messenger or by mailing the reports to the addresses provided below. Agencies shall report proposals to OMB using OMB's specific web-based portal, as described below. Agencies shall not mail or messenger paper versions of the report to OMB. Submission of the report to OMB will officially start the 30-day advance review period.

(1) *House of Representatives*. Agencies shall submit reports to the chair of the House Committee on Oversight and Government Reform, 2157 Rayburn House Office Building, Washington, DC 20515.

[81] OMB is providing this table to illustrate the steps of the standard review process. The actual timing of the process will depend on the specific circumstances of the proposal, the agency's internal review and clearance procedures, and the logistics of *Federal Register* publication.

(2) *Senate*. Agencies shall submit reports to the chair of the Senate Committee on Homeland Security and Governmental Affairs, 340 Dirksen Senate Office Building, Washington, DC 20510.

(3) *OMB*. Agencies shall submit reports to OMB using the web-based portal jointly developed by OIRA and RISC. This web-based portal, called ROCIS, was developed to facilitate the submission and review of regulations and other agency materials.[82] For detailed instructions on how to use ROCIS to submit reports to OMB, agencies shall consult the user manuals available on the ROCIS website or register for the training classes conducted by RISC at GSA headquarters.[83]

d. ***Request for Expedited Review of a New or Modified Matching Program***. Although agencies are required to provide adequate advance notice of any proposal to establish, re-establish, or significantly modify a matching program, there may be circumstances where it is not feasible for the agency to wait until the 30-day review period has expired to publish a notice in the *Federal Register*. In such cases, the agency may submit a formal written request from the Senior Agency Official for Privacy to OIRA for an expedited OMB review period. The request shall be included in the transmittal letter that the agency submits to OIRA in ROCIS. The request shall demonstrate the agency's specific and compelling need for the expedited review, indicate why the agency cannot meet the established review period, and explain the consequences if the request is not granted.

When OIRA grants an agency's request for expedited review, the agency will be allowed to publish the notice in the *Federal Register* after the expedited OMB review period. When OIRA does not grant an agency's request for expedited review, the normal OMB review process will proceed. Agencies shall note that OMB may not waive the explicit requirement in the Privacy Act for a 30-day *Federal Register* public notice before conducting a new or significantly modified matching program,[84] nor may OMB waive the adequate advance notice that is required to Congress.[85]

e. ***Content of the Report of a New or Modified Matching Program***. The report of an established, re-established, or significantly modified matching program includes a transmittal letter, a narrative statement, a draft *Federal Register* notice, a matching agreement, and any supplementary documents.

(1) *Transmittal Letter*. The transmittal letter serves as a brief cover letter accompanying the report. The transmittal letter shall:

(A) Be signed by the Senior Agency Official for Privacy or the chairman of the Data Integrity Board.

---

[82] *See* RISC/OIRA Consolidated Information System (ROCIS), *available at* https://www.rocis.gov/.
[83] All ROCIS user manuals and training information are available on the ROCIS website at https://www.rocis.gov/rocis/login.do.
[84] *See* 5 U.S.C. § 552a(e)(12).
[85] *See id.* § 552a(r).

(B) Contain the name, email address, and telephone number of the individual who can best answer questions about the proposed matching program.

(C) Contain the agency's assurance that the proposed matching program was approved by the agency's Data Integrity Board and fully complies with the Privacy Act and OMB policies.

(2) *Narrative Statement*. The narrative statement provides a brief overview of the proposed matching program making reference to the other materials in the report without simply restating information provided in those materials. The narrative statement shall:

(A) Describe the purpose(s) for which the agency is establishing, re-establishing, or significantly modifying the matching program.

(B) Identify the specific authority (statute or executive order) under which the agency is conducting the matching program. The agency shall avoid citing authority that is overly general; rather, the agency shall cite the specific programmatic authority for conducting the matching program.

(C) Describe the administrative, technical, and physical safeguards in place to protect against unauthorized access to records used in the matching program.

(D) Provide the agency's specific evaluation of the potential impact on the privacy of individuals whose records will be used in the matching program.

(E) Indicate whether a cost-benefit analysis was performed for the matching program, describe the results of the cost-benefit analysis, and explain the basis on which the agency is justifying the matching program.

(3) *Federal Register Notice*. The draft new or revised matching notice in the format prescribed by the Office of the Federal Register matching notice templates, which are provided in the appendices to this Circular.

(4) *Matching Agreement*. The full matching agreement that was approved by the agency's Data Integrity Board.

(5) *Supplementary Documents*. The supplementary documents include:

(A) For significantly modified matching programs, the agency shall include a list of the substantive changes to the previously published version of the matching notice and/or a version of the previously published matching notice that has been marked up to show the changes that are being proposed.

(B) The agency shall include any other supplementary documents requested by OMB.

10. Privacy Act Implementation Rules

Each agency that maintains a system of records shall promulgate rules, in accordance with the rulemaking procedures in 5 U.S.C. § 553, to implement the requirements of the Privacy Act.[86] Privacy Act implementation rules shall provide the public with sufficient information to understand how an agency is complying with the law, and provide sufficient information for individuals to exercise their rights under the law.[87] In particular, agencies' Privacy Act implementation rules shall:

a. establish procedures whereby an individual can be notified in response to his or her request if any system of records named by the individual contains a record pertaining to him or her;[88]

b. define reasonable times, places, and requirements for authenticating the identity of an individual who requests his or her record or information pertaining to him or her before the agency makes the record or information available to the individual (more rigorous authentication procedures may be required for more sensitive records);[89]

c. establish procedures whereby an individual can be notified at his or her request how the individual can gain access to any record pertaining to him or her in the system, including special procedures, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him or her;[90]

d. establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to him or her, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his or her rights under the Privacy Act;[91] and

e. establish fees to be charged, if any, to any individual for making copies of his or her record, excluding the cost of any search for and review of the record.[92]

Agencies shall submit proposed and final Privacy Act implementation rules to OMB if those rules are subject to OMB review under Executive Order 12866, *Regulatory Planning and*

---

[86] *See id.* § 552a(f).
[87] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,966 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.
[88] *See* 5 U.S.C. § 552a(f)(1).
[89] *See id.* § 552a(f)(2).
[90] *See id.* § 552a(f)(3).
[91] *See id.* § 552a(f)(4).
[92] *See id.* § 552a(f)(5).

Review,[93] Executive Order 13563, *Improving Regulation and Regulatory Review*,[94] or other regulatory review procedures.

11. Privacy Act Exemption Rules

The Privacy Act includes two sets of provisions that allow agencies to claim exemptions from certain requirements in the statute.[95] These provisions allow agencies in certain circumstances to promulgate rules, in accordance with 5 U.S.C. § 553, to exempt a system of records from select provisions of the Privacy Act. Agencies that wish to promulgate a rule to exempt a system of records shall follow all applicable rulemaking procedures. Generally, these procedures will require agencies to publish in the *Federal Register* a proposed rule soliciting comments from the public, followed by a final rule. At a minimum, agencies' Privacy Act exemption rules shall include:

a. The specific name(s) of any system(s) that will be exempt pursuant to the rule (the name(s) shall be the same as the name(s) given in the relevant SORN(s));[96]

b. The specific provisions of the Privacy Act from which the system(s) of records is to be exempted and the reasons for the exemption (a separate reason need not be stated for each provision from which a system is being exempted, where a single explanation will serve to explain the entire exemption);[97] and

c. An explanation for why the exemption is both necessary and appropriate.[98]

In addition to promulgating a rule, agencies wishing to claim an exemption for a system of records shall also identify the applicable exemption(s) in the relevant SORN. Whenever agencies publish a rule to claim a new or revised exemption for a system of records, the agency shall also revise the SORN pursuant to the publication requirements described in section 6 of this Circular, and report the proposal to OMB and Congress pursuant to the reporting requirements described in section 7 of this Circular.

When agencies wish to promulgate a Privacy Act exemption rule, agencies shall submit the draft rule to OMB along with the new or revised SORN(s) associated with the systems that the agency wishes to exempt (see section 7 of this Circular for information about reporting a new or modified system of records). In most cases a separate submission of the rule to OMB will not be required and OMB will review the proposed exemption rule along with the SORN. However, in

---

[93] Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (1993), *available at* http://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf.
[94] Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (2011), *available at* http://www.reginfo.gov/public/jsp/Utilities/EO_13563.pdf.
[95] *See* 5 U.S.C. § 552a(j) and (k).
[96] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,971-72 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.
[97] *See id.*
[98] *See id.* at 28,971.

some exceptional cases exemption rules may also be subject to OMB's regulatory review procedures under Executive Order 12866, *Regulatory Planning and Review*,[99] and Executive Order 13563, *Improving Regulation and Regulatory Review*.[100] In such cases, OIRA will notify the agency as soon as possible regarding the appropriate review process.

It is important for agencies to recognize that Privacy Act exemptions are permissive. Even in circumstances where an agency is authorized to promulgate an exemption, the agency shall only do so if the exemption is necessary and consistent with established policies.[101] Moreover, while the Privacy Act allows agencies to promulgate exemptions that apply at the system level, agencies shall exempt only those records in a system of records for which the exemption is necessary and appropriate.[102] In cases where it is necessary to maintain exempt and non-exempt records in a single system of records, agencies shall only exempt the records for which the exemption is necessary and appropriate.[103]

Agencies may not exempt any system of records from any provision of the Privacy Act until all of the applicable reporting and publication requirements have been met.

12. Privacy Act Reviews

OMB Circular A-130[104] outlines privacy requirements that apply to the information system development life cycle. Because all information in systems of records is part of one or more information systems,[105] many of the requirements in Circular A-130 apply to systems of records. For example, agencies are required to select, implement, and assess privacy controls[106] and develop privacy plans[107] for information systems. In addition, agencies are required to establish and maintain an agency-wide privacy continuous monitoring (PCM) program,[108] based on a

---

[99] Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (1993), *available at* http://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf.

[100] Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (2011), *available at* http://www.reginfo.gov/public/jsp/Utilities/EO_13563.pdf.

[101] *See* Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,972 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

[102] *See id.* at 28,971.

[103] *See id.*

[104] OMB Circular No. A-130, Managing Information as a Strategic Resource (July 28, 2016), *available at* https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a130/a130revised.pdf.

[105] The term "information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. 44 U.S.C. § 3502(8). The term "information resources" means information and related resources, such as personnel, equipment, funds, and information technology. 44 U.S.C. § 3502(6).

[106] A privacy control is an administrative, technical, or physical safeguard employed within an agency to ensure compliance with applicable privacy requirements and manage privacy risks.

[107] A privacy plan is a formal document that details the privacy controls selected for an information system or environment of operation that are in place or planned for meeting applicable privacy requirements and managing privacy risks, details how the controls have been implemented, and describes the methodologies and metrics that will be used to assess the controls.

[108] A PCM program is an agency-wide program that maintains ongoing awareness of threats and vulnerabilities that may pose privacy risks; monitors changes to information systems and environments of operation that create, collect, use, process, store, maintain, disseminate, disclose, or dispose of personally identifiable information; and conducts

written PCM strategy.[109] The requirement to establish and maintain a PCM program has replaced the prior OMB requirement for agencies to conduct annual Privacy Act reviews.

During the development of an information system, agencies shall select, implement, and assess privacy controls that allow the agency to ensure continued compliance with all applicable requirements in the Privacy Act and related OMB guidance. Furthermore, agencies shall monitor and assess privacy controls selected for an information system on an ongoing basis. This includes assessing the effectiveness of the privacy controls, documenting changes to the information system, analyzing the privacy impact associated with the changes, and reporting the state of the information system to appropriate agency officials. The type, rigor, and frequency of control assessments shall be sufficient to account for risks that change over time based on changes in the threat environment, agency missions and business functions, personnel, technology, or environments of operation.

Agencies shall design their privacy control selection process to include privacy controls that allow the agency to ensure compliance with applicable requirements in the Privacy Act and related OMB guidance. At a minimum, the controls selected for an information system that contains information in a system of records shall address the following elements:

a. ***Minimization***. Agencies shall ensure that no system of records includes information about an individual that is not relevant and necessary to accomplish a purpose required by statute or executive order.

b. ***Systems of Records Notices***. Agencies shall ensure that all SORNs remain accurate, up-to-date, and appropriately scoped (see section 6(h) of this Circular for information about the scope of a system of records); that all SORNs are published in the *Federal Register*; that all SORNs include the information required by this Circular; and that all significant changes to SORNs have been reported to OMB and Congress (see section 7 of this Circular for information about reporting a modified system of records).

c. ***Routine Uses***. Agencies shall ensure that all routine uses remain appropriate and that the recipient's use of the records continues to be compatible with the purpose for which the information was collected (see section 6(k) of this Circular for information about routine uses).

d. ***Privacy Act Exemptions***. Agencies shall ensure that each exemption claimed for a system of records pursuant to 5 U.S.C. § 552a(j) and (k) remains appropriate and necessary (see section 11 of this Circular for information about Privacy Act exemptions).

---

privacy control assessments to verify the continued effectiveness of all privacy controls selected and implemented at an agency across the agency risk management tiers to ensure continued compliance with applicable privacy requirements and manage privacy risks.

[109] A PCM strategy is a formal document that catalogs the available privacy controls implemented at an agency across the agency risk management tiers and ensures that the controls are effectively monitored on an ongoing basis by assigning an agency-defined assessment frequency to each control that is sufficient to ensure compliance with applicable privacy requirements and to manage privacy risks.

e. ***Contracts***. Agencies shall ensure that the language of each contract that involves the creation, collection, use, processing, storage, maintenance, dissemination, disclosure, or disposal of information that identifies and is about individuals, is sufficient and that the applicable requirements in the Privacy Act and OMB policies are enforceable on the contractor and its employees (see section 6(j) of this Circular for information about systems of records operated by contractors).

f. ***Privacy Training***. Agencies shall ensure that the agency's training practices are sufficient and that agency personnel understand the requirements of the Privacy Act, OMB guidance, the agency's implementing regulations and policies, and any job-specific requirements.

13. Annual FISMA Privacy Review and Report

The Privacy Act originally required the President to submit a biennial report to Congress describing the administration of the statute. However, this requirement was subsequently repealed.[110] In place of the biennial Privacy Act report, OMB now reports to Congress on agencies' compliance with privacy requirements through the annual Federal Information Security Modernization Act of 2014 (FISMA) report to Congress.[111] Each year, OMB issues guidance instructing each Senior Agency Official for Privacy to review the administration of the agency's privacy program and report compliance data to OMB. OMB uses the reports from agencies to develop its annual FISMA report to Congress.

14. Annual Matching Activity Review and Report

At the end of each calendar year, the Data Integrity Board of each agency that has participated in a matching program during the year shall conduct a review of that year's matching programs and submit a report to the head of the agency and to OMB.[112] The report for the preceding calendar year shall be submitted to OMB at privacy-oira@omb.eop.gov by June 1 and posted on the agency's website at www.[agency].gov/privacy (see section 15 of this Circular for information about agency website posting requirements).

The Data Integrity Board's annual matching activity report shall include the following elements:

a. Current information about the composition of the Data Integrity Board, including:

(1) a list of the names and positions of the members of the Data Integrity Board;

(2) the name and contact information of the Data Integrity Board's secretary; and

(3) any changes in membership or structure of the Data Integrity Board that occurred during the year.

[110] *See* 31 U.S.C. § 1113 note.
[111] *See* 44 U.S.C. §§ 3551-3558.
[112] *See* 5 U.S.C. § 552a(u)(3)(D).

b. A list of each matching program in which the agency participated during the year. For each matching program, the report shall include:

(1) a brief description of the matching program, including the names of all participating Federal and non-Federal agencies;

(2) links to the matching notice and matching agreement posted on the agency's website at www.[agency].gov/privacy;

(3) an account of whether the agency has fully adhered to the terms of the matching agreement;

(4) an account of whether all disclosures of agency records for use in the matching program continue to be justified; and

(5) an indication of whether a cost-benefit analysis was performed, the results of the cost-benefit analysis, and an explanation of why the agency proceeded with any matching program for which the results of the cost-benefit analysis did not demonstrate that the program is likely to be cost effective.

c. For each matching program for which the Data Integrity Board waived the requirement for a cost-benefit analysis, the reasons for the waiver.

d. A description of any matching agreement that the Data Integrity Board disapproved and the reasons for the disapproval.

e. A description of any violations of matching agreements that have been alleged or identified, and a discussion of any action taken in response.

The Data Integrity Board's annual matching activity report may also include a review of any agency matching activities that are not matching programs.[113]

15. Agency Website Posting

Agencies shall maintain a central resource page dedicated to their privacy program on their principal website at www.[agency].gov/privacy. At a minimum, agencies shall include the following materials related to the Privacy Act on their central privacy program page:

a. ***System of records notices***. Agencies shall list and provide links to complete, up-to-date versions of all agency SORNs. This requires agencies to provide the following:

(1) A list of all of the agency's systems of records;

[113] *See id.* § 552a(u)(3)(H).

(2) Citations and links to all *Federal Register* notices that comprise the SORN for each system of records; and

(3) For any SORNs that are comprised of multiple *Federal Register* notices, an unofficial consolidated version of the SORN that describes the current system of records and allows members of the public to view the SORN in its entirety in a single location.

The requirement for agencies to provide links to complete, up-to-date versions of SORNs on the agency's privacy program page does not replace the Privacy Act's statutory requirement for agencies to publish SORNs in the *Federal Register*. Notice in the *Federal Register* of the establishment or modification of a system of records will continue to serve as the agency's official notice (see section 6 of this Circular for information about publishing SORNs).

b. ***Matching notices and agreements***. Agencies shall list and provide links to up-to-date matching notices and agreements[114] for all active matching programs in which the agency participates (see section 8 of this Circular for information about publishing matching notices).

c. ***Exemptions to the Privacy Act***. Agencies shall provide citations and links to the final rules published in the *Federal Register* that promulgate each Privacy Act exemption claimed for their systems of records (see section 11 of this Circular for information about Privacy Act exemption rules).

d. ***Privacy Act implementation rules***. Agencies shall list and provide links to all Privacy Act implementation rules promulgated pursuant to 5 U.S.C. § 552a(f) (see section 10 of this Circular for information about Privacy Act implementation rules).

e. ***Instructions for submitting a Privacy Act request***. Agencies shall provide instructions in clear and plain language for individuals who wish to request access to or amendment of their records pursuant to 5 U.S.C. § 552a(d).

This is not an exhaustive list of the materials that agencies are required to include on their central privacy program page. Agencies shall refer to other OMB guidance documents to understand all website posting requirements.

16. Government-wide Responsibilities

a. ***General***. The Privacy Act places principal responsibility for compliance with its provisions on Federal agencies. The head of each agency shall designate a Senior Agency Official for Privacy who has agency-wide responsibility for privacy, including implementation of privacy protections; compliance with Federal laws, regulations, and policies relating to privacy; management of privacy risks at the agency; and a central policy-making role in the agency's

[114] 5 U.S.C. § 552a(o)(2)(A)(ii) provides that a copy of each matching agreement "shall . . . be available upon request to the public."

development and evaluation of legislative, regulatory, and other policy proposals. The head of each agency shall also ensure that the Senior Agency Official for Privacy has the necessary resources to carry out his or her responsibilities. At the discretion of the Senior Agency Official for Privacy and consistent with applicable law, other qualified agency personnel may perform particular functions that are assigned to the Senior Agency Official for Privacy in this Circular.

b. ***Office of Management and Budget***. The Director of OMB will:

(1) Issue guidelines and directives to the agencies to implement the Privacy Act.

(2) Oversee the agencies' implementation of the Privacy Act.

(3) Assist the agencies, at their request, in implementing their Privacy Act programs.

(4) Review agencies' proposals pursuant to 5 U.S.C. § 552a(r).

c. ***Department of Commerce***. The Secretary of Commerce shall, consistent with guidelines issued by OMB, develop and issue standards and guidelines for ensuring the security of information protected by the Privacy Act in Federal information systems.

d. ***Federal Acquisition Regulations Council***. The Federal Acquisition Regulations Council shall, consistent with guidelines issued by OMB, ensure that instructions are issued on what agencies must do in order to comply with the requirements of 5 U.S.C. § 552a(m) when contracting for the operation of a system of records to accomplish an agency purpose.

e. ***Office of Personnel Management***. The Director of the Office of Personnel Management shall, consistent with guidelines issued by OMB:

(1) Develop and maintain government-wide standards and procedures for civilian personnel information processing and recordkeeping directives to ensure compliance with the Privacy Act.

(2) Develop and conduct Privacy Act training programs. The assignment of this responsibility to the Office of Personnel Management does not affect the responsibility of individual agency heads for developing and conducting training programs tailored to the specific needs of their own personnel.

f. ***National Archives and Records Administration***. The Archivist of the United States shall, consistent with guidelines issued by OMB:

(1) Issue instructions on the format of the agency notices and rules required to be published under the Privacy Act.

(2) Compile and post on the *Federal Register* website a list of published agency SORNs that are in effect and a list of the Privacy Act implementation rules promulgated under 5 U.S.C. § 552a(f).

(3) Issue procedures governing the transfer of records to Federal Records Centers for storage, processing, and servicing, pursuant to 44 U.S.C. § 3103. For purposes of the Privacy Act, such records are considered to be maintained by the agency that deposited them. The Archivist may only disclose deposited records according to the access rules established by the agency that deposited them.

(4) Review and approve agencies' proposed record retention schedules associated with each new system of records.

17. Effectiveness

This Circular is effective upon issuance. However, agencies need not immediately revise or republish their system of records notices, matching notices/agreements, or Privacy Act statements or regulations to comport with the requirements of this Circular. Rather, agencies may make such revisions on an ongoing basis as they establish or modify any systems of records, matching programs, information collections, or Privacy Act regulations.

This Circular is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

18. Inquiries

All inquiries regarding this Circular should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Telephone: (202) 395-3785. Email: privacy-oira@omb.eop.gov.

Appendix I – Summary of Key Requirements

The following tables provide a general summary of the reporting, publication, review, and agency website posting requirements discussed in this Circular. The tables only include the specific requirements referenced in this Circular; they do not provide a complete list of the requirements in these areas. For more detailed explanations of these requirements, agencies shall consult the Privacy Act, the corresponding sections of this Circular, and additional OMB guidance.

Federal Register Publication Requirements

Publication	Description	Timing	Citation(s)
System of Records Notices	Agencies shall publish a notice in the *Federal Register* describing the existence and character of a new or significantly modified system of records. Agencies shall also publish a notice of rescindment when the agency stops maintaining a system of records.	A new or revised SORN is effective upon publication in the *Federal Register*, with the exception of any new or modified routine uses, which require a minimum of 30 days after publication in the *Federal Register* before they can become effective.	5 U.S.C. § 552a(e)(4); section 6 of this Circular.
Matching Notices	Agencies shall publish a notice in the *Federal Register* describing an established, re-established, or significantly modified matching program.	A new or revised matching notice is not effective until at least 30 days after its publication in the *Federal Register*.	5 U.S.C. § 552a(e)(12); section 8 of this Circular.
Privacy Act Implementation Rules	Agencies shall promulgate rules to implement the provisions of the Privacy Act.	Agencies must publish a final rule before the rule is effective.	5 U.S.C. § 552a(f); section 10 of this Circular.
Privacy Act Exemption Rules	In certain circumstances, agencies may promulgate a rule to exempt a system of records from certain requirements of the Privacy Act.	Agencies must publish a final rule before the exemption is effective.	5 U.S.C. § 552a(j)-(k); section 11 of this Circular.

Reporting Requirements

Report	Description	Timing	Recipient(s)	Citation(s)
Privacy Act Implementation and Exemption Rules	Agencies shall submit Privacy Act rules to OMB under applicable regulatory review procedures and as part of a	Agencies shall provide proposed and/or final rules before publication and consult OMB	OMB (via ROCIS system).	5 U.S.C. § 552a(f), (j)-(k); Executive Orders 12866 and 13563; sections 10 and 11 of this Circular.

	proposal to establish or significantly modify a system of records.	regarding applicable review procedures.		
Report of New or Significantly Modified System of Records	Agencies shall report any proposal to establish or significantly modify a system of records.	Agencies shall submit reports at least 30 days prior to submission of the notice to the *Federal Register*.	OMB (via ROCIS system) and Congress (via mail).	5 U.S.C. § 552a(r); section 7 of this Circular.
Report of New or Significantly Modified Matching Program	Agencies shall report any proposal to establish, re-establish, or significantly modify a matching program.	Agencies shall submit reports at least 30 days prior to submission of the notice to the *Federal Register*.	OMB (via ROCIS system) and Congress (via mail).	5 U.S.C. § 552a(r); section 9 of this Circular.
Annual Matching Activity Report	Agencies' Data Integrity Boards shall submit a report describing any matching programs that occurred during the calendar year.	Agencies shall submit the annual report for the preceding calendar year to OMB by June 1.	OMB (via email to privacy-oira@omb.eop.gov) and the head of the agency.	5 U.S.C. § 552a(u)(3)(D); section 14 of this Circular.
Annual FISMA Privacy Report	The Senior Agency Official for Privacy shall report privacy compliance information to OMB as part of the annual FISMA reporting process.	Agencies shall refer to OMB's annual FISMA guidance for reporting instructions.	OMB (see OMB's annual FISMA guidance for reporting instructions).	44 U.S.C. §§ 3551-3558; section 13 of this Circular.

Agency Website Posting Requirements

Posting	Description	Location	Citation(s)
Compilation of agencies' system of records notices and Privacy Act implementation rules	The Office of the Federal Register shall post a compilation of agencies' system of records notices and Privacy Act implementation rules.	The website of the *Federal Register*.	5 U.S.C. § 552a(f).
System of Records Notices	Agencies shall list and provide links to complete, up-to-date versions of all agency SORNs.	www.[agency].gov/privacy	5 U.S.C. § 552a(e)(4); section 15 of this Circular.
Matching Notices and Agreements	Agencies shall list and provide links to up-to-date matching notices and agreements for all active matching programs.	www.[agency].gov/privacy	5 U.S.C. § 552a(o), (r); section 15 of this Circular.
Privacy Act Exemptions	Agencies shall provide citations and links to all	www.[agency].gov/privacy	5 U.S.C. § 552a(j)-(k); section 15 of this Circular.

	Privacy Act exemption rules.		
Privacy Act Implementation Rules	Agencies shall list and provide links to all Privacy Act implementation rules.	www.[agency].gov/privacy	5 U.S.C. § 552a(f); section 15 of this Circular.
Instructions for Submitting a Privacy Act Request	Agencies shall provide instructions for individuals who wish to submit an access or amendment request.	www.[agency].gov/privacy	5 U.S.C. § 552a(d); section 15 of this Circular.

Agency Review Requirements

Review	Description	Timing	Reviewer	Citation(s)
Minimization – Continuous Monitoring	Agencies shall ensure that no system of records includes information about an individual that is not relevant and necessary to accomplish a purpose required by statute or executive order.	Agencies shall perform assessments of privacy controls with a frequency sufficient to ensure compliance and manage risks.	Senior Agency Official for Privacy	5 U.S.C. § 552a(e)(1); section 12 of this Circular.
System of Records Notices – Continuous Monitoring	Agencies shall ensure that all SORNs remain accurate, up-to-date, and appropriately scoped; that all SORNs are published in the *Federal Register*; that all SORNs include the information required by this Circular; and that all significant changes to SORNs have been reported to OMB and Congress.	Agencies shall perform assessments of privacy controls with a frequency sufficient to ensure compliance and manage risks.	Senior Agency Official for Privacy	5 U.S.C. § 552a(e)(4); section 12 of this Circular.
Routine Uses – Continuous Monitoring	Agencies shall ensure that all routine uses remain appropriate and that the recipient's use of the records continues to be compatible with the purpose for which the information was collected.	Agencies shall perform assessments of privacy controls with a frequency sufficient to ensure compliance and manage risks.	Senior Agency Official for Privacy	5 U.S.C. § 552a(a)(7); section 12 of this Circular.
Privacy Act Exemptions – Continuous Monitoring	Agencies shall ensure that each exemption claimed for a system of records pursuant to 5 U.S.C. § 552a(j) and (k) remains appropriate and necessary.	Agencies shall perform assessments of privacy controls with a frequency sufficient to ensure compliance and manage risks.	Senior Agency Official for Privacy	5 U.S.C. § 552a(j)-(k); section 12 of this Circular.
Contracts – Continuous Monitoring	Agencies shall ensure that the language of each contract that involves the creation, collection, use, processing, storage, maintenance, dissemination, disclosure, or disposal of information that	Agencies shall perform assessments of privacy controls with a frequency sufficient to ensure compliance and manage risks.	Senior Agency Official for Privacy	5 U.S.C. § 552a(m); section 12 of this Circular.

	identifies and is about individuals, is sufficient and that the applicable requirements in the Privacy Act and OMB policies are enforceable on the contractor and its employees.			
Privacy Training – Continuous Monitoring	Agencies shall ensure that the agency's training practices are sufficient and that agency personnel understand the requirements of the Privacy Act, OMB guidance, the agency's implementing regulations and policies, and any job-specific requirements.	Agencies shall perform assessments of privacy controls with a frequency sufficient to ensure compliance and manage risks.	Senior Agency Official for Privacy	5 U.S.C. § 552a(e)(9); section 12 of this Circular.
FISMA Review – Annual	The Senior Agency Official for Privacy shall review the administration of the agency's privacy program as part of the annual FISMA reporting process.	Agencies shall refer to OMB's annual FISMA guidance for review instructions.	Senior Agency Official for Privacy	44 U.S.C. §§ 3551-3558; section 13 of this Circular.
Review of Matching Programs – Annual	Agencies' Data Integrity Boards shall review all matching programs in which the agency has participated during the calendar year.	Agencies' Data Integrity Boards shall conduct the review at the end of the calendar year and report to OMB by June 1.	Agency's Data Integrity Board	5 U.S.C. § 552a(u)(3)(B)-(C); section 14 of this Circular.
Review of Other Matching Activities – Annual	Agencies' Data Integrity Boards may also review any agency matching activities that are not matching programs.	Agencies' Data Integrity Boards shall conduct any review at the end of the calendar year and report to OMB by June 1.	Agency's Data Integrity Board	5 U.S.C. § 552a(u)(3)(H); section 14 of this Circular.

Appendix II
Office of the Federal Register SORN Template – Full Notice

Agencies shall publish all system of records notices (SORNs) in the *Federal Register* using the appropriate format provided in the appendices to this Circular. Agencies shall use the language and section headings provided in the template and replace the language in brackets with the appropriate agency language.

Appendix II provides the Office of the Federal Register SORN template for full notices that include all of the elements that are required to be in a SORN. Agencies shall use this template when publishing a new SORN or choosing to publish a revised SORN in its entirety.

[Name of agency]

Privacy Act of 1974; System of Records

AGENCY: [Name of agency and, if applicable, agency component].

ACTION: Notice of a [New/Modified] System of Records.

SUMMARY: [A plain-language description of the system].

DATES: [The deadline to submit comments on the proposal and the date on which any routine uses will be effective].

ADDRESSES: [Instructions for submitting comments on the proposal, including an email address or a website where comments can be submitted electronically].

FOR FURTHER INFORMATION CONTACT: [Instructions for submitting general questions about the system].

SUPPLEMENTARY INFORMATION: [Background information about the proposal, including a description of any changes being made to the system and the purpose(s) of the changes].

SYSTEM NAME AND NUMBER: [A name for the system that is unambiguous and clearly identifies the purpose or character of the system, and the number of the system].

SECURITY CLASSIFICATION: [An indication of whether any information in the system is classified].

SYSTEM LOCATION: [The address of the agency and/or component responsible for the system, as well as the address of any third-party service provider].

SYSTEM MANAGER(S): [The title, business address, and contact information of the agency official who is responsible for the system].

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: [The specific authority that authorizes the maintenance of the records in the system].

PURPOSE(S) OF THE SYSTEM: [A description of the agency's purpose(s) for maintaining the system].

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: [The categories of individuals on whom records are maintained in the system].

CATEGORIES OF RECORDS IN THE SYSTEM: [The categories of records maintained in the system and, if practicable and useful for public notice, specific data elements].

RECORD SOURCE CATEGORIES: [The categories of sources of records in the system].

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES: [Each routine use of the records contained in the system, including the categories of users and the purpose of such use].

POLICIES AND PRACTICES FOR STORAGE OF RECORDS: [The policies and practices of the agency regarding the storage of records].

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS: [The policies and practices of the agency regarding retrieval of records].

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS: [The policies and practices of the agency regarding retention and disposal of records].

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS: [A description of the administrative, technical, and physical safeguards to which the system is subject].

RECORD ACCESS PROCEDURES: [The agency procedures whereby an individual can be notified at his or her request how he or she can gain access to any record pertaining to him or her in the system].

CONTESTING RECORD PROCEDURES: [The agency procedures whereby an individual can be notified at his or her request how he or she can contest the content of any record pertaining to him or her in the system].

NOTIFICATION PROCEDURES: [The agency procedures whereby an individual can be notified at his or her request if the system contains a record pertaining to him or her].

EXEMPTIONS PROMULGATED FOR THE SYSTEM: [Any Privacy Act exemptions promulgated for the system].

HISTORY: [Citation(s) to the last full *Federal Register* notice that includes all of the elements that are required to be in a SORN, as well as any subsequent notices of revision].

Appendix III
Office of the Federal Register SORN Template – Notice of Revision

Agencies shall publish all system of records notices (SORNs) in the *Federal Register* using the format provided in the appendices to this Circular. Agencies shall use the language and section headings provided in the template and replace the language in brackets with the appropriate agency language.

Appendix III provides the Office of the Federal Register SORN template for revised notices that describe a modified system of records when the agency chooses not to publish the revised SORN in its entirety. The elements provided in the template are required to appear in any notice of a modified system of records. Elements omitted from the template shall be included in a notice of a modified system of records if there are revisions to those elements.

[Name of agency]

Privacy Act of 1974; System of Records

AGENCY: [Name of agency and, if applicable, agency component].

ACTION: Notice of a Modified System of Records.

SUMMARY: [A plain-language description of the system].

DATES: [The deadline to submit comments on the proposal and the date on which any routine uses will be effective].

ADDRESSES: [Instructions for submitting comments on the proposal, including an email address or a website where comments can be submitted electronically].

FOR FURTHER INFORMATION CONTACT: [Instructions for submitting general questions about the system].

SUPPLEMENTARY INFORMATION: [Background information about the proposal, including a description of the changes being made to the system and the purpose(s) of the changes].

SYSTEM NAME AND NUMBER: [A name for the system that is unambiguous and clearly identifies the purpose or character of the system, and the number of the system].

SECURITY CLASSIFICATION: [An indication of whether any information in the system is classified].

SYSTEM LOCATION: [The address of the agency and/or component responsible for the system, as well as the address of any third-party service provider].

SYSTEM MANAGER(S): [The title, business address, and contact information of the agency official who is responsible for the system].

…

[Agencies shall review the other elements in the full SORN template in Appendix II to this Circular and include elements for which revisions are necessary. For example, if an agency is modifying the categories of records in the system, the agency shall include that element in the notice of revision.]

…

HISTORY: [Citation(s) to the last full *Federal Register* notice that includes all of the elements that are required to be in a SORN, as well as any subsequent notices of revision].

Appendix IV
Office of the Federal Register Notice of Rescindment Template

Agencies are required to publish a notice of rescindment in the *Federal Register* whenever they stop maintaining a previously established system of records. Agencies shall publish all notices of rescindment using the format provided in Appendix IV to this Circular. Agencies shall use the language and section headings provided in the template and replace the language in brackets with the appropriate agency language.

[Name of agency]

Privacy Act of 1974; System of Records

AGENCY: [Name of agency and, if applicable, agency component].

ACTION: Rescindment of a System of Records Notice.

SUMMARY: [A plain-language description of the system that is being discontinued].

DATES: [The date on which the agency stopped or will stop maintaining the system of records].

ADDRESSES: [Instructions for submitting comments on the notice, including an email address or a website where comments can be submitted electronically].

FOR FURTHER INFORMATION CONTACT: [Instructions for submitting general questions about the discontinued system].

SUPPLEMENTARY INFORMATION: [Background information about the proposal, including an account of what will happen to the records that were previously maintained in the system and references to any other SORN that will pertain to the records].

SYSTEM NAME AND NUMBER: [The name and number of the system that is being discontinued].

HISTORY: [Citation(s) to the last full *Federal Register* notice that includes all of the elements that are required to be in a SORN, as well as any subsequent notices of revision].

Appendix V
Office of the Federal Register Matching Notice Template – Full Notice

Agencies shall publish all matching notices in the *Federal Register* using the format provided in the appendices to this Circular. Agencies shall use the language and section headings provided in the template and replace the language in brackets with the appropriate agency language.

Appendix V provides the Office of the Federal Register matching notice template for full notices that include all of the elements that are required to be in a matching notice. Agencies shall use this template when publishing a notice of the establishment or re-establishment of a matching program, or when publishing a revised matching notice in its entirety.

[Name of agency]

Privacy Act of 1974; Matching Program

AGENCY: [Name of agency and, if applicable, agency component].

ACTION: Notice of a [New/Modified] Matching Program.

SUMMARY: [A plain-language description of the matching program].

DATES: [The deadline to submit comments on the proposal, as well as the beginning and ending dates of the matching program].

ADDRESSES: [Instructions for submitting comments on the matching program, including an email address or a website where comments can be submitted electronically].

FOR FURTHER INFORMATION CONTACT: [Instructions for submitting general questions about the matching program].

SUPPLEMENTARY INFORMATION: [Background information about the proposal].

PARTICIPATING AGENCIES: [The name of the participating agency or agencies, including any non-Federal agencies].

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM: [The specific authority for conducting the matching program].

PURPOSE(S): [A plain-language description of the agency's purpose(s) for conducting the matching program].

CATEGORIES OF INDIVIDUALS: [The categories of individuals whose information is involved in the matching program].

CATEGORIES OF RECORDS: [The categories of records involved in the matching program and the specific data elements that are matched].

SYSTEM(S) OF RECORDS: [The names of all relevant systems of records and a citation of the system of records notices].

Appendix VI
Office of the Federal Register Matching Notice Template – Notice of Revision

Agencies shall publish all matching notices in the *Federal Register* using the format provided in the appendices to this Circular. Agencies shall use the language and section headings provided in the template and replace the language in brackets with the appropriate agency language.

Appendix VI provides the Office of the Federal Register matching notice template for revised notices that describe a modified matching program when the agency chooses not to publish the revised notice in its entirety. The elements provided in the template are required to appear in any notice of a modified matching program. Elements omitted from the template shall be included in a notice of a modified matching program if there are revisions to those elements.

[Name of agency]

Privacy Act of 1974; Matching Program

AGENCY: [Name of agency and, if applicable, agency component].

ACTION: Notice of a Modified Matching Program.

SUMMARY: [A plain-language description of the matching program].

DATES: [The deadline to submit comments on the proposal, as well as the beginning and ending dates of the matching program].

ADDRESSES: [Instructions for submitting comments on the proposal, including an email address or a website where comments can be submitted electronically].

FOR FURTHER INFORMATION CONTACT: [Instructions for submitting general questions about the matching program].

SUPPLEMENTARY INFORMATION: [Background information about the proposal].

PARTICIPATING AGENCIES: [The name of the participating agency or agencies, including any non-Federal agencies].

…

[Agencies shall review the other elements in the full matching notice template in Appendix V to this Circular and include elements for which revisions are necessary. For example, if an agency is modifying the categories of records involved in the matching program, the agency shall include that element in the notice of revision.]

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

Semiannual Regulatory Flexibility Agenda

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Board is issuing this agenda under the Regulatory Flexibility Act and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period November 1, 2018, through April 30, 2019. The next agenda will be published in spring 2019.

DATES: Comments about the form or content of the agenda may be submitted any time during the next 6 months.

ADDRESSES: Comments should be addressed to Ann E. Misback, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: A staff contact for each item is indicated with the regulatory description below.

SUPPLEMENTARY INFORMATION: The Board is publishing its fall 2018 agenda as part of the Fall 2018 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda also identifies rules the Board has selected for review under section 610(c) of the Regulatory Flexibility Act, and public comment is invited on those entries. The complete Unified Agenda will be available to the public at the following website: *www.reginfo.gov.* Participation by the Board, as an independent Agency, in the Unified Agenda is on a voluntary basis.

The Board's agenda is divided into four sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next 6 months. The second section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. The third section, Long-Term Actions, reports on matters where the next action is undetermined, 00/00/0000, or will occur more than 12 months after publication of the Agenda. And a fourth section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further. A dot (•) preceding an entry indicates a new matter that was not a part of the Board's previous agenda.

Yao-Chin Chao,

Assistant Secretary of the Board.

FEDERAL RESERVE SYSTEM—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
503	Regulation CC—Availability of Funds and Collection of Checks (Docket No: R–1409)	7100–AD68
504	Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No: R–1429).	7100–AD80

FEDERAL RESERVE SYSTEM—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
505	Regulation YY—Single-Counterparty Credit Limits for Large Banking Organizations (Docket No: R–1534)	7100–AE48

FEDERAL RESERVE SYSTEM—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
506	Source of Strength **(Section 610 Review)**	7100–AE73
507	Short Form Call Reports (Docket No: R–1618)	7100–AF12

FEDERAL RESERVE SYSTEM (FRS)

Proposed Rule Stage

503. Regulation CC—Availability of Funds and Collection of Checks (Docket No: R–1409)

E.O. 13771 Designation: Independent agency.

Legal Authority: 12 U.S.C. 4001 to 4010; 12 U.S.C. 5001 to 5018

Abstract: The Board of Governors of the Federal Reserve System (the Board) is amending Regulation CC, which implements the Expedited Funds Availability Act (EFAA), which governs the availability of funds after a check deposit, as well as check collection and return. In March 2011, the Board proposed amendments to Regulation CC to facilitate the banking industry's ongoing transition to fully electronic interbank check collection and return, including proposed amendments to subpart C to encourage depository banks to receive and paying banks to send returned checks electronically and proposed amendments to subpart B's funds availability schedule provisions. Subsequently, section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the EFAA to provide the Consumer Financial Protection Bureau (CFPB) with joint rulemaking authority with the Board over certain EFAA provisions, including those implemented by subpart B of Regulation CC. Based on its analysis of comments received, the Board revised its proposed amendments to subpart C of Regulation CC. The Board finalized its proposed amendments to subpart C in June 2017.

Timetable:

Action	Date	FR Cite
Board Requested Comment.	03/25/11	76 FR 16862
Board Requested Comment on Revised Proposal.	02/04/14	79 FR 6673
Board Published Final Rule.	06/15/17	82 FR 27552
Board Expects Further Action on Subpart B.	10/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Gavin Smith, Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–3474.

Ian Spear, Manager, Federal Reserve System, Division of Reserve Bank Operations and Payment Systems, Washington, DC 20551, *Phone:* 202 452–3959.

RIN: 7100–AD68

504. Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No: R–1429)

E.O. 13771 Designation: Independent agency.

Legal Authority: 5 U.S.C. 552; 5 U.S.C. 559; 5 U.S.C. 1813; 5 U.S.C. 1817; 5 U.S.C. 1828

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) transferred responsibility for supervision of Savings and Loan Holding Companies (SLHCs) and their non-depository subsidiaries from the Office of Thrift Supervision (OTS) to the Board of Governors of the Federal Reserve System (the Board), on July 21, 2011. The Act also transferred supervisory functions related to Federal savings associations and State savings associations to the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), respectively. The Board on August 12, 2011, approved an interim final rule for SLHCs, including a request for public comment. The interim final rule transferred from the OTS to the Board the regulations necessary for the Board to supervise SLHCs, with certain technical and substantive modifications. The interim final rule has three components: (1) New Regulation LL (part 238), which sets forth regulations generally governing SLHCs; (2) new Regulation MM (part 239), which sets forth regulations governing SLHCs in mutual form; and (3) technical amendments to existing Board regulations necessary to accommodate the transfer of supervisory authority for SLHCs from the OTS to the Board. The structure of interim final Regulation LL closely follows that of the Board's Regulation Y, which governs bank holding companies, in order to provide an overall structure to rules that were previously found in disparate locations. In many instances, interim final Regulation LL incorporated OTS regulations with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Interim final Regulation LL also reflects statutory changes made by the Dodd-Frank Act with respect to SLHCs, and incorporates Board precedent and practices with respect to applications processing procedures and control issues, among other matters. Interim final Regulation MM organized existing OTS regulations governing SLHCs in mutual form (MHCs) and their subsidiary holding companies into a single part of the Board's regulations. In many instances, interim final Regulation MM incorporated OTS regulations with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Interim final Regulation MM also reflects statutory changes made by the Dodd-Frank Act with respect to MHCs. The interim final rule also made technical amendments to Board rules to facilitate supervision of SLHCs, including to rules implementing Community Reinvestment Act requirements and to Board procedural and administrative rules. In addition, the Board made technical amendments to implement section 312(b)(2)(A) of the Act, which transfers to the Board all rulemaking authority under section 11 of the Home Owner's Loan Act relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders. These amendments include revisions to parts 215 (Insider Transactions) and part 223 (Transactions with Affiliates) of Board regulations.

Timetable:

Action	Date	FR Cite
Board Requested Comment.	09/13/11	76 FR 56508
Board Expects Further Action.	12/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: C. Tate Wilson, Senior Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–3696.

Claudia Von Pervieux, Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–2552.

RIN: 7100–AD80

FEDERAL RESERVE SYSTEM (FRS)

Final Rule Stage

505. Regulation YY—Single-Counterparty Credit Limits for Large Banking Organizations (Docket No: R–1534)

E.O. 13771 Designation: Independent agency.

Legal Authority: 12 U.S.C. 321; 12 U.S.C. 1818; 12 U.S.C. 1844(b); 12 U.S.C. 1844(c); 12 U.S.C. 5365; . . .

Abstract: The final rule would implement section 165(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires the Board to impose limits on the amount of credit exposure that such a domestic or foreign bank holding company can have to an unaffiliated company in order to reduce the risks arising from the company's failure. The final rule, which build on earlier proposed rules by the Board to establish single-counterparty credit limits for large domestic and foreign banking organizations, would increase in stringency based on the systemic importance of the firms to which they apply.

Timetable:

Action	Date	FR Cite
Board Requested Comment.	03/16/16	81 FR 14328
Board Adopted Final Rule.	08/06/18	83 FR 38460
Final Rule Effective.	10/05/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Benjamin McDonough, Assistant General Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–2036.

Laurie Schaffer, Associate General Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–2272.

RIN: 7100–AE48

FEDERAL RESERVE SYSTEM (FRS)

Long-Term Actions

506. Source of Strength (Section 610 Review)

E.O. 13771 Designation: Independent agency.

Legal Authority: 12 U.S.C. 1831(o)

Abstract: The Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) plan to issue a proposed rule to implement section 616(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act by December 2019. Section 616(d) requires that bank holding companies, savings and loan holding companies, and other companies that directly or indirectly control an insured depository

institution serve as a source of strength for the insured depository institution.

Timetable:

Action	Date	FR Cite
Notice of Proposed Rulemaking.	12/00/19	

Regulatory Flexibility Analysis Required: Undetermined.

Agency Contact: Conni Allen, Special Counsel, Federal Reserve System, Division of Supervision and Regulation, Washington, DC 20551, *Phone:* 202 912–4334.

Melissa Clark, Sr. Supervisory Financial Analyst, Federal Reserve System, Division of Supervision and Regulation, Washington, DC 20551, *Phone:* 202 452–2277.

Barbara Bouchard, Senior Associate Director, Federal Reserve System, Division of Supervision and Regulation, Washington, DC 20551, *Phone:* 202 452–3072.

Jay Schwarz, Senior Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–2970.

Will Giles, Senior Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–3351.

Claudia Von Pervieux, Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–2552.

RIN: 7100–AE73

507. • Short Form Call Reports (Docket No: R–1618)

E.O. 13771 Designation: Independent agency.

Legal Authority: 12 U.S.C. 1817(a)(12)

Abstract: The Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (collectively, the agencies) are jointly issuing and inviting comment on a proposed rule that would implement section 205 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which requires the agencies to provide a reduced reporting requirement for the first and third reports of condition for depository institutions that have less than $5 billion in total consolidated assets and satisfy other criteria determined by the agencies.

Timetable:

Action	Date	FR Cite
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Laura Bain, Senior Attorney, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 736–5546.

Claudia Von Pervieux, Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–2552.

RIN: 7100–AF12

[FR Doc. 2018–23934 Filed 11–15–18; 8:45 am]

BILLING CODE 6210–01–P

FORMAL REGULATORY OVERSIGHT FILING

Public Comment and Administrative Challenge

Re: Federal Reserve Board Modified System of Records

BGFRS-14 — "FRB—General File of Federal Reserve Bank and Branch Directors"

Published at 91 FR 12802 (Tuesday, March 17, 2026)

Comments Due: April 16, 2026

And Associated Matters:

Information Collection OMB Control No. 7100-0328

Delegation of Authority under 12 CFR § 265.2

Cross-Cutting Compliance Gaps — 12 CFR Title 12 (Federal Reserve & OCC Frameworks)

Agency:

Board of Governors of the Federal Reserve System

20th Street and Constitution Avenue NW, Washington, DC 20551

Submitted by:

James Hunter Poole

Executive Chairman & Chief Executive Officer

Obelisk Tech Systems Inc.

Thomasville, Thomas County, Georgia

CAGE 9S0L8 | UEI U34MSJ6A6413 | HUBZone-certified | ITAR-registered

Date of Submission: April 11, 2026

Dockets: BGFRS-14 SORN; FR-2026-0004-01; OMB 7100-0328

Section 2 — Executive Summary

Obelisk Tech Systems Inc. ("Obelisk") submits this filing in response to the Federal Reserve Board's ("Board") proposed modification of system of records BGFRS-14, published at 91 FR 12802 (Mar. 17, 2026). Obelisk does not oppose the Board's underlying statutory duty to maintain records relating to Reserve Bank and Branch director eligibility, conduct, and service. Obelisk does, however, formally challenge the scope, methodology, internal-control posture, and transparency of the proposed modification, and places on the administrative record a parallel challenge to associated information collections, delegation authority, and cross-cutting compliance gaps under Title 12 of the Code of Federal Regulations.

Core challenge.

The proposed modification simultaneously (a) expands ingestion of personally identifiable information to non-employee candidates and their staff assistants, (b) authorizes third-party database sourcing without source-authentication controls, (c) permits demographic data collection, and (d) invokes the Privacy Act § (k)(5) exemption to deny access, accounting, and accuracy rights — while publishing no Privacy Impact Assessment, no OMB A-123 internal-control matrix, and no cumulative Paperwork Reduction Act burden reconciliation. This combination produces an asymmetry between regulated private actors (who face extensive qualification, registry, and audit-trail obligations) and federal delegation authority under 12 CFR § 265.2 (which operates without comparable transparency).

Legal effect of this filing.

This submission is structured to trigger binding agency obligations under the Administrative Procedure Act (5 U.S.C. §§ 553, 706), the Paperwork Reduction Act (44 U.S.C. §§ 3506–3507), the Privacy Act of 1974 (5 U.S.C. § 552a), OMB Circular A-108, OMB Circular A-123 (2026 revision), and the Federal Records Act. It creates an administrative record supporting subsequent Government Accountability Office audit, Office of Inspector General inspection, and judicial review.

Section 3 — Legal Authority Stack

The following layered authorities establish the Board's obligation to respond, to produce documentation, and to coordinate with oversight entities.

3.1 Administrative Procedure Act — 5 U.S.C. §§ 553, 706

Section 553 requires notice-and-comment procedures for rules of agency practice and substantive effect. A SORN modification that collaterally narrows Part 261a access procedures and expands categories of covered individuals functions as substantive rulemaking and must be supported by a reasoned explanation. Section 706 requires reviewing courts to set aside agency action found arbitrary, capricious, or not in accordance with law. Failure to respond substantively to material comments is itself reversible error.

3.2 Privacy Act of 1974 — 5 U.S.C. § 552a

Subsections (e)(1), (e)(4), (e)(10), (e)(11), (o), (p), (r), and (u) impose affirmative duties respecting relevance, publication, safeguards, matching agreements, Data Integrity Board oversight, and reports to OMB and Congress. Subsection (k)(5) authorizes exemption only for material compiled solely for suitability, eligibility, or access determinations, and only to the extent disclosure would reveal a confidential source.

3.3 Paperwork Reduction Act — 44 U.S.C. ch. 35

Sections 3506 and 3507 require agencies, prior to conducting or sponsoring an information collection, to (a) demonstrate practical utility, (b) evaluate burden, (c) consult with affected parties, and (d) obtain OMB clearance. Associated collection OMB 7100-0328 must be reconciled against BGFRS-14's expanded ingestion; duplication across collections and systems is a PRA violation.

3.4 OMB Circular A-108 — Federal Agency Responsibilities for Privacy Act SORNs

A-108 § 6(c) requires SORN modifications to identify all categories of individuals, records, and sources with specificity; § 7 requires Privacy Impact Assessments where E-Government Act § 208 is triggered; § 8 requires narrative justification for routine uses; § 9 requires Data Integrity Board review where matching programs are implicated.

3.5 OMB Circular A-123 (2026 Revision) — Management's Responsibility for ERM and Internal Control

A-123 requires federal managers to identify risks to objectives, design proportionate control activities, and monitor and remediate deficiencies. The 2026 revision expressly requires linkage between identified risks and published control activities in rulemaking records affecting information systems.

3.6 Federal Records Act — 44 U.S.C. chs. 29, 31, 33

The Federal Records Act, in conjunction with NARA General Records Schedules, forbids ad hoc destruction standards such as "may be destroyed when no longer needed." Records schedules must be NARA-approved.

3.7 Why the Board Must Respond

Under the APA, an agency must consider and respond to material comments. Under the PRA, OMB cannot approve a collection that has not addressed substantive public objections. Under A-108, unanswered objections to SORN scope require republication. Under A-123, unresolved control deficiencies must be escalated to entity-level risk review. These obligations are non-discretionary.

Section 4 — CFR Title 12 Analysis: Delegation Asymmetry

4.1 12 CFR § 265.2 — Functions Delegated to the Secretary

Part 265 establishes the Board's internal delegation framework. § 265.2 and the surrounding sections delegate a wide range of supervisory, licensing, personnel, and administrative decisions to Board officers and Reserve Bank officials. The regulation does not, on its face, establish:

- A publicly accessible registry of delegated authorities actually exercised.
- Qualification standards for individuals to whom authority is delegated.
- Audit trails documenting the factual basis for each delegated decision.
- Public transparency mechanisms comparable to those imposed on regulated private actors.

- Cross-references to the Privacy Act system that would capture delegation decisions about identifiable individuals.

4.2 Comparison — Mortgage Loan Originator and OMB 7100-0328

Under the SAFE Act, CFPB Regulation G, and the Nationwide Multistate Licensing System, mortgage loan originators are subject to federal registration, unique identifier assignment, qualification testing, continuing education, public-record disclosure, and audit. The Board's information collection OMB 7100-0328 imposes analogous reporting burdens on regulated depository personnel.

By contrast, persons exercising delegated federal authority under 12 CFR § 265.2 — whose decisions can materially affect supervised institutions, director eligibility, and personal reputations — face no comparable registration, qualification, or public-audit regime.

4.3 Framing: Regulatory Asymmetry

This filing characterizes the resulting condition as a regulatory asymmetry between controlled private actors and uncontrolled federal delegation authority. The asymmetry is not merely rhetorical; it is a measurable internal-control gap under A-123 and a cognizable APA reasoned-decisionmaking defect when the Board expands an SORN that feeds delegated decisions without disclosing the delegation framework itself.

Section 5 — Privacy Act / Circular A-108 Failure Analysis

5.1 System of Records Scope

The proposed BGFRS-14 modification expands covered individuals to include candidates for director positions and their assistants. A-108 § 6(c) requires specificity. The term "news and other information databases" is not a source category; it is a sourcing modality and fails A-108.

5.2 Routine Uses

The notice narrows the system-specific routine use while relying on general routine uses A, C, D, G, I, and J. The narrative does not explain, as A-108 § 8 requires, why each retained general routine use is compatible with the purpose of collection as applied to non-employee candidates.

5.3 Reporting Obligations

Under Privacy Act § (r) and OMB implementing guidance, significant SORN modifications require advance report to OMB and to the congressional committees of jurisdiction. The notice does not document whether that report was submitted, its contents, or OMB's response.

5.4 Data Integrity Board Oversight

Under § (u), each agency maintaining a system of records subject to a matching program must establish a Data Integrity Board. The notice does not disclose whether BGFRS-14 records are used in any matching program, nor whether the Board's Data Integrity Board has reviewed the proposed modification.

5.5 Forced Questions

- What matching programs, if any, draw on or feed BGFRS-14?
- What interagency data-sharing agreements touch BGFRS-14 records?

- Where are the § (r) reports to OMB and Congress concerning this modification?
- What Data Integrity Board minutes or findings exist concerning BGFRS-14?
- What PIA, if any, was prepared under E-Government Act § 208?

Section 6 — Paperwork Reduction Act Challenge to OMB 7100-0328 and Associated Collections

6.1 Burden Estimation Validity

PRA § 3506(c)(1)(A)(iv) requires agencies to provide a specific, objectively supported estimate of burden. Expansion of BGFRS-14 to ingest candidate and assistant data from third-party databases necessarily increases the downstream burden on Reserve Bank staff who must authenticate, reconcile, and maintain those records. No revised burden estimate is disclosed.

6.2 Cross-System Duplication

PRA § 3506(c)(3)(B) requires agencies to avoid unnecessary duplication. To the extent BGFRS-14 duplicates information already collected under OMB 7100-0328 or other Board collections, that duplication must be documented and justified.

6.3 Cumulative Burden Accounting

PRA § 3507 requires OMB review before approval. Cumulative burden across BGFRS-14, OMB 7100-0328, and any related collections must be aggregated; the public record does not reflect such aggregation.

6.4 Relief Sought under the PRA

- OMB reopening of 7100-0328 clearance in light of the BGFRS-14 expansion.
- Publication of a cumulative burden statement reconciling all collections touching director records.
- Written justification under 44 U.S.C. §§ 3506–3507 addressing practical utility, duplication, and burden.

Section 7 — Interagency Obligation Map

The matters raised in this filing cannot remain internal to the Board. Mandatory interagency obligations flow as follows:

7.1 Federal Reserve Board → Office of Management and Budget

Under Privacy Act § (r), PRA §§ 3506–3507, and A-108, the Board must coordinate with OMB on SORN modifications, information collections, and PIAs. OMB's role is non-discretionary review.

7.2 OMB → Government Accountability Office

GAO exercises audit authority under 31 U.S.C. § 712 and 31 U.S.C. § 717 over agency compliance with information-management statutes. A-123 (2026) explicitly contemplates GAO access to internal-control documentation.

7.3 Board → Board Office of Inspector General

Under the Inspector General Act of 1978, as amended, the Board OIG has jurisdiction to inspect and investigate management and operational deficiencies, including SORN compliance and internal-control posture.

7.4 Interagency Coordination — CIGIE

The Council of the Inspectors General on Integrity and Efficiency coordinates cross-agency inspection standards under the Blue Book and the Silver Book. Coordination is required where systemic deficiencies implicate multiple federal systems of records.

Section 8 — Audit Cascade

This filing is structured to create an audit-triggering condition across multiple oversight bodies. The cascade operates as follows:

1. PRA trigger — OMB review of associated information collections, including OMB 7100-0328, under 44 U.S.C. §§ 3506–3507.
2. A-123 trigger — internal-control audit by the Board's management and, where escalation is warranted, by the Board OIG.
3. Privacy Act trigger — SORN compliance review under § 552a and A-108, including § (r) report reconciliation and Data Integrity Board review.
4. GAO trigger — audit authority under 31 U.S.C. §§ 712, 717, and GAGAS (Yellow Book, 2024 revision).
5. OIG trigger — inspection or investigation pathway under the Inspector General Act and CIGIE Blue/Silver Book standards.

This filing creates an audit-triggering condition across oversight bodies. The record established herein is available for citation in any subsequent audit, inspection, investigation, or judicial proceeding.

Section 9 — Formal Questions Requiring Mandatory Response

The following questions are submitted pursuant to the APA, the Privacy Act, the PRA, and associated OMB Circulars. Each demands documentation and a written response on the administrative record.

6. Does a publicly accessible registry of delegated authorities exercised under 12 CFR § 265.2 exist? If so, produce it. If not, explain the legal basis for its absence.
7. What qualification standards govern individuals to whom authority is delegated under 12 CFR §§ 265.2–265.20, and where are they published?
8. Produce the OMB A-123 (2026) internal-control documentation specific to BGFRS-14, including the entity-level risk assessment, control activity matrix, and monitoring plan.
9. Identify all interagency data-sharing agreements and computer-matching agreements that touch BGFRS-14, and produce the underlying agreements and Data Integrity Board minutes.
10. Identify all matching programs, as defined in 5 U.S.C. § 552a(a)(8), that draw on or feed BGFRS-14.

11. Produce the § (r) report to OMB and to the congressional committees of jurisdiction concerning the proposed BGFRS-14 modification, together with any OMB response.
12. Produce the Privacy Impact Assessment prepared under E-Government Act § 208 for the BGFRS-14 modification, or explain the legal basis for its absence.
13. Produce the cumulative Paperwork Reduction Act burden statement reconciling BGFRS-14 with OMB 7100-0328 and all other Board collections touching director records.
14. Produce all Board OIG consultations, findings, or recommendations concerning BGFRS-14 in the preceding 36 months.
15. Identify the NARA-approved retention schedule governing candidate and candidate-assistant records, and produce the NARA disposition authority number.
16. Produce all internal memoranda supporting the expansion of covered individuals to include non-employee candidates and their assistants.
17. Identify the authentication, hashing, versioning, and chain-of-custody controls governing ingestion from "news and other information databases" into BGFRS-14.

Section 10 — Required Actions

- Produce all documentation identified in Section 9 within the comment reply window or state, for each item, a specific legal basis for withholding.
- Submit or resubmit BGFRS-14 and OMB 7100-0328 for OMB review with cumulative burden accounting.
- Publish the A-123 internal-control matrix specific to BGFRS-14.
- Publish the Section 208 Privacy Impact Assessment.
- Disclose all interagency coordination records, matching agreements, and Data Integrity Board minutes.
- Narrow the § (k)(5) exemption to records actually compiled solely for suitability determinations, and segregate mixed-use records.
- Adopt a NARA-approved retention schedule for candidate and candidate-assistant records.
- Conduct a cross-cutting internal-control review of 12 CFR Parts 261, 261a, 261b, 262, 263, 264, 264a, 264b, 265, 266, and 268 for parallel deficiencies.
- Commit to a CIGIE Blue Book-compliant Board OIG inspection within 12 months of the effective date of any final modification.

Section 11 — Conclusion and Reservation of Rights

This filing is not a generic public comment. It is a structured federal oversight filing designed to invoke the Administrative Procedure Act, the Privacy Act, the Paperwork Reduction Act, OMB Circulars A-108 and A-123, the Federal Records Act, and the Inspector General Act, and to create an administrative record available for Government Accountability Office audit, Office of Inspector General inspection, congressional oversight, and judicial review.

The Board's obligation to respond substantively is non-discretionary. Failure to respond, or response that fails to address the specific questions and documentation requests set forth in

Sections 9 and 10, will constitute a reviewable agency action under 5 U.S.C. § 706 and will be cited as such in subsequent proceedings.

Obelisk reserves all rights under the Administrative Procedure Act, the Privacy Act, the E-Government Act, the Paperwork Reduction Act, the Information Quality Act, the Federal Records Act, and applicable judicial review provisions, and incorporates by reference its prior-filed federal regulatory comments maintained in the Obelisk master citation bank.

Respectfully submitted,

James Hunter Poole

Executive Chairman & Chief Executive Officer

Obelisk Tech Systems Inc.

Thomasville, Thomas County, Georgia

CAGE 9S0L8 | UEI U34MSJ6A6413

Date: April 11, 2026