

I requested a clarification regarding the discussion about the Privacy Act, the new Privacy Notice, and the census worker question that arose during the conference. I ran this through our FO, who contacted HQ, and Althea Forrester responded as follows, and OK'd the publication of her response. She has provided the language of the statute, and suggests that a PHA contact HUD if the PHA has questions of how/whether to apply an exception. She also suggests that the PHA identify the exceptions in its ACOPP or Admin Plan. Her response is in bold text, and the specific census exception is highlighted in yellow. –David Condon

Privacy Act, exceptions, and Census Workers Question:

“... note that if there are questions about standards for applying the exceptions (e.g., when is an exception to be made for Congress) [t]hey can ask HUD how we have applied the exception.

The Privacy Act clearly applies to HUD and by virtue of section 904 of the McKinney Homeless Amendments it applies in part to PHAs. However, there are exceptions to the Act. Subsection (b) of the Privacy Act limits a government agency's ability to disclose information placed in a system of records. The agency may only disclose such information if it has permission from the individual or if it can meet one of the twelve following conditions:

- The disclosure is to an agency employee who normally maintains the record and need it in the performance of duty;
- The disclosure is made under the Freedom of Information Act;
- The disclosure is for a "routine use;"
- The disclosure is to the Census Bureau for the purposes of a census survey;**
- The disclosure is to someone who has adequately notified the agency in advance that the record is to be used for statistical research or reporting, and the record is transferred without individually identifying data;
- The disclosure is to the National Archives and Records Administration as a record of historical value;
- The disclosure is to an agency "of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity," and if the record is provided in response to a written request by the head of the agency;
- The disclosure is made where there are "compelling circumstances" affecting someone's health or safety, and the person whose health or safety is affected is sent a notification of the disclosure;
- The disclosure is made to Congress, or any committee or subcommittee within Congress;
- The disclosure is made to the Comptroller General in the course of the duties of the General Accounting Office;
- The disclosure is made pursuant to a court order;
- The disclosure is made to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

It would probably be in a PHA's interest to identify the exceptions in its policies. But the question presented at the conference was whether there was a basis to provide the information to the Census worker and I said yes – noting the exception. As I also said it has to be provided to a census worker who has clearly identified themselves as such.