

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; one altered Privacy Act system of records; revision of four routine uses; addition of two new routine uses; and deletion of one routine use.

SUMMARY: Pursuant to subsection (e)(4) of the *Privacy Act of 1974*, as amended (Privacy Act), the FCC proposes to change the name and alter one system of records, FCC/CGB-1, "Informal Complaints, Inquiries, and Requests for Dispute Assistance" (formerly FCC/CGB-1, "Informal Complaints and Inquiries"). The FCC will alter the categories of individuals; the categories of records; the authority for maintenance of the system; the purposes for collecting the information; four routine uses: (3), (4), (7) and (8) (add new routine uses: (2) and (5), and delete one routine use: (4)); the policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system; the system manager and address; the notification, record access, and contesting record procedures; and make various other minor edits and revisions as necessary to comply with the requirements of the *Privacy Act of 1974*, as amended.

DATES: In accordance with subsections (e)(4) and (e)(11) of the Privacy Act, any interested person may submit written comments concerning the alteration of this system of records on or before September 15, 2014. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records, and Congress may submit comments on or before September 24, 2014. The proposed altered system of records will become effective on September 24, 2014 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed altered system to OMB and to both Houses of Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1-C216, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, or via the Internet at Leslie.Smith@fcc.gov.

FOR FURTHER INFORMATION CONTACT:

Contact Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1-C216, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, (202) 418-0217 or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974*, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed alteration of one system of records maintained by the FCC, revision of four routine uses: (3), (4), (7), and (8), addition of two new routine uses (2) and (5), and deletion of one routine use (4). The FCC previously gave complete notice of the system of records (FCC/CGB-1, "Informal Complaints and Inquiries") covered under this Notice by publication in the **Federal Register** on December 15, 2009 (74 FR 66356). This notice is a summary of the more detailed information about the proposed altered system of records, which may be obtained or viewed under the contact and information at the location given above in the **ADDRESSES** section. The purposes for altering FCC/CGB-1, "Informal Complaints, Inquiries, and Requests for Dispute Assistance" (formerly FCC/CGB-1, "Informal Complaints and Inquiries") are to change the name of the system to FCC/CGB-1, "Informal Complaints, Inquiries, and Requests for Dispute Assistance," to reflect the changes to the system's contents; to revise the categories of individuals; to revise the categories of records; to revise the authority for maintenance of the system; to revise the purposes for which the information is maintained; to revise routine uses (3) (formerly (2)), (4) (formerly (3))), (7) (formerly (6))), and (8) (formerly (7))); to add new routine uses (2) and (5); to delete one routine use (4); to revise the policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system; to revise the system manager and address; to revise the notification, records access, and contesting records procedures; and to make other edits and revisions as necessary to comply with the requirements of the *Privacy Act of 1974*, as amended (5 U.S.C. 552a), and the regulations and requirements of the Office of Management and Budget (OMB) and the National Archives and Records Administration (NARA).

The FCC will achieve these purposes by altering this system of records with these changes:

Revision of the language regarding the Categories of Individuals Covered by the System, for clarity and to note that:

The categories of individuals in the system include individuals, groups, and other entities who make or have made informal complaints, inquiries, or requests for dispute assistance on matters arising under the Communications Act of 1934, as amended, and the Rehabilitation Act;

Revision of the language in the Categories of Records in the System, for clarity and to note that:

The categories of records in this system include both computerized information contained in a database and paper copies of inquiries, requests for dispute assistance, informal complaints, and related supporting information made by individuals, groups, or other entities; and company replies to complaints, requests, inquiries, and Commission letters regarding such complaints, requests, and inquiries.

The categories of records may also include submissions that individuals, groups, or other entities make, including, but not limited to, submissions made by letter, fax, telephone, email, and via the FCC web portal at www.fcc.gov;

Revision of the Authority for Maintenance of the System to add several rule sections, so that the authorities include:

Sections 1, 4, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507, 710, 713, 716, 717, and 718 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507, 610, 613, 617, 618, and 619; Sections 504 and 508 of the Rehabilitation Act, 29 U.S.C. 794 and 794d; and 47 CFR 0.111, 0.141, 1.711 *et seq.*, 14.30 *et seq.*, 20.19, 64.604, 68.414 *et seq.*, and 79.1 *et seq.*

Revision of the language regarding the Purpose(s) for which the information in the system is maintained, for clarity and to note that:

The records in this system are used by Commission personnel to handle and process informal complaints, inquiries, and requests for dispute assistance received from individuals, groups, and other entities. Records in this system are available for public inspection after redaction of information that could identify the complainant or correspondent, such as the complainant's name, address, telephone number, fax number, and/or email address.

Revision of the language in Routine Use (3) "FCC Enforcement Actions" to note that:

When an order or other Commission-issued document that includes consideration of informal complaints filed against telecommunications

providers, broadcasters, multi-channel video programming distributors, voice-over-internet-protocol providers, and/or wireless providers is entered by the FCC to implement or enforce the Communications Act, pertinent rule, regulation, or order of the FCC, the complainant's name may be made public in that order or document. When an order or other Commission-issued document that includes consideration of an informal complaint about accessibility for individuals with disabilities filed against a company (including telecommunications and advanced communications service providers and equipment manufacturers; video programming owners, providers, and distributors, including broadcasters and multichannel video programming distributors; and manufacturers of apparatus used to receive, play back, or record video programming) is entered or released by the FCC to implement or enforce the Communications Act, pertinent rule, regulation, or order of the FCC, the complainant's name may be made public in that order or document. Where a complainant in filing his or her complaint explicitly requests confidentiality of his or her name from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint;

Revision of the language in Routine Use (4) "Law Enforcement and Investigation" to note that:

Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, state, Tribal, or local agency either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another agency;

Revision of the language in Routine Use (7) "Congressional Inquiries" to note that:

Records on an individual in this system may be disclosed when requested by a congressional office in response to an inquiry by an individual made to the congressional office for the individual's own records;

Revision of the language in Routine Use (8) "Government-wide Program Management and Oversight" to note that:

When requested by the General Services Administration (GSA), the

National Archives and Records Administration (NARA), and/or the Government Accountability Office (GAO) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906 (such disclosure(s) shall not be used to make a determination about individuals); when the Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act;

Addition of new Routine Use (2) "Informal Complaints, Inquiries, and Requests for Dispute Assistance about Accessibility for Individuals with Disabilities" to note that:

When a record in this system involves an informal complaint, inquiry, or request for dispute assistance involving or filed against a company (including telecommunications and advanced communications service providers and equipment manufacturers; video programming owners, providers, and distributors, including broadcasters and multichannel video programming distributors; and manufacturers of apparatus used to receive, play back, or record video programming) about accessibility for individuals with disabilities, the inquiry, request, or informal complaint may be forwarded to the subject company for a response, pursuant to Section 4(i), 208, and 303(r) of the Communications Act of 1934, as amended;

Deletion of Routine Use (4) and its replacement with new Routine Use (5) "Adjudication and Litigation" to note that:

Where by careful review, the Commission determines that the records are both relevant and necessary to litigation and the use of such records is deemed by the Commission to be for a purpose that is compatible with the purpose for which the Commission collected the records, these records may be used by a court or adjudicative body in a proceeding when: (a) The Commission or any component thereof; or (b) any employee of the Commission in his or her official capacity; or (c) any employee of the Commission in his or her individual capacity where the Commission has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation;

Revision of the language regarding the Policies and Practices for Storing, Retrieving, Accessing, Retaining, and

Disposing of Records in the System, for clarity and to note that:

Storage:

The Consumer and Governmental Affairs Bureau staff logs consumer informal complaints, inquiries, and requests for dispute assistance that it receives into its Complaint and Inquiry Management System (CIMS), Consolidated Complaint Management System (CCMS), and other electronic databases and network databases not specifically named here that are used to store consumer informal complaints and inquiries, including requests for dispute assistance. Each request for dispute assistance and informal complaint submission is automatically assigned a file identification number for future reference when the case is entered into one of the databases. This identification number tracks consumer submissions and assists with identification of duplicate filings, which occur when consumers file multiple submissions. Confidential paper submissions are moved to a locked storage room for safekeeping. All records are kept in accordance with the agency records control schedule approved by NARA.

Retrievability:

Information in this system, including, but not limited to records, files, and data, may be retrieved by the individual's personal identifiers (such as the complainant's name, address, telephone number, fax number, and/or email address), entity name, program name, date received and date closed, problem description field, and/or call sign.

Safeguards:

Electronic records that emanate from these informal complaint, inquiry submissions, and requests for dispute assistance are maintained in CIMS, CCMS, or other electronic and network computer databases not specifically named here, which are secured through controlled access and passwords restricted to a limited number of FCC employees or contractors working on informal complaints, inquiries, and requests for dispute assistance. In addition, as an added security measure, the staff in the Consumer and Governmental Affairs Bureau, Enforcement Bureau, and other FCC bureaus and offices who are assigned responsibility for resolution of these records in CIMS are only allowed access to these records via a "license" that also tracks their use of the records. Confidential paper submissions are moved to a locked storage room for safekeeping.

Retention and Disposal:

The information in this system is limited to electronic data, paper files,

and audio files, such as telephone call records. The information is retained at the FCC and then destroyed in accordance with the agency records control schedule N1-173-07-1, approved by the National Archives and Records Administration (NARA), which generally requires that source records are destroyed three years after data are entered into the system, and records in the master file are destroyed three years after the case is closed. Revision of the language regarding the System Managers and Address of the system, for clarity and to note that individuals seeking information about themselves in this system should: Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

Revision of the Notification, Record Access, and Contesting Record Procedures for the system, for clarity and to note that individuals seeking information about themselves in this system should:

Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. An individual requesting access must follow FCC Privacy Act regulations regarding verification of identity and amendment of records. *See* 47 CFR 0.554–0.557.

Revision or modification of other data elements in CGB–1, as required, to make editorial changes to update, simply, or clarify, as necessary, this system of records notice (SORN) to make various other minor edits and revisions as necessary to comply with the requirements of the *Privacy Act of 1974*, as amended.

This notice meets the requirement of documenting the changes to the systems of records that the FCC maintains, and provides the public, Congress, and OMB an opportunity to comment.

FCC/CGB–1

SYSTEM NAME:

Informal Complaints, Inquiries, and Requests for Dispute Assistance

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554 and 1270 Fairfield Road, Gettysburg, PA 17325.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system include individuals, groups, and other entities who make or have made informal complaints, inquiries, or requests for dispute assistance on matters arising under the Communications Act of 1934, as amended, and the Rehabilitation Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include both computerized information contained in a database and paper copies of inquiries, requests for dispute assistance, informal complaints, and related supporting information made by individuals, groups, or other entities; and company replies to complaints, requests, inquiries, and Commission letters regarding such complaints, requests, and inquiries. The categories of records may also include submissions that individuals, groups, or other entities make, including, but not limited to, submissions made by letter, fax, telephone, email, and via the FCC web portal at www.fcc.gov.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1, 4, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507, 710, 713, 716, 717, and 718 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507, 610, 613, 617, 618, and 619; Sections 504 and 508 of the Rehabilitation Act, 29 U.S.C. 794 and 794d; and 47 CFR 0.111, 0.141, 1.711 *et seq.*, 14.30 *et seq.*, 20.19, 64.604, 68.414 *et seq.*, and 79.1 *et seq.*

PURPOSES:

The records in this system are used by Commission personnel to handle and process informal complaints, inquiries, and requests for dispute assistance received from individuals, groups, and other entities. Records in this system are available for public inspection after redaction of information that could identify the complainant or correspondent, such as the complainant's name, address, telephone number, fax number, and/or email address.

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

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Informal Complaints—When a record in this system involves an informal complaint filed against telecommunications providers,

broadcasters, multi-channel video program distributors, voice-over-internet-protocol providers, and/or wireless providers, the complaint may be forwarded to the subject company for a response, pursuant to Sections 4(i), 208, and 303(r) of the Communications Act of 1934, as amended.

2. Informal Complaints, Inquiries, and Requests for Dispute Assistance about Accessibility for Individuals with Disabilities—When a record in this system involves an informal complaint, inquiry, or request for dispute assistance involving or filed against a company (including telecommunications and advanced communications service providers and equipment manufacturers; video programming owners, providers, and distributors, including broadcasters and multichannel video programming distributors; and manufacturers of apparatus used to receive, play back, or record video programming) about accessibility for individuals with disabilities, the inquiry, request, or informal complaint may be forwarded to the subject company for a response, pursuant to Section 4(i), 208, and 303(r) of the Communications Act of 1934, as amended.

3. FCC Enforcement Actions—When an order or other Commission-issued document that includes consideration of informal complaints filed against telecommunications providers, broadcasters, multi-channel video program distributors, voice-over-internet-protocol providers, and/or wireless providers is entered by the FCC to implement or enforce the Communications Act, pertinent rule, regulation, or order of the FCC, the complainant's name may be made public in that order or document. When an order or other Commission-issued document that includes consideration of an informal complaint about accessibility for individuals with disabilities filed against a company (including telecommunications and advanced communications service providers and equipment manufacturers; video programming owners, providers, and distributors, including broadcasters and multichannel video programming distributors; and manufacturers of apparatus used to receive, play back, or record video programming) is entered or released by the FCC to implement or enforce the Communications Act, pertinent rule, regulation, or order of the FCC, the complainant's name may be made public in that order or document. Where a complainant in filing his or her complaint explicitly requests confidentiality of his or her name from

public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint.

4. Law Enforcement and Investigation—Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, state, Tribal, or local agency either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another agency.

5. Adjudication and Litigation—Where by careful review, the Commission determines that the records are both relevant and necessary to litigation and the use of such records is deemed by the Commission to be for a purpose that is compatible with the purpose for which the Commission collected the records, these records may be used by a court or adjudicative body in a proceeding when: (a) The Commission or any component thereof; or (b) any employee of the Commission in his or her official capacity; or (c) any employee of the Commission in his or her individual capacity where the Commission has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation.

6. Department of Justice—A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when:

(a) the United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) the Commission determines that the disclosure is relevant or necessary to the litigation.

7. Congressional Inquiries—When requested by a congressional office in response to an inquiry by an individual made to the congressional office for the individual's own records.

8. Government-wide Program Management and Oversight—When requested by the General Services Administration (GSA), the National Archives and Records Administration (NARA), and/or the Government Accountability Office (GAO) for the purpose of records management inspections conducted under authority

of 44 U.S.C. 2904 and 2906 (such disclosure(s) shall not be used to make a determination about individuals); when the Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act.

9. Breach of Federal Data—A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Consumer and Governmental Affairs Bureau staff logs consumer informal complaints, inquiries, and requests for dispute assistance that it receives into its Complaint and Inquiry Management System (CIMS), Consolidated Complaint Management System (CCMS), and other electronic databases and network databases not specifically named here that are used to store consumer informal complaints and inquiries, including requests for dispute assistance. Each request for dispute assistance and informal complaint submission is automatically assigned a file identification number for future reference when the case is entered into one of the databases. This identification number tracks consumer submissions and assists with identification of

duplicate filings, which occur when consumers file multiple submissions. Confidential paper submissions are moved to a locked storage room for safekeeping. All records are kept in accordance with the agency records control schedule approved by NARA.

RETRIEVABILITY:

Information in this system, including, but not limited to records, files, and data, may be retrieved by the individual's personal identifiers (such as the complainant's name, address, telephone number, fax number, and/or email address), entity name, program name, date received and date closed, problem description field, and/or call sign.

SAFEGUARDS:

Electronic records that emanate from these informal complaint, inquiry submissions, and requests for dispute assistance are maintained in CIMS, CCMS, or other electronic and network computer databases not specifically named here, which are secured through controlled access and passwords restricted to a limited number of FCC employees or contractors working on informal complaints, inquiries, and requests for dispute assistance. These various safeguards comply with the FCC's IT security and privacy protocols. In addition, as an added security measure, the staff in the Consumer and Governmental Affairs Bureau, Enforcement Bureau, and other FCC bureaus and offices who are assigned responsibility for resolution of these records in CIMS are only allowed access to these records via a "license" that also tracks their use of the records. Confidential paper submissions are moved to a locked storage room for safekeeping.

RETENTION AND DISPOSAL:

The information in this system is limited to electronic data, paper files, and audio files, such as telephone call records. The information is retained at the FCC and then destroyed in accordance with the agency records control schedule N1-173-07-1, approved by the National Archives and Records Administration (NARA), which generally requires that source records are destroyed three years after data are entered into the system, and records in the master file are destroyed three years after the case is closed.

SYSTEM MANAGERS AND ADDRESS:

Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications

Commission, 445 12th Street SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. An individual requesting access must follow FCC Privacy Act regulations regarding verification of identity and amendment of records. *See* 47 CFR 0.554–0.557.

CONTESTING RECORD PROCEDURES:

Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

The sources for the information in this system include the complainants and subject entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–19292 Filed 8–14–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. DE–CA–08–0046]

Notice of Opportunity To Submit Amici Curiae Briefs in an Unfair-Labor-Practice Proceeding Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to submit briefs as amici curiae on a significant issue arising in a case pending before the Authority. The Authority is considering this case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (the Statute), and its unfair-labor-practice (ULP) regulations, set

forth at 5 CFR part 2423. The issue concerns whether a presidential order, which was issued under § 7103(b)(1) of the Statute to exclude an agency subdivision “from coverage under” the Statute, precludes the Authority from finding that an employee of the excluded subdivision acted as a “representative of the agency” under § 7114(a)(2)(A) and (B) of the Statute. Because the Authority has not directly addressed this issue before, there is an absence of controlling precedent. And, as this matter is likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amici briefs addressing this matter.

DATES: Briefs must be received on or before September 15, 2014.

ADDRESSES: Mail or deliver briefs to Gina K. Grippando, Chief, Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street NW., Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Gina K. Grippando, Chief, Case Intake and Publication, Federal Labor Relations Authority, (202) 218–7740.

SUPPLEMENTARY INFORMATION: In Case No. DE–CA–08–0046, the Federal Labor Relations Authority’s (FLRA’s) Chief Administrative Law Judge (ALJ) issued a recommended order to dismiss a ULP complaint against the U.S. Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah (the Respondent) for alleged violations of §§ 7114(a)(2)(B), 7116(a)(1), and 7116(a)(8) of the Statute. The FLRA’s Office of the General Counsel (GC) filed exceptions to the recommended dismissal order, and those exceptions are currently pending before the Authority. A summary of the case follows.

1. Background and ALJ’s Decision

The Regional Director of the FLRA’s Denver Regional Office, which is part of the Office of the GC, issued a ULP complaint alleging that the Respondent violated §§ 7114(a)(2)(B), 7116(a)(1), and 7116(a)(8) of the Statute when the Air Force Office of Special Investigations (AFOSI)—which is a subdivision of the same parent agency as the Respondent—denied union representation to one of the Respondent’s bargaining-unit employees (the employee) during an AFOSI-conducted investigative interview. According to the complaint, the Respondent and AFOSI worked closely together in the investigation and interview of the employee, and, consequently, when AFOSI denied the

employee the union representation that he requested due to an allegedly reasonable belief that the interview might result in discipline, AFOSI acted as a “representative of the [A]gency” (i.e., the Respondent), within the meaning of § 7114(a)(2)(B) of the Statute. As a result, the complaint alleged, the Respondent (but not AFOSI) committed ULPs.

As relevant here, the Respondent denied the complaint’s allegations on the basis that, in Executive Order 12,171, President Carter exercised his authority under § 7103(b)(1) of the Statute to “exclude [AFOSI] from coverage under” the Statute based on “national[-]security requirements and considerations,” so AFOSI’s actions could not be the basis for a ULP finding against the Respondent. Exec. Order No. 12,171 (Nov. 19, 1979), 44 FR 66,565 (Nov. 20, 1979), *reprinted as amended* in 5 U.S.C. 7103 note at 647–48 (2012).

The ALJ agreed with the Respondent and found that, because Executive Order 12,171 excludes AFOSI “from coverage under” the Statute, the order necessarily excludes AFOSI from coverage under every provision of the Statute, including the “representative[-]of[-]the[-]agency” provision in § 7114(a)(2)(B). And as the ALJ found that the order precludes finding that AFOSI acted as a “representative” of the Respondent under § 7114(a)(2)(B), the ALJ concluded that the Respondent could not be found to have committed a ULP based on AFOSI’s actions. Thus, the ALJ recommended that the Authority dismiss the complaint.

2. GC’s Exceptions

The GC filed, with the Authority, exceptions to the ALJ’s recommended order. In the exceptions, the GC contends, as relevant here, that the ALJ erred in finding that AFOSI cannot be a “representative of the [A]gency” (i.e., the Respondent), within the meaning of § 7114(a)(2)(B). The GC argues that, just as the incumbent of a position specified in § 7103(a)(2)(B) of the Statute may be excluded from the Statute’s definition of “employee” and yet still act as a “representative of [an] agency” for purposes of § 7114(a)(2), so may an agency or subdivision that is excluded from coverage of the Statute under § 7103(b)(1) be found to act as a “representative of [an] agency.” The GC argues that a contrary conclusion would “erode the right” to representation under § 7114(a)(2)(B) “by encouraging the use of investigative conduits outside the employee’s bargaining unit, and would otherwise frustrate Congress’ apparent policy of protecting certain federal employees when they are