



December 5, 2011

Ms. Claire Stapleton  
Chief Privacy Officer  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20006

**Re: “Notice of Modified Privacy Act System of Records,” CFPB  
Docket No. CFPB-2011-0018**

Dear Ms. Stapleton:

We are submitting these comments on behalf of the U.S. Chamber of Commerce Center for Capital Markets Competitiveness (“CCMC”) and the U.S. Chamber Institute for Legal Reform (“ILR”). The U.S. Chamber of Commerce (the “Chamber”) is the world’s largest business federation, representing the interests of more than three million companies of every size, sector, and region. The Chamber created CCMC to promote a modern and effective regulatory structure for capital markets to fully function in a 21<sup>st</sup> century economy. ILR is an affiliate of the Chamber dedicated to making our nation’s overall civil legal system simpler, fairer and faster for all participants.

On February 9, 2011, CCMC and ILR filed comments in response to the initial January 10, 2011 Privacy Act notice regarding the system of records relating to consumer inquiries and complaints concerning consumer financial products,<sup>1</sup> a copy of which is attached (“February 9 Comments”). Those comments made three basic points:

- The Bureau should collect and store in the database only complaints submitted by a consumer regarding a consumer financial product or service that the consumer herself or himself purchased or considered purchasing, or by an

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<sup>1</sup> 76 Fed. Reg. 1507 (2011).

authorized representative of such a consumer—submissions by third parties should not be permitted, because they were not authorized by the statute and would enable serious abuses of the database system (pages 2-6);

- The initial Notice’s designation of routine uses should be revised because it was overly broad in a number of respects (pages 6-8); and
- The safeguards protecting information stored in the database should be enhanced (page 8).

We also urged the Bureau to address the need to coordinate submissions to this new database with submissions to other agencies (*see* pages 7-8 & note 21).

On November 4, 2011, the Bureau published in the Federal Register a “Notice of Modified Privacy Act System of Records,” revising the notice published on January 10, and soliciting comments on the revised notice.<sup>2</sup> These comments respond to that request.

*First*, although the November 4 Federal Register notice states that it “takes into account” comments filed in response to the earlier notice,<sup>3</sup> the Bureau failed to address at all the first point in our February 9 Comments—that the broad acceptance of complaints from unauthorized third parties would lead to abuse and inaccurate information and in addition violates the statute—neither modifying the system of records notice as suggested by those comments nor explaining the reasons why such the modifications are not warranted. That approach is wholly inconsistent with the Bureau’s promises to act in a transparent and responsive manner. Rejecting the FTC’s and FDIC’s approach to this issue (described at pages 3-4 of the February 9 Comments), with no explanation whatsoever, is simply arbitrary.

*Second*, with respect to the designation of routine uses, the Bureau did eliminate the routine use permitting disclosure of complaints to a person who filed a similar complaint—as recommended in our February 9 Comments—and we applaud the Bureau for that decision.

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<sup>2</sup> 76 Fed. Reg. 68396 (2011).

<sup>3</sup> 76 Fed. Reg. at 68397.

But the Bureau retained—and appears even to have expanded—the broad category relating to disclosure to third parties. The initial Notice permitted disclosure as follows:

“(4) Third parties to the extent necessary to obtain information needed for a response to or referral of a complaint or inquiry.”<sup>4</sup>

The parallel provision in the revised Notice states:

“(8) Appropriate agencies, entities, and persons, to the extent necessary to obtain information needed to investigate, resolve, respond, or refer to a complaint or inquiry.”<sup>5</sup>

We explained in our February 9 Comments that this routine use provision in the initial Notice imposed no real constraints on the Bureau, and was broader than the equivalent routine use specified by the FTC and the FDIC for their parallel records systems. The Bureau responded that it “believes [this routine use category] is necessary to resolve complaints and it is common to other financial regulators’ consumer complaint” statements of routine use.<sup>6</sup> In fact, however, the other agencies’ routine use provisions are drawn more narrowly—as discussed in our February 9 Comments at pages 6-7.

Moreover, the Bureau actually *expanded* this routine use in the revised Notice. Permitting disclosure “to the extent necessary to . . . *refer to* a complaint or inquiry” (emphasis added) is much broader than permitting disclosure for a “referral of a complaint or inquiry.” It appears to permit the Bureau to disclose the content of any complaint whenever it wishes simply to mention the complaint to a third party—so that the decision to “refer to” the complaint in any sort of communication would allow the complaint’s disclosure. That self-justifying rationale appears to eliminate any constraint on the Bureau, because it enables the Bureau to disclose a complaint

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<sup>4</sup> 76 Fed. Reg. at 1508.

<sup>5</sup> 76 Fed. Reg. at 68397.

<sup>6</sup> *Id.*

whenever it wishes to. That significant change—without disclosure or explanation—ignores the Privacy Act requirement that routine uses be specified in order to explain the limits on agency discretion.

The provision should at least be revised so that it at least is not broader than that of the initial Notice; and the proper course would be to incorporate the language used by other agencies, so that it would read: “Third parties (a) to the extent necessary to obtain from the third party information relevant to and sought in furtherance of an investigation of the complaint or inquiry; or (b) to the extent necessary to refer the complaint or inquiry to a third party with jurisdiction over the subject matter of the complaint or inquiry, or over the entity that is the subject of the complaint or inquiry.”

The language in proposed clause (b) was contained in paragraph (7) of the initial Notice, which was deleted from the revised Notice—apparently because it was deemed to be replaced by the new broader, unlimited routine use just discussed. *Compare* 76 Fed. Reg. at 1508 (“(7) The appropriate governmental, Tribal, self-regulatory or professional organizations ***if that organization has jurisdiction over the subject matter of the complaint or inquiry, or over the entity that is the subject of the complaint or inquiry***”) (emphasis added). Proposed clause (b) incorporates this appropriately-limited language into the suggested routine use category.

*Third*, the revised Notice significantly broadens two routine use categories in a manner that renders the revised category overly broad. The initial Notice permitted disclosure to:

- (5) Appropriate law enforcement agencies or authorities in connection with the investigation and/or prosecution of alleged civil, criminal, and administrative violations<sup>7</sup>;

and to

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<sup>7</sup> 76 Fed. Reg. at 1508.

(9) Other Federal and nonfederal governmental supervisory or regulatory authorities when the subject matter is within such other agency's jurisdiction.<sup>8</sup>

The revised Notice states:

(9) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies 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.<sup>9</sup>

This new routine use category is much more expansive than the two categories contained in the initial Notice. For example, it replaces two clear and specific descriptions—agencies with enforcement authority and agencies with regulatory jurisdiction—with a very different, and wholly unclear, enumeration of agency authority: “investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license.” And the “may be relevant” standard at the end of the category provides little in the way of limitation, because it too is vague and broad. The combination of these two very broad categories expands the routine uses very significantly—again without any explanation or justification.<sup>10</sup>

The breadth of this new category—again, far broader than the routine use categories of other similar agencies—is likely to lead to abuse and unfairness, because of the lack of any constraint on Bureau discretion. To take just one example, disclosure would be permissible even to an entity responsible for “carrying out” a “policy,” even if that entity has no law enforcement or policy-making power, and even if the authority that the entity does have is wholly unrelated to the subject matter of

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<sup>8</sup> *Id.*

<sup>9</sup> 76 Fed. Reg. at 68398.

<sup>10</sup> The Bureau states that “[i]n some cases the routine uses have been eliminated or combined” (76 Fed. Reg. at 68397), but it does not disclose that the new language results in significantly broadened routine use categories, compared to those set forth in the initial Notice.

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the complaint or inquiry, and even if the information only “may be relevant” to the entity’s mission. The effect of the change is to permit the Bureau to disclose anything it wants at any time it wants. Again, this undermines the entire purpose of requiring specification of routine uses—and all without any explanation of why the two categories in the initial Notice were revised.

Finally, the designation of routine uses should expressly reflect the Bureau's recognition that any disclosure is still subject to the Bureau's interim final rules on information sharing. As such, we suggest modifying the prefatory sentence of that section to read, “These records may be disclosed, ~~consistent with~~ subject to the CFPB Disclosure of Records and Information Rule promulgated in the title of the CFR to:.”

*Fourth*, our February 9 Comments discussed the need for additional safeguards for the information stored in this database. The Bureau neither altered the safeguards specified in the revised notice nor responded to our comments.

*Fifth*, we explained in the February 9 Comments (at pages 7-8 and note 21) the importance of coordinating use of this database with the consumer complaint databases maintained by the FTC and other regulators. We hope the Bureau is engaging in a dialogue regarding that issue and that it will involve the private sector in that discussion.

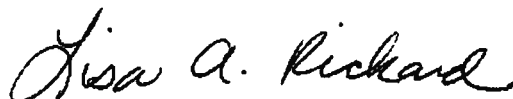
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We thank you for your consideration of these comments and would be happy to discuss these issues further with you and your staff.

Sincerely,



David Hirschmann  
President and Chief Executive Officer  
Center for Capital Markets Competitiveness  
U.S. Chamber of Commerce



Lisa A. Rickard  
President  
U.S. Chamber Institute for Legal  
Reform