



February 8, 2011

**Via overnight delivery**

Claire Stapleton  
Consumer Financial Protection Bureau Implementation Team  
1801 L Street, N.W.  
Washington, DC 20036

Re: Treasury/DO.315—CFPB Implementation Team Consumer Inquiry and Complaint Database

Dear Sirs and Madams:

The Clearing House Association L.L.C.,<sup>1</sup> the American Bankers Association,<sup>2</sup> the Consumer Bankers Association,<sup>3</sup> The Financial Services Roundtable<sup>4</sup> and the Housing Policy Council<sup>5</sup> (collectively, the “Associations”) respectfully submit this comment letter in response to an invitation to comment on a proposal to establish a consumer complaint database. Specifically, on January 10, 2011, the Department of the Treasury (“Treasury”) published a notice in the Federal Register (“Notice”) proposing the establishment, as of February 9, 2011, of a Consumer Inquiry and Complaint Database (“Implementation Team CIC Database” or “Database”) to be used by the CFPB Implementation Team as a repository of complaints about consumer financial products and services.

Treasury issued the Notice based on its interim authority under Section 1066 of the Dodd-Frank Act (“DFA”), which Treasury has delegated to the Implementation Team, to help stand up the Consumer

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<sup>1</sup> Established in 1853, The Clearing House is the nation’s oldest banking association and payments company. It is owned by the world’s largest commercial banks, which employ 1.4 million people in the U.S. and hold more than half of all U.S. deposits. The Clearing House is a nonpartisan advocacy organization representing through regulatory comment letters, amicus briefs and white papers the interests of its owner banks on a variety of systemically important banking issues. The Clearing House Payments Company provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost \$2 trillion daily and representing nearly half of the automated clearing-house, funds-transfer, and check-image payments made in the U.S. See The Clearing House’s web page at [www.theclearinghouse.org](http://www.theclearinghouse.org).

<sup>2</sup> The American Bankers Association (“ABA”) represents banks of all sizes and charters and is the voice for the nation’s \$13 trillion banking industry and its two million employees. The majority of ABA’s members are banks with less than \$165 million in assets.

<sup>3</sup> The Consumer Bankers Association (“CBA”) is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation on retail banking issues. CBA members include most of the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the industry’s total assets.

<sup>4</sup> The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America’s economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

<sup>5</sup> The Housing Policy Council (“HPC”) of The Financial Services Roundtable consists of thirty-two of the leading national mortgage finance companies. HPC members originate, service, and insure mortgages. We estimate that HPC member companies originate approximately 75% and service two-thirds of mortgages in the United States. HPC’s mission is to promote the mortgage and housing marketplace interests of member companies in legislative, regulatory, and judicial forums.

Financial Protection Bureau (“CFPB” or “Bureau”). According to the Notice, the Implementation Team CIC Database will, among other things, serve as a record of consumer complaints or inquiries, and will be used by the Implementation Team for collecting complaint or inquiry data, responding to or referring complaints or inquiries, and aggregating data that will be used to inform other functions of the Implementation Team and, as appropriate, other agencies and/or the public. Among other things, the Notice describes the routine uses for which records in the Implementation Team CIC Database will be disclosed.

The Associations value the efforts of Treasury and the CFPB Implementation Team to help stand up the CFPB, including the impending establishment of the Implementation Team CIC Database. The Associations and their respective members are strongly committed to customer satisfaction. We believe that consumer complaints should be processed promptly with due care and thorough consideration in order to achieve appropriate resolution. Accordingly, the Associations respectfully submit this comment in order to help ensure that the sensitive information in the database is handled securely and responsively during the interim period. In addition, the Associations welcome future dialogue on this matter and about the steps necessary to establish the Bureau’s permanent CIC Database.

The Associations have significant concerns regarding the proposal reflected in the Notice, including that:

(1) The Implementation Team’s role should be limited to the administrative function of setting up the Implementation Team CIC Database, and should not involve the resolution or data analysis of consumer complaints, as doing so appears to be outside of the scope of Treasury’s authority. In addition, unlike prudential regulators,<sup>6</sup> Treasury does not have an established infrastructure or expertise to respond to, resolve, monitor, assess, inquire about or otherwise process consumer complaints. Instead, the Database should be used to house complaints and refer them, as appropriate, to the existing prudential regulators, which are best equipped to address them.

(2) The CFPB is the entity that will have ongoing substantive responsibility over the Database and therefore the only entity that should develop routine uses for the Database. Accordingly, when the database officially transfers to the CFPB, the CFPB should undertake a formal rulemaking process to develop routine uses in a manner that affords all stakeholders and interested parties an opportunity for full involvement in the process. In addition, we would appreciate clarification as to how the CFPB will operate the Database after July 21, 2011.

(3) Until the CFPB issues a formal rulemaking, upon transfer of the Database, the Database should be made accessible only to prudential regulators and the consumer who made the complaint or on behalf of whom the complaint was submitted. Beyond those parties, any expansion of the use of or access to the Database should be determined through a formal rulemaking process that involves a suitable notice and comment period.

Each concern is discussed below in greater detail.

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<sup>6</sup> The term “prudential regulator” as used in this letter includes the same regulatory authorities as the term encompasses under federal law, and also includes financial regulators that may have primary supervisory authority over non-depository institutions.

## **(1) Data-Analysis of Consumer Complaints and Inquiries Exceeds the Interim Authority of the Implementation Team**

The Associations believe that, from the date the Implementation Team CIC Database is launched until the Database formally transfers to the Bureau, Treasury should operate the Implementation Team CIC Database for the exclusive purposes of (1) housing the complaint information it receives and (2) referring the complaining party, as appropriate, to the prudential regulatory authority that oversees the institution that is the subject of the complaint. These limited uses of the Implementation Team CIC Database reflect Treasury's organizational role in helping to stand up the Bureau, a role that does not include substantively dealing with or analyzing consumer complaints. In addition, any other use of or access to the Implementation Team CIC Database during the interim period is unnecessary, premature and may harm the consumers that are the subject of the complaints and inquiries by putting their sensitive information at risk of misuse. Specifically, application of the expansive routine use list in connection with the interim nature of the Implementation Team CIC Database unnecessarily opens sensitive customer information to exposure not germane to the expeditious handling of consumer complaints and inquiries during the interim period.

### **A. Scope of Treasury's Authority**

Under section 1066(a) of DFA, Treasury's interim authority power is limited to performing the functions of the CFPB under DFA Title X, Subtitle F. Section 1066(b) allows the Implementation Team to provide only administrative services to support the Bureau prior to the designated transfer date, and therefore would provide no authority for the routine uses of this database as contemplated by the Notice. As recently described in the January 10, 2011 letter to Chairmen Bachus and Biggert by Inspectors General Thorsen and Coleman ("Joint Response")<sup>7</sup>, Treasury's interim authority under 1066(a) reaches only certain enumerated functions, which does not include the authority to respond to, resolve or conduct monitoring or assessment of consumer complaints or inquiries. As the Joint Response explains "the Secretary is not permitted to exercise the Bureau's authority to prohibit unfair, deceptive or abusive acts or practices under subtitle C ...[or] prescribe rules and require model disclosure forms under subtitle C...[or] prescribe rules under section 1022...." It follows from the Joint Response analysis that the CFPB's authority to "gather and compile information from ... consumer complaints" (see section 1022(c)(4)(B)(i)) or to establish procedures to respond to complaints and inquiries (see, e.g., section 1034 in Subtitle C) are also CFPB authorities that Treasury is not permitted to exercise.

For these reasons, the routine uses of the interim CIC Database that is the subject of this Notice and located and controlled in the Treasury Department under its Information Security Program must be limited in scope. In addition, a separate Notice for establishment of a Privacy Act System of Records is required to be published before any CIC Database can be maintained by the CFPB as a Federal Reserve System bureau. The Associations urge the CFPB when it publishes its Notice for Privacy Act System of Records to significantly reduce the number of routine uses to those that better reflect the intended purpose of the complaint process, permit a longer comment period (such as the minimum 60 days

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<sup>7</sup> Letter to Chairmen Bachus and Biggert from Inspectors General Thorsen and Coleman dated January 10, 2011 available at [http://www.federalreserve.gov/oig/files/Treasury\\_OIG\\_Posted\\_PDF\\_-\\_Response\\_CFPB.pdf](http://www.federalreserve.gov/oig/files/Treasury_OIG_Posted_PDF_-_Response_CFPB.pdf).

provided for in the President’s recent Executive Order) and provide adequate time for consideration of such comments between comment closing and effective date of any such database.

To expedite this process, the Associations and their members respectfully request a meeting with the Implementation Team to discuss the myriad details that should be addressed in any future Notice.

### **B. Role of the Prudential Regulators**

Each prudential regulator has a well established consumer complaint and inquiry process that has an approved Privacy Act database. More importantly, these agencies are experienced and equipped to respond to the substantive concerns expressed by consumer complaints and inquiries. It would be far better for consumers for the Implementation Team to make immediate referrals of complaints and inquiries to the prudential regulators rather than attempt to respond to them directly or delay response during the indeterminate length of the interim period. In addition, any further access to such complaints or inquiries would then be handled in accordance with the routine uses embraced by the respective agency database rules, which have an established history of protecting consumer information. The Implementation Team should not distribute complaints by bank or financial institution customers to any entities other than a prudential regulator because those regulators have the authority and rules for providing further access, subject to well-established security provisions and access restrictions.

Moreover, limiting the uses of the Implementation Team CIC Database during the interim period to housing and referring complaints is consistent with the approach taken by Treasury in establishing the referral portal located at <http://www.consumerfinance.gov> (the “Consumer Referral Portal”). Through the Consumer Referral Portal’s “Get Help Now” tab, consumers are directed to the prudential regulators or the Federal Trade Commission, as appropriate to the circumstances. This approach reflects the fact that prudential and other financial regulators have well-established processes and existing authority to receive, keep secure, evaluate, redirect or investigate, and resolve all individual complaints and inquiries of the type described by the Notice. Treasury has not been empowered with this authority and does not have the infrastructure or expertise to perform those functions.

Thus, to best protect and serve individuals who submit complaints or inquiries to the Implementation Team, Treasury should expeditiously catalog and then refer all such items to the prudential regulators of the institution that may be the subject of such a complaint or inquiry.

### **(2) The CFPB Should Issue a Proposed Rule Outlining its Intended Uses of the Database**

As noted above, the CFPB, as a Bureau of the Federal Reserve System – not of the Treasury Department, is the entity with substantive responsibility over a permanent Database and therefore is the only entity that should be developing routine uses for that Database. Accordingly, use of information in the interim Database should not be expanded until the CFPB is empowered to exercise the related consumer complaint functions that are triggered by Senate confirmation of a Director. At such time, the CFPB should issue proposed rules governing any final CIC database. These rules should be proposed and finalized through the formal rulemaking process to develop routine uses in a manner that affords all stakeholders and interested parties an opportunity for full involvement in the process.

In addition, Section 1034 clearly anticipates that Bureau will coordinate with and be consistent with the complaint resolution practices of the other financial regulators. Thus, the Associations urge the Bureau to coordinate with the other financial regulators and give stakeholders an opportunity to comment in that process. The Associations also strongly urge the Bureau to develop the structure and function of the database through the public notice and comment process.

Finally, the Associations note that the process for transfer of the Database to the Bureau is not altogether clear from the Notice. Accordingly, the Associations urge the Implementation Team to clarify this process in a transparent manner.

### **(3) Upon Transfer to the CFPB, Access to and Use of the Database Should Remain Limited and Should Not Be Expanded Without Formal Rulemaking**

Given the sensitivity of the information contained in consumer complaints and the involved nature of handling such complaints, once the Database is transferred to the CFPB, access to the database should remain limited to prudential regulators and the consumer that made the complaint or on behalf of which complaint was submitted. Beyond those parties, any expansion of the use of or access to the Database should be determined through a formal rulemaking process that involves a suitable notice and comment period.

The Associations note that many of the proposed routine uses outlined in the Notice extend beyond that found in the parallel permanent databases operated by the current prudential regulators—which will continue to operate such databases for future consumer complaints pertaining to depository institutions that remain within their jurisdiction. For example, routine use #16 in the Notice introduces the concept of “victim” separate from actual complainants and implies that information about complainants may be shared with other consumers or agency self-selected “victims.” The purpose of the federal banking agencies’ complaint process is to deal with each individual as an individual—safeguarding his/her identity, his/her financial information and the institution’s investigation of the individual’s financial activity. Sharing one complainant’s plight with another complainant or “victim” is anathema to the individual privacy of the complainant. In addition, routine use #5 may permit consumer financial information to be shared with ICE and IRS officials investigating civil, criminal or administrative cases against the complaining individuals. None of these or similar uses are intended by consumers seeking redress for alleged problems with financial products or services—yet they fall within the ambit of the routine uses described in the Notice.

The above-mentioned examples demonstrate that certain proposed routine uses could cause the Database to be employed in a manner that is significantly outside of its intended purposes. This concern, coupled with the sensitive nature of consumer complaints and the resolution process mandate that any routine uses developed by the CFPB be done so through a formal rulemaking.

### **Conclusion**

For the above reasons, the Associations strongly recommend that all consumer complaints and inquiries received by the Implementation Team be promptly referred to the prudential regulator of the financial institution that is the subject of the complaint or inquiry, and that the routine uses of the

Implementation Team CIC Database be limited to permitting access (other than to the CFPB Implementation Team itself) to the following: “(1) The entity that is the subject of the complaint or inquiry and (2) the Federal or State supervisory/regulatory authority that has direct supervision over the entity that is the subject of the inquiry or complaint.”

Moreover, the Associations strongly recommend that the use of the Database remains so limited until such time as the Bureau develops further routine uses through a formal rulemaking process that involves a suitable notice and comment period and affords all stakeholders and interested parties the opportunity to comment. Such action by the Bureau should be undertaken once the database officially is transferred to the CFPB. Finally, Treasury and the Bureau should provide the industry with guidance regarding the transfer of the database and issue a proposed rule that governs such transfer and allows stakeholders and interested parties to comment.

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Thank you for the opportunity to comment on the Notice. If you have any questions or wish to discuss the Associations’ comment, please do not hesitate to contact any of the undersigned at the information provided below.

Yours very truly,

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