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DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, as Amended

AGENCY: Departmental Offices, Treasury.

ACTION: Final Notice of Proposed New Privacy Act System of Records for the Home Affordable Modification Program.

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SUMMARY: The U.S. Department of the Treasury proposed in August 2009 to establish a new System of Records under the Privacy Act known as ``Home Affordable Modification Program--Treasury/DO.'' This system of records would be established primarily to administer the Home Affordable Modification Program and related homeownership preservation programs (``HAMP''). This notice is to inform the public that one submitter has provided comments in response to the proposed Privacy Act notice published on August 3, 2009, at 74 FR 38484, and that minor changes have been made to the proposed notice in light of these comments.

DATES: Confirmation of effective date: September 14, 2009.

FOR FURTHER INFORMATION CONTACT: Theodore R. Kowalsky, Manager, Data & Information Technology, Office of Fiscal & Financial Agents, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, 202-927-9445 or at [Ted.Kowalsky@do.treas.gov](mailto:Ted.Kowalsky@do.treas.gov).

SUPPLEMENTARY INFORMATION: The Department established HAMP, pursuant to the Emergency Economic Stabilization Act of 2008 (Pub. L. 110-343) (the ``EESA''), to enable eligible homeowners who have a record of making timely mortgage payments, but are experiencing hardships in doing so, to modify the principal amounts and interest rates of their mortgage loans. This new System of Records will provide Treasury and its Financial Agents with access to certain information about mortgage borrowers and their respective home mortgage loans that is necessary to administer the HAMP.

Comments were received from one submitter in response to the proposed Privacy Act notice. Minor changes have been made to the proposed Privacy Act Notice in light of these comments. The Department does not believe that these modifications impact the original effective date for this notice (September 14, 2009), or the active implementation of this System of Records. Accordingly, we are publishing this Final Notice of a Privacy Act System of Records. This Final Notice also includes several new HAMP production and backup system locations which are managed by or on behalf of the Federal National Mortgage Association (``Fannie Mae'') and the Federal Home Loan Mortgage Corporation (``Freddie Mac''), both of which have been designated as Financial Agents of the Department.

The Department received comments from one submitter concerning thirteen of the fifteen routine uses set forth in the proposed system of records, the ``Home Affordable Modification Program Records--

Treasury/DO.' These comments generally expressed concern that the routine uses for the proposed System of Records were too broadly defined and would unduly invade the privacy of HAMP applicants. The submitter also suggested that the Department should seek express written consent from loan modification applicants before making any use of personally identifiable information ('`PII'') in execution of the HAMP. No comments were received regarding routine uses (1), (8), (12) or (15).

In addressing these comments, it is important to note first that the HAMP is a Department program aimed at incentivizing mortgage servicers to modify borrower loans, thereby reducing the financial burden on millions of homeowners across the United States. The majority of the routine use clauses in this System of Records Notice are aimed at disclosing borrower information in an effort to effectively manage and appropriately monitor the performance of loan servicers in meeting their obligations under the HAMP program. Notably, in order to participate in the HAMP, all borrowers must agree to a mandatory consent provision which expressly authorizes the disclosure of information to Fannie Mae, Freddie Mac, the Department, and entities related to the HAMP program.

After careful consideration of the comments received, the Department concludes that routine uses (2), (4), (6), (7), (9), (11), and (14) will remain unchanged. The Department believes that these routine uses are consistent with the statutory authority of the Department of the Treasury to carry out the HAMP consistent with its mandate under the EESA. Additionally, routine use (4) is required by the Office of Management and Budget ('`OMB'') for all agency systems of records, as set forth in OMB's supplementary guidance issued on November 21, 1975.

With regard to routine use (14), the Department believes that this routine use is consistent with the policies and requirements established by OMB in OMB Memorandum M-07-16, ``Safeguarding Against and Responding to the Breach of Personally Identifiable Information [PII],'' dated May 22, 2007. This OMB memorandum directs each federal agency to develop and publish a routine use in order to be able to disclose information regarding a breach to individuals affected by it, as well as to persons and entities that are in a position to assist the agency in preventing or minimizing any harm from a breach. The language of routine use (14) is identical to the language set forth in OMB's memorandum. In addition to publishing the routine use, agencies are also required to implement the processes outlined in M-07-16 by establishing an agency response team consisting of senior officials. We also note that OMB Memorandum M-06-19, ``Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information Technology Investments,'' instructs agencies to report incidents involving PII to the U.S. Computer Emergency Readiness Team within one hour of discovering the incident and advises agencies not to distinguish between actual and suspected incidents. The Department needs to be able to share information about a breach with appropriate persons and entities in order to mitigate the harmful effects of the unauthorized disclosure of confidential or private

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information about an individual. Accordingly, the Department does not believe that an amendment to this routine use is warranted. OMB documents are available at: [http://www.whitehouse.gov/omb/inforeg\\_infopoltech/](http://www.whitehouse.gov/omb/inforeg_infopoltech/).

In response to public comments that expressed concern about the use of PII collected from homeowners under the HAMP, the Department has

amended several routine uses in this System of Records Notice to ensure that it authorizes the dissemination of PII only where necessary to support the HAMP. The revisions are as follows:

Routine use (3) has been amended so as to authorize the disclosure of data only pursuant to a court order.

Routine use (5) has been modified so as to permit disclosure only if the investigation pertains to the HAMP program.

Routine use (10) has been modified to detail further the specific uses of the data collected and to harmonize routine uses (8) and (10) by stipulating that employees, agents, and contractors of Financial Agents, or contractors to the Department of the Treasury to whom information is disclosed, are each subject to the same or equivalent rules and regulations that apply to the Department's officers and employees under the Privacy Act.

Routine use (13) has been modified so as to permit disclosure to the Department of Housing and Urban Development and the Federal Housing Finance Agency in the absence of a complaint or inquiry.

The revised System of Records, entitled ``Home Affordable Modification Program--Treasury/DO .218,`` is published in its entirety below.

Dated: October 19, 2009.

Melissa Hartman,  
Acting Deputy Assistant Secretary, Privacy and Treasury Records.  
TREASURY/DO .218

SYSTEM NAME:

Home Affordable Modification Program Records--Treasury/DO.

SYSTEM LOCATION:

The Office of Financial Stability, Department of the Treasury, Washington, DC. Other facilities that maintain this system of records are located in: Urbana, MD, Dallas, TX, and a backup facility located in Reston, VA, all belonging to the Federal National Mortgage Association (``Fannie Mae``); and in McLean, VA, Herndon, VA, and Reston, VA, facilities belonging to the Federal Home Loan Mortgage Corporation (``Freddie Mac``). Both Fannie Mae and Freddie Mac have been designated as Financial Agents for the Home Affordable Modification Program (``HAMP``).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains information about mortgage borrowers that is submitted to the Department or its Financial Agents by loan servicers that participate in HAMP. Information collected pursuant to HAMP is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities and organizations is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains loan-level information about individual mortgage borrowers (including loan records and financial records). Typically, these records include, but are not limited to, the individual's name, Social Security Number, mailing address, and monthly income, as well as the location of the property subject to the loan, property value information, payment history, and type of mortgage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Emergency Economic Stabilization Act of 2008 (Pub. L. 110-343) (the ``EESA``).

PURPOSE(S):

The purpose of this system of records is to facilitate administration of HAMP by the Department and its Financial Agents, including by enabling them to (i) collect and utilize information collected from mortgage loan servicers, including loan-level information about individual mortgage holders; and (ii) produce reports on the performance of HAMP, such as reports that concern loan modification eligibility and "exception reports" that identify certain issues that loan servicers may experience with servicing loans.

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

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court order where arguably relevant to a proceeding, or in connection with criminal law proceedings;

(4) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to third parties during the course of a Department investigation as it relates to HAMP to the extent necessary to obtain information pertinent to that investigation;

(6) Disclose information to a consumer reporting agency to use in obtaining credit reports;

(7) Disclose information to a debt collection agency for use in debt collection services;

(8) Disclose information to a Financial Agent of the Department, its employees, agents, and contractors, or to a contractor of the Department, for the purpose of ensuring the efficient administration of HAMP and compliance with relevant guidelines, agreements, directives and requirements, and subject to the same or equivalent limitations applicable to Department's officers and employees under the Privacy Act;

(9) Disclose information originating or derived from participating loan servicers back to the same loan servicers as needed, for the purposes of audit, quality control, and reconciliation and response to borrower requests about that same borrower;

(10) Disclose information to Financial Agents, financial institutions, financial custodians, and contractors to: (a) Process mortgage loan modification applications, including, but not limited to, enrollment forms; (b) implement, analyze and modify programs relating to HAMP; (c) investigate and correct erroneous information submitted to the Department or its Financial Agents; (d) compile and review data and statistics and perform research, modeling and data analysis to improve the quality of services provided under HAMP or otherwise improve the efficiency or administration of HAMP; or (e) develop, test and enhance

computer systems

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used to administer HAMP; with all activities subject to the same or equivalent limitations applicable to Department's officers and employees under the Privacy Act;

(11) Disclose information to financial institutions, including banks and credit unions, for the purpose of disbursing payments and/or investigating the accuracy of information required to complete transactions pertaining to HAMP and for administrative purposes, such as resolving questions about a transaction;

(12) Disclose information to the appropriate Federal financial regulator or State financial regulator, or to the appropriate Consumer Protection agency, if that agency has jurisdiction over the subject matter of a complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

(13) Disclose information and statistics to the Department of Housing & Urban Development and the Federal Housing Finance Agency to improve the quality of services provided under HAMP and to report on the program's overall execution and progress;

(14) Disclose information to appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department 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 Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(15) Disclose information to the U.S. Department of Justice ("DOJ") for its use in providing legal advice to the Department or in representing the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, where the use of such information by the DOJ is deemed by the Department to be relevant and necessary to the litigation, and such proceeding names as a party or interests:

(a) The Department or any component thereof, including the Office of Financial Stability ("OFS");

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Department determines that litigation is likely to affect the Department or any of its components, including OFS.

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

##### STORAGE:

Information contained in the system of records is stored in a transactional database and an operational data store. Information from the system will also be captured in hard-copy form and stored in filing cabinets managed by personnel working on HAMP.

##### RETRIEVABILITY:

Information about individuals may be retrieved from the system by reference including the mortgage borrower's name, Social Security Number, address, or loan number.

#### SAFEGUARDS:

Safeguards designed to protect information contained in the system against unauthorized disclosure and access include, but are not limited to: (i) Department and Financial Agent policies and procedures governing privacy, information security, operational risk management, and change management; (ii) requiring Financial Agent employees to adhere to a code of conduct concerning the aforementioned policies and procedures; (iii) conducting background on all personnel with access to the system of records; (iv) training relevant personnel on privacy and information security; (v) tracking and reporting incidents of suspected or confirmed breaches of information concerning borrowers; (vi) establishing physical and technical perimeter security safeguards; (vii) utilizing antivirus and intrusion detection software; (viii) performing risk and controls assessments and mitigation, including production readiness reviews; (ix) establishing security event response teams; and (x) establishing technical and physical access controls, such as role-based access management and firewalls.

Loan servicers that participate in HAMP (i) have agreed in writing that the information they provide to Treasury or to its Financial Agents is accurate, and (ii) have submitted a ``click through'' agreement on a Web site requiring the loan servicer to provide accurate information in connection with using the Program Web site. In addition, the Treasury's Financial Agents will conduct loan servicer compliance reviews to validate data collection controls, procedures, and records.

#### RETENTION AND DISPOSAL:

Information is retained in the system on back-up tapes or in hard-copy form for seven years, except to the extent that either (i) the information is subject to a litigation hold or other legal retention obligation, in which case the data is retained as mandated by the relevant legal requirements, (ii) or the Treasury and its financial agents need the information to carry out the Program. Destruction is carried out by degaussing according to industry standards. Hard copy records are shredded and recycled.

#### SYSTEM MANAGER(S) AND ADDRESS(ES):

Deputy Assistant Secretary, Fiscal Operations and Policy,  
Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington,  
DC 20220.

#### NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, to gain access to records maintained in this system, or to amend or correct information maintained in this system, must submit a written request to do so in accordance with the procedures set forth in 31 CFR Sec. Sec. 1.26-.27. Address such requests to: Director, Disclosure Services Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

#### RECORD ACCESS PROCEDURES:

See ``Notification Procedure'' above.

#### CONTESTING RECORD PROCEDURE:

See ``Notification Procedure'' above.

#### RECORD SOURCE CATEGORIES:

Information about mortgage borrowers contained in the system of records is obtained from loan servicers who participate in HAMP or developed by the Treasury and its Financial Agents in connection with HAMP. Information is not obtained directly from individual mortgage

borrowers to whom the information pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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