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[Proposed Rules]
[Pages 7121-7123]
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DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505-AC28

Privacy Act of 1974; Proposed Implementation

AGENCY: Departmental Offices, Treasury

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment to this part to exempt a system of records from certain provisions of the Privacy Act.

DATES: Comments must be received no later than March 11, 2011.

ADDRESSES: Written comments should be sent to the Department of the Treasury, ATTN: Supervisory Fraud Specialist, Office of Financial Stability (OFS), 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622-0990 (not a toll-free line). You may also submit comments through the Federal rulemaking portal at <http://www.regulations.gov> (follow the instructions for submitting comments). All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Brian Bressman, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927-9219 (fax) or via electronic mail at Brian.Bressman@do.treas.gov.

SUPPLEMENTARY INFORMATION: The Department is establishing the Troubled Asset Relief Program (TARP) Fraud Investigation Information System to assist in carrying out its responsibilities under the Emergency

Economic Stabilization Act of 2008 (EESA). The TARP Fraud Investigation Information System maintains information relevant to background inquiries conducted on individuals who seek, receive or are entrusted with TARP funds, and to complaints received and collected as part of investigations pertaining to alleged fraud, waste, and/or abuse committed against the TARP programs. Information in the system will assist investigators in determining whether to: (a) Refer matters to the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) for further investigation and resolution; (b) refer matters to OFS Financial Agents and others for compliance review; or (c) close matters with no further action to be taken. The Department of the Treasury is publishing separately in the Federal Register a notice of the new system of records.

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is ``investigatory material compiled for law enforcement

[[Page 7122]]

purposes, other than material within the scope of subsection (j)(2).'' To the extent that this system of records contain investigative material within the provision of 5 U.S.C. 552a(k)(2), the Department of the Treasury proposes to exempt the TARP Fraud Investigation Information System from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

The proposed exemption under 5 U.S.C. 552a(k)(2) for the reference system of records is from provisions 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). Exemptions from these particular subsections are justified on a case-by-case basis to be determined at the time a request is made for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of disclosures of the record and the names and addresses of recipients. Making accountings of disclosures available to the subjects of investigations would alert them to the fact that an investigation is being conducted into their activities as well as identify the nature, scope, and purpose of that investigation. The subjects of investigations, if provided an accounting of disclosures, would be able to take measures to avoid detection or apprehension by destroying or concealing evidence that would form the basis for detection or apprehension.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individual access, or concern procedures by which an individual may gain access, to records pertaining to themselves. Disclosure of this information to the subjects of investigations would provide individuals with information concerning the nature and scope of any current investigation, may enable them to avoid detection or apprehension, may enable them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and could impede the investigator's ability to investigate the matter. In addition, permitting access to investigative files and records could disclose the identity of confidential sources and the nature of the information supplied by informants as well as endanger the physical safety of those sources by exposing them to possible reprisals for having provided the

information. Confidential sources and informers might refuse to provide valuable information unless they believe that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the investigator's ability to perform its law enforcement responsibilities. Furthermore, providing access to records contained in the system of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities, thereby endangering the physical safety of those undercover officers by exposing them to possible reprisals. Permitting access in keeping these provisions would also discourage other law enforcement and regulatory agencies, foreign or domestic, from freely sharing information and thus would restrict access to information necessary to accomplish its mission most effectively.

(3) 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern related to procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend upon the individual having access to his or her records, and since an exemption from the provisions of 5 U.S.C. 552a relating to access to records is proposed for the reasons set out in the preceding paragraph of this section, these provisions should not apply to the above-listed system or records.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. The term "maintain," as defined in 5 U.S.C. 552a(a)(3), includes "collect" and "disseminate." The application of this provision could impair the investigator's ability to collect and disseminate valuable law enforcement information. In the early stages of an investigation, it may be impossible to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and information developed subsequently, prove particularly relevant and necessary to the investigation. Compliance with the above records maintenance requirements would require the periodic up-dating of information the Department collects and maintains to ensure that the records in this system remain timely, accurate, and complete. Further, the investigator may uncover evidence of violations of law that fall within the investigative jurisdiction of other law enforcement agencies. To promote effective law enforcement, the investigator will refer this evidence to the appropriate authority for further investigation.

(5) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the above-referenced systems of records could allow individuals to learn whether they have been identified as subjects of investigation. Access to such knowledge would impair the investigator's ability to carry out the mission, since individuals could take steps to avoid detection and destroy or hide evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a

system of records. Revealing sources for information could disclose investigative techniques and procedures; result in threats or reprisals against confidential informants by the subjects of investigations; and cause confidential informants to refuse to give full information to investigators for fear of having their identities as sources disclosed.

As required by Executive Order 12866, it has been determined that this rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. The term "small entity" is defined to have the same meaning as the terms "small business", "small organization" and "small governmental jurisdiction" as defined in the RFA.

The proposed regulation, issued under section 552a(k) of the Privacy Act, is to exempt certain information maintained by the Department in the above system of records from notification, access and amendment of a record by individuals who are citizens of the United States or an alien lawfully admitted for permanent residence. Inasmuch as the Privacy Act rights are personal and apply only to U.S. citizens or an alien lawfully admitted for permanent residence, small entities, as defined in the RFA, are not provided rights under the Privacy Act and are outside the scope of this regulation.

[[Page 7123]]

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, subpart C of title 31 of the Code of Federal Regulations is amended as follows:

PART 1--[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(i) is amended by adding the following text to the table in numerical order.

Sec. 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

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(g) * * *
(1) * * *
(i) * * *

Number	System name.
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DO .225..... TARP Fraud Investigation Information
System

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Dated: January 25, 2011.
Melissa Hartman,
Deputy Assistant Secretary for Privacy, Transparency and Records.
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