

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency**

[Docket No. 00-22]

**Notice of Request for Preemption Determination****AGENCY:** Office of the Comptroller of the Currency, Treasury.**ACTION:** Notice and request for comment.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is publishing for comment two written requests for the OCC's opinion about whether Federal law would preempt certain provisions of the Michigan Motor Vehicles Sales Finance Act (MVSFA) as interpreted by the Michigan Financial Institutions Bureau (FIB), that limit the ability of banks to make loans to finance motor vehicle sales. The purpose of this notice and request for comment is to provide interested persons with an opportunity to submit comments on this matter prior to the OCC's issuance of an opinion.

**DATES:** Comments must be received on or before November 24, 2000.

**ADDRESSES:** Comments should be sent to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Attention: Docket No. 00-22, Washington, DC 20219. You may submit comments electronically to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov) or by facsimile transmission to (202) 874-5274. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874-5043.

**FOR FURTHER INFORMATION CONTACT:** Michele Meyer, Senior Attorney, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090.

**SUPPLEMENTARY INFORMATION:****Background**

The requesters are national banks headquartered in Ohio that would like to conduct motor vehicles sales financing through automobile dealers in Michigan. The banks would enter into agreements with the dealers under which the dealers would act as the banks' agents for the purpose of soliciting loans to finance motor vehicles, taking applications for the vehicle loans, preparing the loan documentation, and obtaining the buyers' signatures on all required documents. The banks would prescribe

the terms of the loan, including the minimum interest rate, and fund the loans.

This method of conducting business is inconsistent with a Declaratory Ruling issued by the FIB on January, 1, 2000, concerning this proposed practice.<sup>1</sup> The FIB concluded that, under the MVSFA, the proposed arrangement between the banks and Michigan motor vehicle dealers would result in "installment sale contracts" subject to the MVSFA.<sup>2</sup> In order for a motor vehicle installment sale contract to comply with the MVSFA: (1) The dealer must originate the loan as a licensed installment seller of motor vehicles; and (2) the bank may only purchase the loan, as a licensed sales finance company.<sup>3</sup> The transaction must also comply with the several other requirements of the MVSFA that apply to installment sale contracts.<sup>4</sup> Thus, a national bank cannot originate motor vehicle loans through a dealer agent.

The requesters have asked our opinion whether the National Bank Act preempts the provisions of the MVSFA described in this notice, as those provisions have been interpreted by the FIB, with respect to national banks. The requesters assert that the FIB's construction of the proposed financing transactions as installment sale contracts under the MVSFA impairs a national bank's authority under the National Bank Act to make loans and determine the interest rates on those loans.<sup>5</sup> The requesters contend that the FIB's construction of the proposed financing transactions as installment sale contracts subject to the MVSFA is an impermissible state restriction of a

<sup>1</sup> In the Matter of: Request by Rodney D. Martin on Behalf of National City Bank for a Declaratory Ruling on the Applicability of the Motor Vehicle Sales Finance Act to Certain Transactions (January 1, 2000).

<sup>2</sup> Section 2 of the MVSFA defines an "installment sale contract" as one "for the retail sale of a motor vehicle, or which has a similar purpose or effect, under which part or all of the price is payable in 2 or more scheduled payments subsequent to the making of the contract \* \* \*" MCL 492.102(9); MSA 23.628(2)(9).

<sup>3</sup> MCL 492.103(a) and (b); MSA 23.628(3)(a) and (b).

<sup>4</sup> These include, for example, provisions concerning the form and contents of an installment sales contract, disclosures that must be made to the buyer, the amount and computation of fees and finance charges, and prohibited charges. See MCL 492.112-492.134.

<sup>5</sup> The requesters contend that the proposed financing transactions would not result in installment sale contracts under the meaning of the MVSFA because the banks and their customers would be contracting for loans and not "for the retail sale of \* \* \* motor vehicle[s]." The FIB, as indicated in its Declaratory Ruling, disagrees with this interpretation and considers the transactions installment sale contracts subject to the requirements of the MVSFA.

national bank's exercise of its authority under 12 U.S.C. 24(Seventh) to originate loans directly to the bank's customers through third-party agents without having to obtain state licenses. The requesters further assert that the FIB's interpretation, which required the dealer, rather than the bank, to originate the loans unlawfully restricts a national bank's authority under 12 U.S.C. 85 to charge interest on loans at the rate allowed by the bank's home state.

**Request for Comment**

Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103-328, 108 Stat. 2338) generally requires the OCC to publish in the **Federal Register** a descriptive notice of certain requests that the OCC receives for preemption opinions.<sup>6</sup> Under section 114, the OCC must publish notice before it issues any opinion letter or interpretive rule opining that Federal law preempts the application to a national bank of any State law in four designated areas: community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches. Pursuant to section 114, interested persons have at least 30 days to submit written comments. Without making a determination as to whether section 114 applies to this request, the OCC has decided that it is appropriate to use notice and comment procedures.

The OCC requests comments on the issues described above. The OCC will publish in the **Federal Register** any final opinion letter we issue in response to the requests.

Dated: October 16, 2000.

**John D. Hawke, Jr.***Comptroller of the Currency.*

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Privacy Act of 1974; System of Records****AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Notice of proposed new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Internal Revenue Service (IRS), Treasury, gives notice of a newly proposed Servicewide system of records entitled "Third Party

<sup>6</sup> 12 U.S.C. 43.

Contact Reprisal Records—Treasury/IRS 00.334” that is being established in accordance with Internal Revenue Code section 7602(c).

**DATES:** Comments must be received no later than November 24, 2000. The proposed system of records will be effective December 4, 2000 unless the IRS receives comments which would result in a contrary determination.

**ADDRESSES:** Comments should be sent to Internal Revenue Service, Office of Governmental Liaison and Disclosure, Room 1603, 1111 Constitution Ave., NW, Washington, DC 20224. Comments will be made available for inspection and copying in the IRS Freedom of Information Act (FOIA) Reading Room. An appointment for inspecting the comments can be made by contacting the FOIA Reading Room.

**FOR FURTHER INFORMATION CONTACT:** Harry Manaka, National Director, Collection Field Operations, Room 7238, 1111 Constitution Avenue, NW, Washington, DC 20224. Telephone number (202) 622-5110.

**SUPPLEMENTARY INFORMATION:** The proposed system of records contains records concerning reprisal determinations made under 26 U.S.C. 7602(c). The IRS already has a Privacy Act system of records, Treasury/IRS 00.333, for third party contact records that are used to inform the taxpayer of third party contacts in compliance with 26 U.S.C. 7602(c). However, a second system that is exempted under a proposed rule from certain provisions of the Privacy Act is needed for records that concern reprisal determinations in order to protect third party contacts and others from potential reprisal.

The new proposed system will allow the IRS to withhold the information that there was a reprisal determination. Withholding such information will protect the third party contact.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A-130, “Federal Agency Responsibilities for Maintaining Records About Individuals,” dated February 8, 1996.

The proposed Servicewide system of records, Third Party Contact Reprisal Records—Treasury/IRS 00.334, will be exempted from disclosure provisions of the Privacy Act under (k)(2) of the Act to protect third party contacts and others from potential reprisal. A

proposed rule is being published separately in the **Federal Register**.

In addition, Treasury/IRS 00.333—Third Party Contact Records, will be altered to delete “fact of reprisal determination” from its categories of records, because those reprisal determination records will be covered under the proposed new system. The notice altering Treasury/IRS 00.333 will also be published separately in the **Federal Register**.

The proposed Third Party Contact Reprisal Records—Treasury/IRS 00.334 is published in its entirety below.

Dated: August 29, 2000.

**W. Earl Wright, Jr.,**

*Chief Management, and Administrative Programs Officer.*

**Treasury/IRS 00.334**

**SYSTEM NAME:**

Third Party Contact Reprisal Records.

**SYSTEM LOCATION:**

District Offices, Regional Offices, Service Centers, Office of Assistant Commissioner (International), and IRS Computing Centers. (See IRS appendix A for addresses.)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals on whom Federal tax assessments have been made; individuals believed to be delinquent in filing Federal tax returns or in paying Federal taxes, penalties or interest; individuals who are or have been considered for examination for tax determination purposes; *i.e.*, income, estate and gift, excise or employment tax liability.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records of third party contacts as described in 26 U.S.C. 7602(c), where reprisal determinations have been made, including the taxpayer name control, taxpayer identification number, date of contact, fact of reprisal determination, and IRS personnel’s identification number.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 26 U.S.C. 7602, and 7801.

**PURPOSE(S):**

These records will be used to track the number of reprisal determinations made pursuant to IRC § 7602(c)(3)(B).

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

Disclosure of returns and return information may only be made as authorized by 26 U.S.C. 6103 and 7602(c).

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

**STORAGE:**

Paper records and electronic storage media.

**RETRIEVABILITY:**

By taxpayer identification number.

**SAFEGUARDS:**

Access controls will be no less than those provided by IRM 2.1.10, Automated Information Systems Security Handbook; 1(16)12, Manager’s Security Handbook.

**RETENTION AND DISPOSAL:**

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

**SYSTEM MANAGER(S) AND ADDRESSES:**

Official prescribing policies and practices: Assistant Commissioner (Collection). Officials maintaining the system: Assistant Commissioner (International), Regional Chief Compliance Officers, District Directors, IRS Service Center Directors, IRS Computing Center Directors, Associate Chief Counsel, Regional Counsel, and District Counsel.

**NOTIFICATION PROCEDURE:**

This system of records is exempt from certain provisions of the Privacy Act.

**RECORDS ACCESS PROCEDURE:**

This system of records is exempt from certain provisions of the Privacy Act and may not be accessed for the purpose of determining if the system contains a record pertaining to a particular individual.

**CONTESTING RECORD PROCEDURE:**

This system of records is exempt from certain provisions of the Privacy Act and may not be accessed for purposes of inspection or contest of record contents. Also, 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

**RECORD SOURCE CATEGORIES:**

This system of records is exempt from the Privacy Act provision which requires that record source categories be reported. (See “Exemptions Claimed for the System,” below.)

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G),(H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). (see 31 CFR 1.36)

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