

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

### 4 CFR Part 200

RIN 0430-AA03

### Privacy Act Regulations

**AGENCY:** Recovery Accountability and Transparency Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Recovery Accountability and Transparency Board (Board) proposes to amend the Board's regulations implementing the Privacy Act of 1974 (Privacy Act), as amended. This proposed rule would exempt certain systems of records from certain sections of the Privacy Act. These exemptions will help ensure that the Board may efficiently and effectively compile investigatory material to prevent and detect fraud, waste, and abuse and perform its other authorized duties and activities relating to oversight of funds awarded pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act).

**DATES:** Comments on the proposed rule should be submitted no later than June 18, 2010.

**ADDRESSES:** Comments on this proposed rule may be submitted:

- *By Mail or Hand Delivery:* Office of General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC, 20006;
- *By Fax:* (202) 254-7970; or
- *By E-mail to the Board:* [comments@ratb.gov](mailto:comments@ratb.gov).

All comments on this proposed Privacy Act rule should be clearly identified as such.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Dure, General Counsel, (703) 487-5439.

**SUPPLEMENTARY INFORMATION:** On November 20, 2009, the Board published in the **Federal Register** proposed system notices to establish new systems of records, "RATB—11—

RATB Investigative Files" and "RATB—12—RATB Fraud Hotline Program Files," pursuant to the Privacy Act, as amended (74 FR 60302, Nov. 20, 2009). The Board received no comments on these proposed systems of records. The following proposed amendments of the Board's Privacy Act regulations, 4 CFR part 200, exempt these systems of records from certain provisions of the Privacy Act which require, among other things, that the Board provide notice when collecting information, account for certain disclosures, permit individuals access to their records, and allow them to request that the records be amended. These provisions would interfere with the Board's oversight functions if applied to the Board's maintenance of these systems of records.

Accordingly, it is proposed to exempt these systems of records from specified provisions of the Privacy Act, pursuant to sections 552a(j)(2), (k)(2) and (k)(5).

#### List of Subjects in 4 CFR Part 200

Privacy Act of 1974.

For the reasons set forth in the preamble, the Board proposes to amend Chapter II of Title 4, Code of Federal Regulations, as follows:

#### CHAPTER II—RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

#### PART 200—PRIVACY ACT OF 1974

1. The authority for Part 200 continues to read as follows:

**Authority:** 5 U.S.C. 552a(f).

2. Add § 200.17 to read as follows:

#### § 200.17 Exemptions.

(a) *General policy.* The Privacy Act permits an agency to exempt certain types of systems of records from some of the Privacy Act's requirements. It is the policy of the Board to exercise authority to exempt systems of records only in compelling cases.

(b) *Specific systems of records exempted under (j)(2) and (k)(2).* The Board exempts the RATB Investigative Files (RATB—11) system of records from the following provisions of 5 U.S.C. 552a:

(1) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage

to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede the Board's criminal law enforcement duties.

(2) From subsection (c)(4) and (d) because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the ongoing investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

(3) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to the Board's close working relationship with other Federal, State and local law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(4) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(5) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(6) From subsection (e)(4)(G)–(I) because this system of records is exempt from the access provisions of subsection (d).

(7) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what

information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(8) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(9) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual, which might in itself provide an answer to that individual relating to an ongoing investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(10) For comparability with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness, and completeness cannot apply to this record system. Information gathered in an investigation is often fragmentary, and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(c) *Specific systems of records exempted under (k)(2) and (k)(5).* The Board exempts the RATB Fraud Hotline Program Files (RATB—12) system of records from the following provisions of 5 U.S.C. 552a:

(1) From subsection (c)(3) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents.

(2) From subsection (d) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Disclosures

could also subject sources and witnesses to harassment or intimidation which jeopardize the safety and well-being of themselves and their families.

(3) From subsection (e)(1) because the nature of the investigatory function creates unique problems in prescribing specific parameters in a particular case as to what information is relevant or necessary. Due to close working relationships with other Federal, state and local law enforcement agencies, information may be received which may relate to a case under the investigatory jurisdiction of another government agency. It is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(4) From subsection (e)(4)(G)–(H) because this system of records is exempt from the access provisions of subsection (d).

(5) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

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## **OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Parts 831, 841**

**RIN 3206-AM17**

## **RAILROAD RETIREMENT BOARD**

**20 CFR Part 350**

**RIN 3220-AB63**

## **SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404, 416**

**RIN 0960-AH18**

## **DEPARTMENT OF THE TREASURY**

### **Fiscal Service**

**31 CFR Part 212**

**RIN 1505-AC20**

## **DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 1**

**RIN 2900-AN67**

### **Garnishment of Accounts Containing Federal Benefit Payments**

**AGENCY:** Department of the Treasury, Fiscal Service (Treasury); Social Security Administration (SSA); Department of Veterans Affairs (VA); Railroad Retirement Board (RRB); Office of Personnel Management (OPM).

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** Treasury, SSA, VA, RRB and OPM (Agencies) are publishing for comment a proposed rule to implement statutory restrictions on the garnishment of Federal benefit payments. The Agencies are taking this action in response to recent developments in technology and debt collection practices that have led to an increase in the freezing of accounts containing Federal benefit payments. The proposed rule would establish procedures that financial institutions must follow when a garnishment order is received for an account into which Federal benefit payments have been directly deposited. The proposed rule would require financial institutions that receive a garnishment order for an account to determine whether any Federal benefit payments were deposited to the account within 60 calendar days prior to receipt of the order and, if so, would require the financial institution to ensure that the account holder has access to an amount equal to the sum of such payments in