



May 9, 2011

Mr. Andrew Trueblood  
Consumer Financial Protection Bureau Implementation Team  
1801 L Street, NW.,  
Washington, DC 20036

RE: Consumer Financial Protection Bureau Consumer Response Intake Fields

Dear Mr. Trueblood:

The National Association of Mutual Insurance Companies ("NAMIC") is pleased to offer comments on "Consumer Financial Protection Bureau Consumer Response Intake Fields."

NAMIC is the largest and most diverse national property/casualty insurance trade and political advocacy association in the United States. Its 1,400 member companies write all lines of property/casualty insurance business and include small, single-state, regional, and national carriers accounting for 50 percent of the automobile/ homeowners market and 31 percent of the business insurance market. NAMIC has been advocating for a strong and vibrant insurance industry since its inception in 1895.

## **Background**

Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA") on July 15, 2010.<sup>1</sup> Section 1011 of the DFA established the Bureau of Consumer Financial Protection ("CFPB") tasked with regulating the offering and provision of consumer financial products or services under Federal consumer financial laws. The CFPB is further directed to establish a single, toll-free telephone number, a website, and a database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act ([Pub.L. 111-203](#), 124 STAT. 1376-2223), July 21, 2010.

Section 1027(f) of the DFA expressly prohibits the CFPB from exercising any power to enforce the consumer protection title with respect to any person regulated by a State insurance regulator.

On January 10, the Treasury Department proposed a database system to be used by the CFPB implementation team to house complaints regarding consumer financial products and services.<sup>2</sup> The system was effective February 9, 2011 and is applicable to individuals who submit complaints or inquiries to the CFPB (on their own or others' behalf); individuals on whose behalf complaints or inquiries are submitted by others (such as attorneys, members of Congress, third party advocates, and/or other governmental organizations); and individuals about whom complaints or inquiries have been received by prudential regulators, the Federal Trade Commission, other Federal agencies and State agencies, and then shared with the CFPB Implementation Team.

The complaint database as constructed may contain: (1) correspondence or other information received from or made by complainants, consumers, or other individuals or entities; (2) information from the entity or individual referring the inquiry or complaint; (3) records created of verbal communications by or with complainants or other individuals; (4) information regarding third party advocates or others who submit complaints or inquiries on another's behalf; (5) information identifying the entity that is subject to the complaint or inquiry; (6) communication with or by the entity that is subject to the complaint or inquiry; (7) unique identifiers, codes, and descriptors categorizing each complaint or inquiry file; (8) information about how complaints were responded to or referred; (9) records used to respond to or refer complaints, including information in the CFPB Implementation Team's other systems of records; and (10) identifiable information regarding both the individual who is making the inquiry or complaint, and the individual on whose behalf such inquiry or complaint is made, including name, social security number, account numbers, address, phone number, e-mail address, and date of birth.

Treasury has proposed that records received and created with respect to the complaint database may be disclosed to:

- (1) An entity that is the subject of the complaint or inquiry;
- (2) 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 and where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

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<sup>2</sup> Treasury/DO.315—CFPB Implementation Team Consumer Inquiry and Complaint Database; Notice Of Proposed Privacy Act System Of Records, 76 FR 1507, Jan. 10, 2011.

- (3) Third parties to the extent necessary to obtain information needed for a response to or referral of a complaint or inquiry;
- (4) Appropriate law enforcement agencies or authorities in connection with the investigation and/or prosecution of alleged civil, criminal, and administrative violations;
- (5) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;
- (6) The appropriate governmental, Tribal, self-regulatory or professional organization if that organization has jurisdiction over the subject matter of the complaint or inquiry, or over the entity that is the subject of the complaint or inquiry;
- (7) Another Federal agency to:
  - (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or
  - (b) Verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;
- (8) Other Federal and nonfederal governmental supervisory or regulatory authorities when the subject matter is within such other agency's jurisdiction;
- (9) The U.S. Department of Justice ("DOJ") for its use in providing legal advice to the Treasury or in representing the Treasury in a proceeding before a court, adjudicative body, or other administrative body before which the Treasury is authorized to appear, where the use of such information by the DOJ is deemed by the Treasury to be relevant and necessary to the litigation, and such proceeding names as a party or interests:
  - (a) The Treasury or any component thereof;
  - (b) Any employee of the Treasury in his or her official capacity;
  - (c) Any employee of the Treasury in his or her individual capacity where DOJ has agreed to represent the employee; or
  - (d) The United States, where the Treasury determines that litigation is likely to affect the Treasury or any of its components.
- (10) The National Archives and Records Administration for use in records management inspections;
- (11) A contractor or agent who needs to have access to the system of records to perform an assigned activity;
- (12) Appropriate agencies, entities, and persons when:
  - (a) The Treasury suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
  - (b) The Treasury 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 the

system or other systems or programs (whether maintained by the Treasury 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 Treasury's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(13) Prudential regulators (including without limitation Federal banking agencies and the National Credit Union Administration), the Federal Trade Commission, other Federal agencies, and State agencies, for the purpose of facilitating the activities described in 12 U.S.C. § 5493(b)(3)(D) concerning consumer financial products and services complaints;

(14) Government agencies and the public, in the form of analytic and statistical reports, summaries, or extracts in which individual identities are not revealed, in order to provide information about trends and patterns derived from information contained in complaint records; and

(15) Persons determined to be complainants and/or victims, to the extent the Treasury deems necessary, at its discretion, in order to provide such persons with information concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

## **Request for Comment**

The CFPB implementation team requested public comment regarding forms for questions, complaints, and other information about consumer financial products and services. Specifically Treasury requested comment on:

(a) Whether the intake of complaints, questions, and other information relating to consumer financial products and services is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical uses;

(b) The accuracy of the above estimate of the burden of the information collection;

(c) Ways to enhance the quality, usefulness and clarity of the information to be collected;

(d) Ways to minimize the reporting and/or record keeping burdens on respondents, including the use of automated collection techniques or other forms of information technology;

(e) Estimates of capital or start-up costs of operation, maintenance, and purchase of services to provide information; and

(f) Specific types of information that would be useful for CFPB to collect through its intake forms, in order to advance the mission of CFPB.

In testimony before the House Financial Services Committee on April 6, Special Advisor to the Treasury Secretary for the Consumer Financial Protection Bureau Elizabeth Warren advised lawmakers that the CFPB had received approximately 300 complaints, including a handful of complaints regarding insurance products, which she acknowledged would likely fall outside the jurisdiction of the CFPB.

## **Insurance Products and Services**

The statutory language and the legislative history of the DFA are unequivocal in the exclusion of insurance from the purview of the CFPB. Ms. Warren in testimony acknowledged that insurance complaints would be outside the scope of the bureau and emphasized to lawmakers that the CFPB would respect the statutory limitations placed on its authority.

Consumer protection is a hallmark of the state-based insurance regulatory system. In the case of property and casualty insurance, state insurance officials and attorneys general play complementary and mutually supportive roles in consumer protection. The current regulatory structure works well to address consumer protection issues. State officials are keenly attuned to the needs of their residents, and are accountable and accessible, both geographically and politically, to their consumers.

States have adopted and enforce a variety of consumer protection laws and regulations designed to ensure disclosure, fairness, and competitive equity. State insurance regulators actively supervise all aspects of the business of insurance, including review and regulation of solvency and financial condition to ensure against market failure. Public interest objectives are achieved through review of policy terms and market conduct examinations to ensure the effective and appropriate provision of insurance coverage. Regulators also monitor insurers, agents, and brokers to prevent and punish activities prohibited by state antitrust and unfair trade practices laws and take appropriate enforcement action where appropriate. Specifically, insurers are subject to systematic, comprehensive review of all the facets of their operation in their business dealings with customers, consumers, and claimants. The examination process allows regulators to monitor compliance with state insurance laws and regulations, ensure fair treatment of consumers, provide for consistent application of the insurance laws, educate insurers on the interpretation and application of insurance laws, and deter bad practices. Comprehensive examinations generally cover seven areas of investigation, including insurance company operations and management, complaint handling, marketing and sales, producer licensing, policyholder services, underwriting and rating, and claim practices.

State insurance regulators also interact directly with consumers. As an example, nationwide state insurance regulators handle approximately 3.7 million consumer

inquiries and complaints in a single year. Inquiries range from general insurance information, to content of policies, to the treatment of consumers by insurance companies and agents. Most of those consumer needs are resolved successfully and with little or no cost to the consumer. Recent examples underscore the ability of state regulators to respond to consumer protection issues. In response to allegations of improper producer compensation activities – uncovered, investigated and adjudicated by state regulator and law enforcement officials – state regulators moved swiftly to develop model disclosures, coordinate consistent regulatory actions and settlement agreements, improve consumer protections and, in certain instances, bring civil and criminal prosecutions.

NAMIC believes that statutory prohibition on involvement in the business of insurance is clear and that the CFPB should not collect or maintain information related to insurance products and services. Each state has a robust consumer protection system and NAMIC believes any complaints related to insurance should immediately be forwarded to the appropriate state regulator. In the case of web-based systems, NAMIC recommends that the CFPB implement protocols to ask the complainant to identify the type of product or service that is the subject of the complaint and based on the address of the individual to transfer the individual to the appropriate state regulator. Collection and maintenance of such complaints we believe is inconsistent with the letter and spirit of the DFA.

NAMIC further believes that it is inappropriate to collect information and initiate investigations or actions based on allegations made by third parties. Financial services transactions necessarily involve personally identifiable information, including sensitive financial or health information. The current construct of the complaint database contemplates complaints or inquiries received from third party advocates or others on another's behalf. Further it is presumed that the database will include identifiable information regarding both the individual who is making the inquiry or complaint, and the individual on whose behalf such inquiry or complaint is made, including name, social security number, account numbers, address, phone number, e-mail address and date of birth. NAMIC believes that third party reporting flies in the face confidentiality and protection of personal information. Only complaints or inquiries initiated and approved by the first party to the transaction or their representative operating under a valid power of attorney should be accepted by the CFPB. NAMIC urges the CFPB to include an attestation under penalty of perjury that the submitter is in fact the named party in the complaint or that the individual making the complaint or inquiry holds a valid power of attorney authorizing the person to act in the capacity of representative.

In the context of insurance product or services complaints, NAMIC believes that the CFPB must take every reasonable step to ensure that the complaints and information are routed directly to the appropriate state insurance regulatory department and that no

records or documents are retained by the CFPB. Any complaints or inquiries received over the phone should be transferred to the appropriate state insurance regulatory department. Inquiries and complaints received by mail or any electronic communication received outside the automated system should immediately be forwarded to the appropriate state insurance regulatory department and no copies of the communications should be retained by the CFPB. All public communications regarding the CFPB complaint database should likewise clarify that insurance related complaints should be made directly to the state regulatory department.

Treasury has proposed a number of entities with which the CFPB may share information in the context of an inquiry or complaint, including other federal regulators and third parties. NAMIC believes that the prohibition on the authority of the CFPB with respect to insurance products limits the sharing of information related to insurance products and services complaints to the appropriate functional state insurance regulator.

## **Conclusion**

Congress was explicit in excluding insurance from the scope and purview of the CFPB. NAMIC urges the CFPB to respect the statutory boundaries of the DFA and to implement intake systems which effectively segregate insurance related complaints and inquiries, forward such inquiries or complaints to the appropriate state regulator, and to forward any and all documentation related to the complaint to the appropriate state insurance regulatory department, ensuring that the CFPB does not retain documentation. Such safeguards are essential to maintain the statutory exemption with respect to any person regulated by a State insurance regulator.

Sincerely,

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