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Attn: Comments, FDIC Systems of Records
550 17th Street NW
Washington, DC 20429

Submitted via e-mail to comments@fdic.gov as per instructions in the Federal Register notice, Vol. 78, No. 205/Wednesday, October 23, 2013

RE: The Federal Deposit Insurance Corporation (FDIC) Privacy Act of 1974 Systems of Records, Notice of Altered Systems of Records to revise existing systems of records, "FDIC-30-64-0022 Freedom of Information Act and Privacy Act Request Records," Docket No. 2013-24534

These comments are offered on behalf of the National Archives and Records Administration's Office of Government Information Services (OGIS) regarding the Federal Deposit Insurance Corporation's System of Records Notice pertaining to Freedom of Information Act and Privacy Act Requests.

OGIS, created by the OPEN Government Act of 2007 as the Freedom of Information Act (FOIA) Ombudsman, has the statutory mandate to review FOIA policies, procedures and compliance of administrative agencies, and to offer mediation services to resolve disputes between FOIA requesters and agencies. 5 U.S.C. § 552(h)(1)-(3). As part of its review mission, OGIS comments on proposed new and updated agency FOIA policies.

The Privacy Act of 1974 prohibits agencies from sharing information contained in FOIA and Privacy Act request and appeal files without prior written consent of the requester or the existence of a routine use allowing such disclosure. In the absence of a routine use allowing such disclosure, OGIS must obtain written consent from requesters seeking our assistance. For this reason, OGIS has obtained signed and dated consents from more than 1,000 requesters since opening four years ago. This can be an obstacle as requesters do not always comprehend that their request for OGIS assistance alone is not sufficient to grant OGIS the authority to discuss a FOIA request with an agency.

Requiring consent also can be an obstacle when it is an agency seeking OGIS assistance. The situation places agencies in the position of obtaining requester consent for the sole purpose of discussing an issue with OGIS in an attempt to prevent or resolve a dispute or to ask OGIS for help

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with difficult requests or requesters. Consent also may not be feasible when records are relevant to an OGIS review of an agency's policies, procedures or compliance (although OGIS anticipates that there would be considerably less need for access to individual files for that purpose than when OGIS is providing mediation services).

OGIS requests that the FDIC add a routine use to its SORN that would allow sharing of information about individual requesters between OGIS and FDIC. Amending agencies' SORNs to include OGIS as a routine use builds efficiencies into the FOIA administrative process.

OGIS worked with the Department of Justice (DOJ) to develop a model routine use that agencies can use and offers the following language:

To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. § 552(b), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

In addition to DOJ, the Departments of Defense, Health and Human Services, State and Transportation, the Office of Special Counsel, the Privacy and Civil Liberties Oversight Board, the Securities and Exchange Commission, and the U.S. Postal Service have revised their SORNs to include routine uses that allow sharing information with OGIS for purposes of resolving disputes as well as to facilitate OGIS's role to review administrative agency policies, procedures and compliance with FOIA.

Comments submitted on behalf of the National Archives by:

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