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October 24, 2016

VIA ELECTRONIC TRANSMISSION

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C., 20552

Re: Comments on Amendments Relating to Disclosure of Records and Information, RIN 3170-AA63

Dear Ms. Jackson:

The Electronic Transactions Association ("ETA") submits this comment letter in response to the Bureau's proposed amendments to its rules relating to disclosure of records and information, released August 24, 2016. ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing and related products and services. ETA's members include credit and debit card companies, prepaid account providers, mobile telephone service providers, and online small business lenders.

As explained in the comments below, ETA has significant concerns that the Bureau's proposal extends far beyond its statutory authority. While our members support the Bureau's mission, the Bureau does not have authority to share confidential supervisory information ("CSI") about an entity with domestic and foreign governmental agencies that do not have jurisdiction over the entity in the first instance. Further, the proposal to transfer authority for the discretionary sharing of CSI from the Bureau's General Counsel to the Associate Director for Supervision, Enforcement, and Fair Lending (the "Division") creates an obvious and troubling conflict of interest. Assigning this important responsibility to the Division will undoubtedly create situations where the Division will be asked to decide on a CSI request at the same time the Division is litigating against the entity that is the subject of the CSI request. This would not only create a clear conflict of interest, but would allow the Division to use its authority as leverage against the entity that is subject to the CSI request.

For these reasons, ETA encourages the Bureau to adopt a final rule that fits within the boundaries of the Bureau's authority under Dodd-Frank. Otherwise, the Bureau risks exposing itself to criticism or litigation for regulatory overreach.[1] Moreover, an aggressive expansion of the Bureau's sharing of CSI risks undermining the long-standing policy objectives of protecting CSI obtained by banking and other similar federal regulators. These objectives recognize the importance of protecting company-specific information, and that unrestricted sharing of this information may harm companies or inhibit their willingness to cooperate with federal authorities. ETA and its members hope that the Bureau takes these important points into consideration when finalizing its proposed rule.

I. The Proposed Rule Impermissibly Expands the Bureau's Ability to Share CSI Beyond the Authority Conferred in the Consumer Financial Protection Act.

The Proposed Rule would permit the Bureau to share CSI in ways not contemplated or authorized by the Consumer Financial Protection Act ("CFPA"). 12 U.S.C. 5512(c)(6)(A) authorizes the Bureau to prescribe rules regarding the confidential treatment of information obtained from persons in connection with the Bureau's exercise of its authorities under federal consumer financial law. Section 5512(c)(6)(C) discusses access by other regulators to the Bureau's information, and section 5512(c)(6)(C)(i) requires the Bureau to

[1] *PHH Corp. et. al. v. CFPB*, No. 15-1177 (Ct. App. D.C. Oct. 2016).

provide access to reports of examination about a covered person or service provider to any prudential regulator, other federal agency, or state regulator with jurisdiction over that covered person or service provider. Finally, section 5512(6)(C)(ii) states that the Bureau may furnish to a prudential regulator or other agency with jurisdiction over a covered person or service provider any other report or CSI concerning that covered person or service provider.

Previously, the Bureau interpreted 5512(c)(6) as a positive grant of authority limiting the Bureau's discretion to disclose CSI to the situations described in 5512(c)(6)(C). In the Proposed Rule, the Bureau has reversed that position and instead reads 5512(c)(6)(C)(ii) not as a limiting principle, but merely as an example of information sharing within the Bureau's discretion. ETA supports the Bureau's prior interpretation of 5512(c)(6) and disagrees with the Bureau's attempt to reinterpret and expand its authority.

a. The Bureau's Proposal to Share Information with Agencies that do not "Have Jurisdiction" is Inconsistent with the CFPA.

i. The Bureau is not Entitled to Deference because its Re-Interpretation of 12 U.S.C. 5512(c)(6)(C)(ii) Contravenes the Plain Language of the CFPA.

The clear purpose of section 5512(c)(6)(C) is to limit the otherwise broad grant of authority in 5512(c)(6)(A). Section 5512(c)(6)(i) describes situations where the Bureau must provide reports of examination, while 5512(c)(6)(ii) states: "[T]he Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law." Taken together, the obvious meaning of 5512(c)(6)(C)(i) and (ii) is that other agencies engaged in a supervisory role over a covered person shall have access to the Bureau's reports of examination, but may (at the Bureau's discretion) also have access to other CSI. A federal agency only has the power conferred to it by statute and no more; therefore, the Bureau may not expand its authority beyond the clear meaning of 5512(c)(6).[2]

The Proposed Rule, however, would allow for "discretionary disclosures of confidential supervisory information, and it will allow for additional disclosures to agencies that do not 'hav[e] jurisdiction….'"[3] Although the Bureau justifies its re-interpretation on the basis of the broad discretion conferred in 5512(c)(6), the discretion permitted by 5512(c)(6)(C) is only related to "what" the Bureau must or may disclose, not "to whom" the Bureau may disclose such information. In either case, the Bureau may only share information with regulatory agencies that have jurisdiction over the covered person or service provider about whom the information pertains, and the Bureau does not have the authority to declare which agencies have such jurisdiction. Therefore, the Bureau's argument in support of expanding its authority under the Proposed Rule is misleading – the Bureau is not exercising discretion but is instead attempting to re-legislate the CFPA.

A regulatory agency's interpretation of a statutory term that is not ambiguous receives no deference. Further, "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."[4] We believe the clear, plain meaning of the statute is to limit the Bureau's discretion to share CSI with agencies that have jurisdiction over a

[2] "[A]n agency literally has no power to act . . . unless and until Congress confers power upon it." *Louisiana Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 374 (1986).

[3] 81 Fed. Reg. 58,318.

[4] *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984).

covered person or service provider. The Bureau's new interpretation directly contradicts the clear intent of the statute, and therefore, should receive no deference.

ii. Even if the Meaning of 12 U.S.C. 5512(c)(6)(C)(ii) Were Ambiguous, the Bureau has Failed to Justify its Re-Interpretation.

The Bureau's current position is that the structure of 5512(c)(6) – a statement authorizing the Bureau to draft rules on information sharing followed by "instructions related to the exchange of confidential supervisory information" – is ambiguous. Because Congress did not include the word "only" in 5512(6)(C)(ii), the Bureau believes that section does not limit its discretion.[5]

The Bureau's reliance on the D.C. Circuit's proposition in *Adirondack Medical Center v. Sebelius* that "Congress generally knows how to use the word 'only' when drafting laws" is misplaced.[6] That case dealt with the "labyrinthine world" of Medicare, in which two types of hospitals enjoy different reimbursement schemes – the "federal rate" scheme and a "hospital-specific" rate scheme.[7] Congress provided the Department of Health and Human Services ("DHHS") general authority to "provide by regulation for such other exceptions and adjustments to … payment amounts."[8] In response to a request for clarification from DHHS, Congress added a provision to the applicable law providing specific authority for DHHS to adjust the federal rate.[9] When DHHS later attempted to adjust the hospital-specific rate, the plaintiffs brought suit, alleging that the specific grant of authority limited DHHS to only adjusting the federal rate.

Adirondack is easily distinguishable from the issues raised here. As the court expressed, the permissive language at issue was an amendment made by Congress to clarify a statutory provision in response to doubts expressed by DHHS about the scope of its authority.[10] Congress responded by adding the particular permissive provision to clarify DHHS' authority to adjust the federal rate, but did not otherwise intend for that addition to limit the DHHS' general authority. That holding is inapplicable here, because 5512(c)(6)(C)(ii) was not enacted to clarify a particular use of the Bureau's authority under 5512(c)(6)(A) at the Bureau's request. Rather, as the Bureau previously recognized, 5512(c)(6)(C)(ii) describes the outer boundaries of the Bureau's discretion in implementing rules under 5512(c)(6)(A).

The more applicable canon of statutory interpretation is that "A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant…."[11] The *Adirondack* court determined not to follow the "surplusage" canon under an unusual scenario where both parties' preferred outcomes would have led to surplusage. In this respect, *Adirondack* involved a binary grant of authority – the general authority provision suggested DHHS could adjust both rate schemes, while the plaintiffs contended the specific authority provision meant DHHS could only adjust one. Accepting either

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[5] "Congress generally knows how to use the word 'only' when drafting laws." *Adirondack Medical Center*, 740 F.3d 692, 697 (2014).

[6] *Adirondack Medical Center*, 740 F.3d 692, 697 (2014).

[7] *Id.* at 695.

[8] 42 U.S.C. § 1395ww(d)(5)(I)(i).

[9] *Adirondack*, at 695.

[10] *Id.* at 697.

[11] *Adirondack*, at 699 (*citing Amoco Prod. Co. v. Watson*, 410 F.3d 722, 733 (D.C. Cir. 2005); *see also Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (quoted in *Corley v. United States*, 556 U.S. ___, No. 07-10441, slip op. at 9 (April 6, 2009); *Astoria Federal Savings & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991); *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2003).

interpretation would have had the effect of rendering one or the other provision superfluous. That is not the case here.

If 5512(c)(6)(A) confers authority to share CSI in a manner that is broader than 5512(c)(6)(C)(ii) indicates, that would render the language of 5512(c)(6)(C)(ii) superfluous. In other words, if 5512(c)(6)(C)(ii) does not limit the Bureau's permissive sharing, then it serves no purpose as part of the statute. This cannot have been the intent of Congress. However, 5512(c)(6)(A) is not nullified if one accepts the Bureau's original interpretation of 5512(c)(6)(C)(ii), in which the Bureau's general grant of authority is limited. Unlike in *Adirondack*, where limiting DHHS' power to the specific grant of authority would have directly contradicted the general grant, there is no contradiction to say, consistent with the Bureau's prior interpretation, that the Bureau has general power to adopt rules regarding the treatment of CSI, subject to the limitations placed by 5512(c)(6)(C)(i) and (ii).

The Bureau also contrasts 12 U.S.C. 5512(c)(6)(C)(ii) with other provisions in the statute in which Congress allegedly restricts the Bureau's authority.[12] For example, the Bureau asserts that 12 U.S.C. 5562(d)(2) "clearly and unambiguously restricted the Bureau's discretion by stating that '[n]o rule . . . Shall be intended to prevent disclosure [to Congress],'" and that had Congress meant to restrict the Bureau's authority, it would have used the same language in Section 5512(c)(6)(C)(ii).[13] This argument is misleading, as Section 5562(d)(2) cannot be utilized to construe the Bureau's authority: the provision only speaks to Congress's authority to obtain confidential information and does not operate as a restriction on the CFPB's discretionary power. In contrast, Section 5512(c)(6)(C)(ii) speaks to the Bureau's affirmative discretion to disclose confidential information to entities of its choice. The provisions are not analogous in purpose and the CFPB cannot use 5562(d)(2) as a bootstrap to prove legislative intent.

The Bureau also argues that, despite the fact that 12 U.S.C. 5512(c)(6) is labeled "Confidentiality Rules," the paragraphs within the section can serve a purpose other than defining the outer limits of the Bureau's confidentiality privileges.[14] According to the Bureau, 5512(c)(6)(B), which governs when the Bureau may receive confidential information, is "substantively irrelevant" to the Bureau's handling of confidential information.[15] This assertion is inaccurate: subparagraph (B) asserts that an agency may furnish information to the Bureau *upon the Bureau's assurances of confidentiality*, and therefore is in fact relevant to the Bureau's obligations under confidentiality rules.[16] Each item within 5512(c)(6) places limits on how the Bureau may handle confidential information, and Subparagraph (B) is no exception.

Finally, if one were to accept the Bureau's proposition that 5512(c)(6)(C)(ii) does not limit the entities to which the Bureau *may* provide CSI, that would suggest that 5512(c)(6)(C)(i) does not limit the entities to which the Bureau *must* provide reports of examination. Although the Bureau does not intend to revise 12 § C.F.R. 1070.43(a) as part of the Proposed Rule,[17] the implication of its re-interpretation of 5512(c)(6)(C)(ii) is that an entity other than a "prudential regulator, state regulator, or any other federal agency having jurisdiction" can require the Bureau to provide reports of examination under 5512(c)(6)(C)(i). This would lead to the absurd result that the Bureau could draft rules under which nearly anyone, including, for example, a state bar association, could require the Bureau to disclose reports of examination.

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[12] 81 Fed. Reg. 58,317.

[13] *Id.*

[14] *Id.* at 58,318.

[15] *Id.*

[16] 12 U.S.C. 5512(c)(6)(B).

[17] The Bureau has already addressed subparagraph (C)(i)'s mandatory disclosures in the confidentiality rules at § 1070.43(a), and this paragraph remains unchanged. 81 Fed. Reg. 58318.

Even if the meaning of 5512(c)(6)(C)(ii) were not clear from its face, the Bureau is not permitted to adopt an arbitrary or capricious interpretation based on unreasonable or specious grounds.[18] Accepting the Bureau's interpretation would require reading 5512(c)(6)(C)(ii) out of the statute as an unnecessary description of a subset of the Bureau's permitted information-sharing authority. For the reasons described above, such an interpretation is the very definition of arbitrary and capricious.[19]

b. The Bureau's Proposed Definition of "Agency" Is Overbroad and Impermissibly Expands the Scope of the CFPB's Authority to Disclose CSI.

Under current regulations, the Bureau may disclose the CSI of a supervised entity to other state and federal authorities that have supervisory jurisdiction over the entity. Not only does the Bureau propose to expand CSI disclosures beyond entities with supervisory jurisdiction, it also proposes to expand sharing to non-U.S. and quasi-governmental entities. The Proposed Rule defines a new term "agency," which expands the permissible recipients of CSI to any "entity exercising governmental authority."[20] To the Bureau, this definition includes not just U.S. federal and state regulators, but foreign regulators and quasi-governmental registration and disciplinary organizations such as state bar associations.[21] The Bureau also proposes deleting related references to "law enforcement agencies" and "government," asserting that the terms can be encapsulated within a single, all-encompassing "agency" term.[22]

The Bureau states the new definition will "clarify the Bureau's ability to share confidential information with foreign regulators and certain entities that exercise governmental authority."[23] Irrespective of the Bureau's intent, the new definition of "agency" expands, rather than clarifies, its power, and goes well beyond the authority granted to the Bureau under Section 1022 the Dodd-Frank Act by deviating from the normal, expected usage of the term. And, in particular, the Supreme Court in *Cuomo v. Clearing House Association*, 557 U.S. 519 (2009), made clear that visitorial authority (like the Bureau's supervisory authority) is distinct from law enforcement authority, which may be exercised by governmental agencies in court. The Bureau's proposal to share its CSI with governmental agencies that lack supervisory authority would expand the Bureau's supervisory power in contravention of *Cuomo* and related authorities.[24]

i. The Bureau Lacks Authority to Interpret the Term "Prudential Regulator or Other Agency Having Jurisdiction over a Covered Person or Service Provider" Because the Term is Not Ambiguous.

Under 12 U.S.C. 5512(c)(6)(C)(ii), the Bureau "may, in its discretion, furnish to *a prudential regulator or other agency having jurisdiction* over a covered person or service provider any other report or other

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[18] *See Cal. ex rel. Harris v. Fed. Hous. Fin. Agency*, C 10-03084 CW, 2011 WL 3794942 at *12; *United States v. Morton*, 467 U.S. 822, 835 (1984).

[19] Agency interpretations must not be arbitrary or capricious, and must be based on a "permissible construction of the statute." *See Chevron*, 467 U.S. at 843. An arbitrary and capricious decision is one that is made on unreasonable grounds or without any proper consideration of circumstances. *See, e.g.*, *United States v. Morton*, 467 U.S. 822, 835 (1984).

[20] 81 Fed. Reg. 58,323.

[21] *Id.* at 58,311.

[22] *Id.* at 58,316.

[23] *Id.* at 58,311.

[24] "In sum, the unmistakable and utterly consistent teaching of our jurisprudence, both before and after enactment of the National Bank Act, is that a sovereign's 'visitorial powers' and its power to enforce the law are two different things." *Cuomo v. Clearing House Association*, 557 U.S. 519, 529 (2009). The Bureau's proposed rule would, essentially, commingle these two powers by allowing all manner of government agencies to access the Bureau's CSI.

confidential supervisory information concerning such person examined by the [Bureau]," to the extent that the information is "relevant to the exercise of the [prudential regulator or other agency's] statutory or regulatory authority" (emphasis added).[25] Under the statute, permissible recipients of CSI are limited to the prudential bank regulators and other agencies "having jurisdiction" over the supervised entity. In this context, the term "agency" clearly means a government entity with legal authority to supervise and regulate the individual or company about whom the CSI relates.

The Bureau asserts, however, that the statutory language is ambiguous, and that Congress did not intend 12 U.S.C. 5512(c)(6)(C)(ii) to restrict the CFPB's discretion to disseminate such information.[26] However, the term "agency" as used in 12 U.S.C. 5512(c)(6)(C)(ii) is restrictive on its face – the Bureau cannot adopt a new definition of agency that would include entities that are clearly not agencies. The Bureau's definition would permit any entity "exercising governmental authority" to receive CSI. As the Bureau notes, this could include, for example, state bar associations. A state bar association is a non-governmental, voluntary professional membership organization – it may exercise governmental authority in the sense that state and federal court systems empower bar associations to determine who is fit to be an attorney and to exercise quasi-judicial power to determine legal ethics violations, but it is clearly not an agency. In fact, the Supreme Court recently opined on the dangers of the free exercise of power by market participants imbued with "governmental authority."[27]

ii. Even if the Bureau had Authority to Interpret the Term, the Bureau's Proposed Definition of "Agency" Runs Contrary to the Plain Meaning of the Statute.

An agency may not contravene the will of Congress through its interpretation of a statute.[28] If the plain meaning of a term and the intent of Congress is not clear, an agency's interpretation will be given deference unless it is "arbitrary, capricious, or manifestly contrary to the statute."[29] Accordingly, agencies may clarify an ambiguous term to the extent that does not deviate from the statute's purpose.

By the Bureau's own admission, the proposed definition of the term "agency" would allow for CSI disclosures to agencies that do not "'hav[e] jurisdiction.'"[30] As explained, Section 5512(6)(C)(ii) expressly limits the disclosure of CSI to "prudential regulator[s] or other agenc[ies] having jurisdiction" over the supervised entity.[31] The proposed new interpretation of "agency" runs directly contrary to the plain language *and* intent of the statute, and is an arbitrary – and therefore impermissible – construction of the statute.

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[25] 12 U.S.C. 5512(c)(6)(C)(ii).

[26] 81 Fed. Reg 58,317.

[27] "The similarities between agencies controlled by active market participants and such associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules…. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest." *North Carolina State Board of Dental Examiners v. FTC*, No. 15-534, 547 U.S. ___ (2014) (commenting on the structural risk of market participants' confusing their own interests with the State's policy goals).

[28] See *Chevron*, 467 U.S. at 842–43 (discussing situations where Congress has "directly spoken to the precise question at issue[, thus requiring] the court . . . [to] give effect to the unambiguously expressed intent of Congress.").

[29] *Id.* at 843.

[30] 81 Fed. Reg 58,318.

[31] 12 U.S.C. 5512(c)(6)(C)(ii).

iii. Even if the Bureau had Authority to Interpret the Term, the Bureau's Proposed Definition of "Agency" Deviates from Congress's Intended and Normal Usage of the Term.

The Bureau's proposed definition of "agency" encompasses not just entities with administrative legal authority, but those with any sort of public or private governing capability.[32] In effect, the proposal allows any entity with organizational power to have access to CSI, despite the fact that Congress has not expressed an intent to allow entities without administrative legal authority to obtain CSI.[33] This expansion of the term amounts to an unreasonable and impermissible interpretation of the statute.

In agency and administrative law, Congress does not use the term "agency" to refer to registration and disciplinary organizations. Rather, when used in a regulatory context, the term refers to entities with administrative legal authority. For example, the Administrative Procedure Act, which governs the exercise of regulatory authority, defines an "agency" to mean each authority of the Government of the United States.[34] Notably, in at least one other section of the Dodd-Frank Act, "agency" is defined as referring to specific financial regulatory bodies.[35]

While the Bureau's current usage of the term "agency" refers only to state and federal agencies and is consistent with the accepted use of the term in this context, the Bureau's proposed definition of "agency" reaches far beyond this definition. Even if the Bureau has discretion to interpret the term "agency," adopting a definition that contradicts Congressional intent and widely-accepted usage is arbitrary and capricious. The Bureau's proposed definition of "agency" is thus an impermissible interpretation of the term.[36]

II. The Bureau's Proposal for Access Requests to be Submitted to the Associate Director for Supervision, Enforcement, and Fair Lending Presents a Clear Conflict of Interest

The Proposed Rule would transfer authority for the discretionary sharing of CSI from the Bureau's General Counsel to the Associate Director for Supervision, Enforcement, and Fair Lending (the "Division"). The

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[32] 81 Fed. Reg 58,318.

[33] *See Cuomo v. Clearing House Association,* 557 U.S. 519 (2009).

[34] 5 U.S.C. § 551.

[35] *See* Dodd-Frank Act §§ 342(g); 336(g)(1), stating that "The term agency means—

(A) the Departmental Offices of the Department of the Treasury;

(B) the [Federal Deposit Insurance] Corporation;

(C) the Federal Housing Finance Agency;

(D) each of the Federal reserve banks;

(E) the Board [of Governors];

(F) the National Credit Union Administration;

(G) the Office of the Comptroller of the Currency;

(H) the [Securities and Exchange] Commission; and

(I) the [Consumer Financial Protection] Bureau."

[36] *See Chevron*, 467 U.S. at 843; *Morton*, 467 U.S. at 835.

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stated purpose of this change is to increase efficiency, because "the vast majority of access requests pertain to the work performed by its Division of Supervision, Enforcement, and Fair Lending."[37]

The conflict of interest created by this transfer of authority is obvious. Currently, the primary function of the Division is to supervise and bring enforcement actions against covered persons and service providers. Under the Proposed Rule, a single official will have the authority to supervise entities, bring enforcement actions, and decide when to disclose the CSI obtained as part of those processes. We do not believe the CFPA's Confidentiality Rules were intended to provide a negotiating tool to the Bureau, but the Proposed Rule will undoubtedly create situations in which the Associate Director will be asked to decide on a CSI request at the same time the Division is engaged in an enforcement action or litigation against the entity that is the subject of the CSI request. The unfair leverage over a supervised entity that this creates is a clear conflict of interest.

Just this month, the constitutionality of the Bureau's structure was called into question due to the unchecked concentration of power in a single officer.[38] As the court in *PHH Corp. v. CFPB* noted, "The CFPB's concentration of enormous executive power in a single, unaccountable, unchecked Director not only departs from settled historical practice, but also poses a far greater risk of arbitrary decision-making and abuse of power…."[39] The Proposed Rule similarly concentrates authority in the Associate Director and creates a troubling conflict of interest. We strongly recommend the Bureau reject this proposal and return to a structure in which an officer in a more impartial role, the General Counsel, determines whether to approve CSI requests.

III. Conclusion

ETA and its members have significant concerns that the Bureau's proposal extends far beyond its statutory authority. The Bureau does not have authority to share CSI about an entity with domestic and foreign governmental agencies that do not have jurisdiction over the entity in the first instance. Further, the proposal to transfer the decision-making authority for sharing CSI from the General Counsel to the Associate Director for the Division creates an obvious and troubling conflict of interest. For these reasons, ETA encourages the Bureau to adopt a final rule that fits within the boundaries of the Bureau's authority under Dodd-Frank.

Thank you for your attention to this matter, and please let us know if you have any questions.

Respectfully submitted,

Scott Talbott
Senior Vice President of Government Affairs
Electronic Transactions Association

[37] 81 Fed. Reg 58,318.

[38] *See PHH Corp. et. al. v. CFPB*, No. 15-1177 (Ct. App. D.C. Oct. 2016).

[39] *Id*. at 9.