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December 13, 2011

Ms. Hada Flowers  
General Services Administration  
Regulatory Secretariat (MVCB)  
1275 First Street, NE, 7th Floor  
Washington, DC 20417

Re: FAR Case 2010-013  
Federal Acquisition Regulation; Privacy Training, 2010-013 (76 FR 63896)

Dear Ms. Flowers:

OMB Watch welcomes the opportunity to comment on the Federal Acquisition Regulatory (FAR) Council's proposed regulations regarding privacy training for contractors. As a nonprofit organization dedicated to open government, accountability, and citizen participation since 1983, OMB Watch has long worked for improvements to federal information policy.

The Privacy Act of 1974 (5 U.S.C. 552a) gives Americans the right to know what information the government has about them, to know how the government has used the information, and to correct inaccuracies in the information. These transparency rights are critical to protecting Americans' privacy and should be preserved whether work is performed by agency staff or contractors.

Furthermore, we call attention to the open government community's 2008 report *Moving Toward a 21<sup>st</sup> Century Right-to-Know Agenda*, which recommended that "all federal contractors performing government functions should be subject to the same openness laws that apply to the federal agency that would otherwise be performing the service or function."<sup>1</sup>

OMB Watch agrees with the FAR Council that the Privacy Act requires training for any contractors who design, develop, maintain, or operate a system of records on behalf of the federal government. **Such training should include instruction on the Privacy Act's transparency requirements** under subsection (c), Accounting of Certain Disclosures, and subsection (d), Access to Records. For instance, contractors designing a system of records should

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<sup>1</sup> *Moving Toward a 21<sup>st</sup> Century Right-to-Know Agenda: Recommendations to President-elect Obama and Congress*, pages 75-76, November 2008, <http://www.ombwatch.org/files/21strtkrecs.pdf>

be cognizant of the Privacy Act's transparency requirements in order to design a system that readily meets the Act's requirements to promptly retrieve and deliver an individual's records in response to a request.

The FAR Council's proposed rule would require, in Sec. 24.301(c), that privacy training, at a minimum, address "the protection of privacy, in accordance with the Privacy Act." As the Privacy Act's transparency requirements are an important part of the law's privacy protections, we read the proposed regulation to require training on the Act's transparency requirements, among its other provisions. However, **we encourage the FAR Council to amend the proposed rule to specifically require that Privacy Act training for contractors include instruction on the Act's transparency requirements.**

We note that several agencies currently include such instruction in their privacy training for contractors, such as the Department of Education.<sup>2</sup> We encourage the FAR Council to ensure that contractors at all agencies are appropriately trained in order to protect Americans' transparency rights.

OMB Watch appreciates the opportunity to comment on the FAR Council's proposed privacy training regulations. We hope that you will take our recommendations into consideration. If you have questions about our comments or want to discuss the issues further, please feel free to contact us.

Sincerely,



Sean Moulton  
Director, Federal Information Policy  
OMB Watch



Gavin R. Baker  
Federal Information Policy Analyst  
OMB Watch

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<sup>2</sup> Department of Education, "Privacy Safeguards Annual Training for ED Employees and Contractors, FY 2011," page 9, <http://www2.ed.gov/fund/contract/about/privacy-safeguards-training-2011.ppt>