NAVY FEDERAL
CREDIT UNION

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Office of the President

PO Box 3000 • Merrifield VA • 22119-3000

March 18, 2002

Regulations and Legislation Division
Chief Counsel's Office
Office of Thrift Supervision
Attn: Study on GLBA Information Sharing
1700 G Street, NW
Washington, DC 20552

Re: Comments on the GLBA Information Sharing Study

Dear Sir/Madam:

Navy Federal Credit Union appreciates the opportunity to comment on the Department of the Treasury's (the Agency) request for comments on several issues concerning information sharing practices among financial institutions. Navy Federal is the world's largest natural person credit union with over $15 billion in assets and 2.1 million members. We serve Department of Navy personnel, dependents, and family members in every state and many locations overseas.

The Agency posted several questions in the *Federal Register* on February 15, 2002. We have responded to these questions in this letter; however, our answers pertain only to Navy Federal's information sharing practices and not to those of all financial institutions.

<u>Questions and Answers</u>

1. Purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties:

a. What types of information do financial institutions share with affiliates?

<u>Answer</u>: Navy Federal shares transaction and experience information with its affiliate, which is its credit union service organization (CUSO). We primarily share information to enable the CUSO to execute transactions members request and for marketing the CUSO's products and services.

b. What types of information do financial institutions share with nonaffiliated third parties?

<u>Answer</u>: We share information with non-affiliated third parties for the purposes outlined in the exceptions listed in Sections 716.12, 716.13, 716.14, and 716.15 of NCUA's Rules and Regulations.

c. Do financial institutions share different types of information with affiliates than with nonaffiliated third parties? If so, please explain the differences in the types of information shared with affiliates and with nonaffiliated third parties.

Answer: While we share only experience and transaction information with our CUSO, we share any information necessary for business purposes, including information bearing on a member's credit worthiness, with nonaffiliated third parties. We only share information with non-affiliated third parties for the purposes outlined in the exceptions listed in Sections 716.12, 716.13, 716.14, and 716.15 of NCUA's Rules and Regulations.

d. For what purposes do financial institutions share information with affiliates?

Answer: We primarily share information with our CUSO to enable it to execute transactions for members and to market its products and services.

e. For what purposes do financial institutions share information with nonaffiliated third parties?

Answer: All of our information sharing activities with nonaffiliated third parties are for the purposes listed in the exceptions provided in Sections 716.12, 716.13, 716.14, and 716.15 of NCUA's Rules and Regulations.

f. What, if any, limits do financial institutions voluntarily place on the sharing of information with their affiliates and nonaffiliated third parties? Please explain.

Answer: We have chosen not to share information bearing on a member's creditworthiness with our CUSO. We have also chosen not to share information with nonaffiliated third parties, unless the information is shared for one or more purposes listed in Sections 716.12, 716.13, 716.14, and 716.15 of NCUA's Rules and Regulations.

g. What, if any, operational limitations prevent or inhibit financial institutions from sharing information with affiliates and nonaffiliated third parties? Please explain.

Answer: None.

h. For what other purposes would financial institutions like to share information but currently do not? What benefits would financial institutions derive from sharing information for those purposes? What currently prevents or inhibits such sharing of information?

Answer: We do not wish to share information for purposes other than those listed in Sections 716.12, 716.13, 716.14, and 716.15 of NCUA's Rules and Regulations.

2. The extent and adequacy of security protections for such information:

a. Describe the kinds of safeguards that financial institutions have in place to protect the security of information. Please consider administrative, technical, and physical protections, as well as the protections that financial institutions impose on their third-party service providers.

Answer: We have implemented an information security program as required by Part 748 of NCUA's Rules and Regulations. This program includes technical and procedural safeguards such as access control software, firewalls, and authentication procedures.

b. To what extent are the safeguards described above required under existing law, such as the GLBA *(see, e.g.,* 12 CFR 30, Appendix B)?

Answer: These safeguards are required generally by Part 748 of NCUA's Rules and Regulations.

c. Do existing statutory and regulatory requirements protect information adequately? Please explain why or why not.

Answer: Yes. Existing regulations require disclosures that inform consumers of financial institutions' information sharing practices before their non-public personal information is collected. Further, current regulations require that these disclosures be delivered on an annual basis to remind members how their non-public personal information is being used. Finally, the regulations provide members the right to "opt out" of certain information sharing practices and limit the use and reuse of information by third parties. We believe these consumer protections are sufficient.

d. What, if any, new or revised statutory or regulatory protections would be useful? Please explain.

Answer: None.

3. The potential risks for customer privacy of such sharing of information:

a. What, if any, potential privacy risks does a customer face when a financial institution shares the customer's information with an affiliate?

Answer: A customer faces the risk that his or her information will be used in a way that is not anticipated. While the potential exists for an affiliate to misuse information, we believe the degree of risk is minimal.

b. What, if any, potential privacy risks does a customer face when a financial institution shares the customer's information with a nonaffiliated third party?

Answer: A customer faces the risk that his or her information will be used in a way that is not anticipated. While the potential exists for a customer's information to be misused by a non-affiliated third party, we believe the degree of risk is minimal as long as the financial institution exercises appropriate due diligence in its relationship with the third party.

c. What, if any, potential risk to privacy does a customer face when an affiliate shares information obtained from another affiliate with a nonaffiliated third party?

Answer: A customer faces the risk that his or her information will be used in a way that is not anticipated. While the potential exists for a customer's information to be misused by a non-affiliated third party, we believe the degree of risk is minimal.

4. The potential benefits for financial institutions and affiliates of such sharing of information (specific examples, means of assessment, or evidence of benefits would be useful):

a. In what ways do financial institutions benefit from sharing information with affiliates?

Answer: We benefit from sharing information with our CUSO when sharing is necessary to complete a transaction a member has authorized. For example, a member might contact our CUSO about their mutual fund account and, during the conversation, ask the CUSO employee to transfer funds from their share checking account to their mutual fund account. By permitting the CUSO employee to view and access the member's credit union checking account, the CUSO employee can complete the member's request and avoid instructing the member to contact the credit union directly. Information sharing for such purposes promotes operational efficiency for both the credit union and the CUSO.

b. In what ways do financial institutions benefit from sharing information with nonaffiliated third parties?

Answer: By outsourcing many of our processes (e.g. mailings, forms printing, credit card processing, electronic bill payment services) to nonaffiliated third parties, we are able to introduce new products and services more quickly to members than if we developed them internally.

c. In what ways do affiliates benefit when financial institutions share information with them?

Answer: Our CUSO occasionally uses transaction or experience information we provide it to determine which members would most likely need or want the products and services it offers. This information allows the CUSO to selectively market and maximize the use of its resources. The CUSO also benefits from sharing information when completing certain transactions requested by members, such as the one described in our answer to question 4(a).

d. In what ways do affiliates benefit from sharing information that they obtain from other affiliates with nonaffiliated third parties?

Answer: While our CUSO does not share information it obtains from us with nonaffiliated third parties, such sharing could be beneficial and is likely beneficial to other credit unions and their CUSOs. For example, a CUSO could forward certain member contact information to a nonaffiliated third party under a joint marketing agreement for the purpose of offering members additional financial products and services such as insurance and brokerage services. In this scenario, the nonaffiliated third party could mail solicitations on behalf of the CUSO. This might be the most cost effective arrangement for both parties.

e. What effects would further limitations on such sharing of information have on financial institutions and affiliates?

Answer: Many lawmakers are considering an "opt in" requirement for sharing with affiliates. Such a requirement could adversely affect the ability of our CUSO to inform members of its products and services, and it might delay the processing of certain transactions requested by members.

5. The potential benefits for customers of such sharing of information (specific examples, means of assessment, or evidence of benefits would be useful):

a. In what ways does a customer benefit from the sharing of such information by a financial institution with its affiliates?

Answer: By sharing certain information with our CUSO, the CUSO can inform a member about the financial products and services it offers. Often, our CUSO is able offer better prices for such financial products and services than would normally be available to our members. Further, sharing certain information with the CUSO might benefit a member by enabling the CUSO staff to execute transfers requested by the member from his or her credit union accounts. For example, a member might instruct a CUSO employee to transfer funds from his credit union share checking account to purchase mutual funds. By allowing the CUSO employee to execute such a transfer, the member does not have to contact the credit union directly to request the transfer.

b. In what ways does a customer benefit from the sharing of such information by a financial institution with nonaffiliated third parties?

Answer: We share information with non-affiliated third parties for purposes outlined in Sections 716.12, 716.13, 716.14, and 716.15 of NCUA's Rules and Regulations. By sharing this information, we are able to process transactions for members more efficiently, fulfill members' requests, comply with the law, and take action to prevent fraud. We are also able to offer the member additional financial products and services by sharing information under joint marketing agreements. For example, Navy Federal provides information to CUNA Mutual under a joint marketing agreement for the purpose of offering members mortgage insurance.

c. In what ways does a customer benefit when affiliates share information they obtained from other affiliates with nonaffiliated third parties?

Answer: While our CUSO does not share information it obtains from us with nonaffiliated third parties, such sharing could be beneficial to members. For example, a member might contract for a service (e.g. a brokerage service) offered jointly by a CUSO and a nonaffiliated third party under a joint marketing agreement. As part of such an arrangement, the member might prefer that changes to his credit union account information, such as a new mailing address, be forwarded to the a nonaffiliated third party. This would keep the member from having to contact two different companies to change his mailing address.

d. What, if any, alternatives are there to achieve the same or similar benefits for customers without such sharing of such information?

Answer: We are not aware of any.

e. What effects, positive or negative, would further limitations on the sharing of such information have on customers?

Answer: Many lawmakers are considering "opt in" provisions for sharing information with affiliates. We believe such provisions would inconvenience members by requiring them to take action to receive information about the financial products and services available through their credit union's CUSO. Consequently, this could delay a member's ability to comparison shop for certain financial products and services.

6. The adequacy of existing laws to protect customer privacy:

a. Do existing privacy laws, such as GLBA privacy regulations and the Fair Credit Reporting Act (FCRA), adequately protect the privacy of a customer's information? Please explain why or why not.

Answer: Yes. Both regulations require disclosures that inform consumers of financial institutions' information sharing practices before information is collected. Additionally, the regulations require that these disclosures be delivered on an annual basis, which reminds consumers of how their non-public personal information is being used. Finally, the regulations provide consumers the right to "opt out" of certain information sharing practices and limit the use and reuse of non-public personal information by third parties. We believe these consumer protections are sufficient.

b. What, if any, new or revised statutory or regulatory protections would be useful to protect customer privacy? Please explain.

Answer: None.

7. The adequacy of financial institution privacy policy and privacy rights disclosure under existing law:

a. Have financial institution privacy notices been adequate in light of existing requirements? Please explain why or why not.

Answer: Yes. In general, the content of financial institutions' privacy notices meet the requirements of the law.

b. What, if any, new or revised requirements would improve how financial institutions describe their privacy policies and practices and inform customers about their privacy rights? Please explain how any of these new or revised requirements would improve financial institutions' notices.

Answer: While we believe financial institution notices have generally been adequate, additional information explaining that certain information sharing practices are not eligible for "opt out" might be useful.

8. The feasibility of different approaches, including opt-out and opt-in, to permit customers to direct that such information not be shared with affiliates and nonaffiliated third parties:

a. Is it feasible to require financial institutions to obtain customers' consent (opt in) before sharing information with affiliates in some or all circumstances? With nonaffiliated third parties? Please explain what effects, both positive and negative, such a requirement would have on financial institutions and on consumers.

Answer: While it might be technically feasible to require a member to "opt in" to information sharing with our CUSO, we believe member service could be adversely impacted if it is required. Specifically, Navy Federal's CUSO would have to delay the delivery of information about special offers and other promotions until the member gives Navy Federal permission to share his or her information. In addition, the costs to administer an "opt in" program would only add to the costs of financial products and services for members. Ultimately, these costs would be borne by the entire membership.

Navy Federal believes that members should be able to instruct financial institutions not to share their non-public personal information with nonaffiliated third parties when the sharing is for purposes other than those listed in the exceptions in Part 716 of NCUA's Rules and Regulations.

However, it is not practicable to permit a member to "opt out" or "opt in" to sharing with nonaffiliated third parties for purposes listed in the exceptions in Part 716. Financial institutions, including Navy Federal, share information with numerous nonaffiliated third parties for many different purposes including processing transactions, mailing statements, complying with a member's request, complying with the law, and preventing fraud. Requesting and obtaining a member's permission for such sharing could slow the delivery of many important services, including delivering statements, mailing automated teller machine cards, and printing checks.

b. Under what circumstances would it be appropriate to permit, but not require, financial institutions to obtain customers' consent (opt in) before sharing information with affiliates as an alternative to a required opt out in some or all circumstances? With nonaffiliated third parties? What effects, both positive and negative, would such a voluntary opt in have on customers and on financial institutions? (Please describe any experience of this approach that you may have had, including consumer acceptance.)

Answer: We believe an "opt in" program is more onerous for both consumers and financial institutions than an "opt out" program. In addition, the costs to administer an "opt in" program would only add to the costs of financial products and services for consumers. Therefore, we do not believe an "opt in" program is a better alternative to an "opt out" program. The only positive aspect of an "opt in" program is that those consumers who wish to direct their financial institutions to not share their information will not have to take action to do so.

c. Is it feasible to require financial institutions to permit customers to opt out generally of having their information shared with affiliates? Please explain what effects, both positive and negative, such a requirement would have on consumers and on financial institutions.

Answer: While it might be technically feasible to permit members to "opt out" generally of affiliate sharing, we do not favor such an approach. A credit union's affiliate, a CUSO, is typically established to provide financial products and services that the credit union does not offer. We believe it is important to inform members of all of the financial products and services offered by their credit unions. Further, administering a formal "opt out" program for affiliate sharing will add to the costs of delivering products and services. Such costs will ultimately be passed on to credit union members in the form of lower dividends and higher interest rates on loans.

The only positive aspect of a general "opt out" for affiliate sharing is that those members who wish to direct their credit unions not to share their non-public personal information with a CUSO will have the right to do so.

d. What, if any, other methods would permit customers to direct that information not be shared with affiliates or nonaffiliated third parties? Please explain their benefits and drawbacks for customers and for financial institutions of each method identified.

Answer: We are not aware of any other methods.

9. The feasibility of restricting sharing of such information for specific uses or of permitting customers to direct the uses for which such information may be shared:

a. Describe the circumstances under which or the extent to which customers may be able to restrict the sharing of information by financial institutions for specific uses or to direct the uses for which such information may be shared?

Answer: Extensive customization of systems to accommodate the different sharing preferences of members could be very costly in terms of systems programming and administration. These costs would be absorbed by the membership and likely result in lower dividends and/or higher prices for financial products and services. Therefore, we do not support regulations that require extensive customization to accommodate individual sharing preferences.

b. What effects, both positive and negative, would such a policy have on financial institutions and on consumers?

Answer: As stated above, the costs to change systems to accommodate individual information sharing preferences could be high. These costs will ultimately be borne by the credit union members. Therefore, we do not support regulations that require extensive customization of information sharing preferences.

c. Please describe any experience you may have had with this approach.

Answer: We do not have any specific experience with such an approach.

If you have any questions concerning our comments, you may contact me at (703) 255-8201, or Bill Briscoe, Regulatory Compliance Officer, at (703) 255-7496.

Sincerely,

B. L. McDonnell
President

BLM/scg