

Claude J. Kazanski  
Assistant Vice President  
Associate General Counsel  
Office of General Counsel  
Phone: 608/231-8336  
Fax: 608/236-8336  
E-mail: [claudio.kazanski@cunamutual.com](mailto:claudio.kazanski@cunamutual.com)

29



May 4, 2002

Regulations and Legislation Division  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552

ATTN: Study on GLBA Information Sharing

Dear Sir/Madam:

Attached please find comments submitted by the affiliated companies of the CUNA Mutual Group ("CUNA Mutual") in response to the request made by the United States Treasury Department regarding its Study on Information Sharing Practices Among Financial Institutions and Their Affiliates.

CUNA Mutual, created over 65 years ago by credit unions, is the largest organization solely dedicated to serving the needs of credit unions and their members in the country. We are mutually owned by credit unions and their members. Our sole objective is to provide diverse products and services that enable credit unions to manage their business and offer competitive products and services to their members. We welcome and appreciate the opportunity to provide our comments on this important subject.

In our view, as the attached response more fully explains, the consumer protections created by GLBA have been significant. Most importantly, these safeguards support a competitive financial services market while ensuring that consumer personal information is protected. That balance is achieved without sacrificing the important role credit unions play in serving consumers by providing viable alternatives to large affiliated financial institutions. Indeed, credit unions have a long tradition of partnering with trusted third parties so they may provide products and services to meet the needs of their members. We believe GLBA recognizes the important role credit unions have played and the unique tradition they bring to the financial services market place. CUNA Mutual strongly supports the GLBA framework because it works for credit unions and consumers alike.

As requested, address, telephone and fax number, email and postal addresses are included on our letterhead. If you have questions regarding the attached, please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink that reads 'Claude J. Kazanski'. The signature is written in a cursive style.

Claude J. Kazanski  
Assistant Vice President  
Associate General Counsel

Attachment

Comments on the GLBA Information Sharing Study  
Submitted on behalf of CUNA Mutual Group  
By Claude Kazanski  
April 30, 2002

As requested, CUNA Mutual will follow the questionnaire published in the Federal Register.

**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?**

Information sharing practices vary depending on the purpose of the financial institution's relationship to its affiliate. For example, there may be instances when virtually all customer information obtained is shared with an affiliate to obtain administrative or operational services to maximize overall organizational efficiency and reduce expenses. In other cases, limited customer data (such as name, address, transactional data, etc.) may be shared with an affiliate to obtain marketing or other services (data processing, printing, software development, etc.).

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

Depending on the size and resources of the financial institution, a nonaffiliated third party may provide virtually the same range of services as an affiliate would provide in a large organizational context. For example, CUNA Mutual is a nonaffiliated third party to credit unions to provide diverse products and services that the vast majority of credit unions do not have the resources to manufacture or administer. Without the ability to contract with a third party, credit unions would be at a significant competitive disadvantage in their ability to make available diverse and competitive products to run their business, manage operational risks or make products available to their members.

**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.**

By necessity, the scope of information shared between a financial institution (particularly for small to midsize financial institutions, such as credit unions) with a nonaffiliated third party is no less than what might be shared among affiliates. For example, in a large organizational context, an affiliate may share all customer data with an affiliate to obtain data processing, software development, transactional processing, marketing services, etc. Similarly, a small credit union likely contracts with a nonaffiliated entity for the same services simply because it does not have the wherewithal to conduct such operations internally. Therefore, it is important that nonaffiliated third party information sharing per se is not singled out as a practice that needs to be restrained.

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

Financial institutions share customer information with affiliates for transactional and data processing, marketing and cross marketing of products and services, administrative support, etc.

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

Financial institutions share information with nonaffiliated third parties for the same purposes as found in an affiliate corporate structure. These purposes are enumerated in the regulations promulgated under GLBA and commonly referenced as exceptions to notice and opt-out requirements found in §.13, §.14 and §.15. These exceptions include, but are not necessarily limited to disclosures made to outsource activities to service providers or engage in joint marketing relationships, disclosures made to effectuate, administer and enforce consumer transactions and disclosures made as a matter of law or to avoid fraud.

- f) **What, if any, limits do financial institutions voluntarily place on the sharing of information with their affiliates and nonaffiliated third parties? Please explain.** CUNA Mutual has elected to restrict its information sharing practices to those activities described within the exceptions to the notice and opt-out requirements cited above. CUNA Mutual does not sell information to third parties. Information is shared with affiliates and nonaffiliated third parties only on an operational or business "needs to know basis."
- g) **What, if any, operational limitations prevent or inhibit financial institutions from sharing information with affiliates and nonaffiliated third parties? Please explain.** GLBA has created a framework to enable CUNA Mutual to share information with credit unions, its strategic business partners and its affiliates under a system of complementary protective consumer privacy practices and customer data safeguards. So long as the GLBA regulatory system remains in tack information can be shared for business purposes within this regulatory framework. We have seen instances, however, where interagency regulators have taken inconsistent informal positions on consumer authorized releases of account numbers to initiate payment of products and services that disregards effective and practical consumer protections. The informality of regulator interpretations, delays in acquiring guidance and the lack of certainty have resulted in additional operational costs and inefficiencies with no measurable protection of consumer privacy.
- 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?**  
As noted, we believe the GLBA framework affords sufficient flexibility for financial institutions to share information. We remain concerned that the needs for small and medium sized financial institutions to share information with trusted nonaffiliated third parties will continue to remain on par with their competitors who exist within an affiliated organizational structure. For example, a small or medium sized credit union, without the opportunity to contract with a third party (while still subject to strong privacy provisions) is unable to compete with the flexibility afforded an affiliate structure. If small and medium sized credit unions are unable to be competitive, consumers will have fewer financial products and services available in the market as the industry consolidates its wears into a handful of large financial conglomerates.

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.**

With few exceptions, financial institutions have had a long and strong reputation for protecting customer information. GLBA has reinforced that tradition by fostering a renewed commitment to strengthening administrative, technical and physical standards designed to safeguard customer information. These controls have expanded the disaster recovery mechanisms designed to meet Y2K requirements by addressing information access controls (including standards defining how and to whom information may be disclosed); access restrictions at physical locations containing customer information; encryption and secured messaging of electronic customer information; customer data storage, retrieval and destruction practices; checks and balances in system modification procedures; reviews of employee qualifications and definition of duties and employee background checks for those with access to customer information; security breach response programs; staff training and audit and remediation practices to enhance customer information security practices. With respect to the selection of third parties and the establishment of business relationships with those who may obtain customer information, preliminary due diligence processes have been enhanced to assess the adequacy of customer information safeguards and final contracts include requirements to protect customer information and restrict its redisclosure consistent with the expectations established in GLBA promulgated regulations. We believe these have contributed to a significant new level of privacy protection that did not widely exist before GLBA was adopted.

**b) To what extent are the safeguards described above required under existing law, such as the GLBA?**

Federal financial institution regulators and recently, the National Association of Insurance Commissioners, have adopted regulations requiring financial institutions to develop comprehensive customer information safeguard programs including administrative, technical and physical customer information standards designed to protect customer information. In our view, the practices described in 2)a) above are required under existing law.

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

In our view, the GLBA requirement to adopt a comprehensive customer information safeguard program adequately protects customer information because it contemplates current information protection needs and incorporates the ongoing obligation to monitor and revise customer information security practices. This prospective reach of the regulations clearly establishes an operational standard requiring financial institutions to maintain customer information security through administrative, technical and physical safeguards. GLBA's reach is unprecedented and one we support.

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

For the reasons stated above, we believe the GLBA framework is adequate and additional statutory or regulatory protections are not necessary.

**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?**

Depending on the size and extent of the affiliate information sharing environment, there

is the potential risk that one affiliate may not have the same degree of customer information security practices in place as another. However, we believe that in the financial services marketplace, this likelihood is relatively small because of the substantial similarity in regulatory requirements adopted among depository, securities and insurance federal and state regulators. Thus, the GLBA framework has created a check and balance mechanism by requiring substantially similar requirements across functional regulatory lines of authority.

- 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?**  
The mere fact that a financial institution is sharing information with a nonaffiliated third party presents no more risk than if the information was shared by affiliates. In both cases, one entity may have relatively more or less resources or stronger or weaker management commitment to honor privacy expectations. Similarly, the size of the two entities and their relative economic importance (either in a affiliate/conglomerate context or third party contractual relationship) may have more or less influence in how an entity receiving customer information manages its obligations to protect and restrict its usage. We believe that the due diligence process and influence of a competitive market place reinforcing the need to maintain strong consumer privacy protections together have greater influence in third party information sharing practices compared to an organizational mandate to do business only with an affiliate in the large organization context. In our view, the influence of the market place coupled with GLBA customer safeguard requirements to review a third party's customer information sharing practices minimizes potential privacy risks in the nonaffiliated third party information sharing context.
- 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?**  
It is conceivable that an affiliate may share information with a nonaffiliated third party in a service provider context, to effectuate, enforce or administer the underlying transaction, as a matter of law or to avoid fraud. GLBA restricts the release of information to a nonaffiliated third party that the originator would not be able to disclose on its own. Although it is possible that the recipient may use information in a manner unintended by either the disclosing party or the consumer resulting in something beyond what the consumer expected, we believe there is minimal risk of such activity.
- 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?**  
Financial institutions benefit from sharing information with affiliates in largely two ways. First, affiliate relationships afford the opportunity to maximize efficient operational practices by consolidating data processing, marketing, product administration, auditing and other activities in core business centers that can provide such services to affiliates. Thus, information sharing avoids duplication of expense and allows for the maximization of financial, technical and human resources. Second, information sharing creates cross marketing opportunities to provide comprehensive products and services to customers thereby making the financial institution more competitive in the market place. Both create benefits for the consumer by reducing costs (which ultimately affects pricing) and

by increasing product availability.

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

Financial institutions, and particularly small and medium size entities, benefit from information sharing practices with nonaffiliated third parties by permitting the possibility to obtain diverse products and services that otherwise would not be available. These are the same benefits as afforded in the affiliate information sharing context except that product availability is based on a third-party relationship. For example, by contracting with a third party, a small financial depository institution may make available securities or insurance products to its customers engendering greater customer loyalty and renewed business without the capital, personnel or operational management investment that would be required to expand its operations. More importantly, in some cases without the affinity of a third party relationship, the financial institution may be restricted from directly offering such products and services and thus the relationship affords the opportunity to increase product availability.

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

The traditional benefits of reduced operating expenses, cross selling opportunities and improved customer service opportunities are common benefits found when financial institutions share information with affiliates. More recently, consumers have a greater expectation that simplicity and ease of doing business is a factor in maintaining loyalty. Thus, to the extent that customer service capabilities or product marketing opportunities are enhanced by affiliate information sharing, improved customer loyalty and the recognition of conducting a "consumer friendly" business become important benefits in the overall financial services marketplace.

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

To the extent that such information sharing is conducted to outsource particular services, then efficiency and cost savings are available by being able to direct certain practices or activities to a nonaffiliated third party who has expertise or lower cost alternatives than if retained internally. Depending on the type of service involved, the relationship also allows the small and medium size financial institutions to offer the "consumer friendly" services on a wider scale thus enhancing their ability to be competitive.

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

We are concerned that further limitations on sharing information would have a significant ill effect on the industry by eliminating possibilities to maximize efficiency, use of technical and human resources and cross marketing of products and services resulting in higher costs to consumers and fewer innovative product or service opportunities. We are concerned that state variations arising from state-by-state differences among insurance regulations and states adopting laws more restrictive than GLBA, will lead to increased operating expenses (resulting in higher prices for consumers in certain areas of the country), fewer products and services available in the market and greater complexity and confusion for consumers.

**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?**

There are a number of transactional and service conveniences that benefit consumers arising from a financial institution's sharing of information with its affiliate. The ease of customer service when addressing inquiries or claims, simplified transactional processes such as a single point to administer multiple product transactions (e.g., obtaining credit, sales of insurance and securities, etc.) and the availability of diverse products and services under a single banner are immediate consumer benefits. Some of the benefits may be relatively transparent as in the case where consumers have come to expect that a service representative will have a broad range of information detailing the customer's relationship with the financial institution. Some of that data may be shared by an affiliate that looks to the entity to provide customer service support. The customer has the expectation nonetheless, that the service representative will be knowledgeable and able to address his/her concerns without multiple transfers or returned phone calls. Thus, in many organizations, the ability to offer single contact service centers is based upon information sharing that occurs among affiliates. Similarly, there is the opportunity to provide product information that is more relevant to the customer's circumstances. Targeted product referrals often depends upon understanding existing customer relationships which often entails sharing of information among affiliates.

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

Customers benefit from nonaffiliated third party information sharing in comparable ways as in the affiliate information sharing context. For example, some financial institutions outsource service capabilities to provide 24-7 product and service availability for their customers. Thus, the convenience of having these services available is dependent upon information shared with the nonaffiliated third party. For members of small and medium sized credit unions, increased product selection arising from their credit unions' relationships with nonaffiliated third parties provides convenience and value through their preferred financial institution.

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

Given the capital investment, required technical and human resources to provide diverse products and services, we know of no other way for financial institutions to provide similar benefits for consumers without sharing of information with either affiliates or nonaffiliated third parties.

**d) What effects, positive or negative, would further limitations on the sharing of such information have on customers?**

We are very concerned that further limitations on information sharing could have significant expense and anti-competitive implications resulting in costlier and fewer financial products and services available to consumers. We also have serious doubts that further limitations would result in any increase in consumer privacy protection especially in light of the regulatory requirements now in place.

**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.**

In our view, the existing framework of privacy protections adequately protects the privacy

of a customer's information. For example, GLBA restricts the disclosure of nonpublic personal information to third parties subject to the notice and opt-out requirements. Exceptions to the opt-out only apply to disclosures made to financial institutions which are subject to the same regulatory framework as the disclosing entity, service providers who perform on behalf of the financial institution, third parties that are necessary to effectuate the underlying consumer transaction or as required by law. Limitations on use and redisclosure also apply. Third party information sharing is also buttressed by contractual privacy provisions required under the GLBA framework. Lastly, financial institutions are expected to have in place a comprehensive customer data security program that includes administrative, technical and physical safeguards protecting customer information. Additionally, FCRA imposes limits on the use and distribution of consumer reports restricting the application of such information to non-permissible purposes.

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

Yes. It is our observation that the industry has designed privacy notices that adequately explain information sharing practices and consumer privacy rights in compliance with the requirements of federal and state 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.**

Regulations promulgated under GLBA generally include sample language that financial institutions may use to comply with many of the complex and technical notice requirements. It would be helpful to have regulators officially release simplified sample language or, at minimum, publish guidelines supporting financial institutions that attempt to simplify their notices by using more general and consumer friendly language. Regulators should encourage such simplified notices and assure financial institutions that they will not be penalized if they attempt in good faith to comply with the GLBA requirements and demystify their notices for their customers.

**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.**

We believe that an opt-in requirement would be tremendously expensive and result in fewer products and services available to consumers. As to affiliate information sharing, the opt-in requirement would have a significant impact on operational efficiency ultimately leading to increased costs to be borne by the consumer. Additionally, opt-in



requirements would inhibit process improvements that enable a financial institution to improve or maintain high customer service capabilities. With respect to applying an opt-in requirement to nonaffiliated third party information sharing, similar destructive results would occur with a particular disproportionate negative impact on small and medium size financial institutions that can not leverage the benefits of a large affiliate organizational structure. Such requirements would impede marketing and cross marketing capabilities thereby reducing product information available to consumers and competition within the financial services at large.

- 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.)**

It is difficult for us to envision how a dual or optional consent standard would provide any benefit. It would lead to great consumer confusion and loss of confidence in their financial institutions.

- c) Is it feasible to require financial institutions to permit customers to opt out generally of having their information shared with affiliates?**

We do not believe an opt-out requirement for information sharing is feasible particularly in light of how financial institutions structure their marketing, administrative and customer service functions. For some financial institutions, the net effect of honoring an opt-out would be the termination or denial of a customer relationship without any appreciable privacy protection simply because the entity may not be able to underwrite and service the product without sharing information among affiliates. Further, an entity's own experience with a consumer should not be restricted from affiliate information sharing.

- 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.**

We are not aware of any.

- 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?**

The consideration of a flexible information sharing consumer directive can not be evaluated in the abstract without considering the operational infrastructure necessary to support it. To provide consumers the option of directing where information may or may not be shared contemplates the availability of a very complex data processing system that can reasonably control the distribution of customer data, permitting disclosure in some cases but denying it in others. The cost of designing and maintaining a system not only from a software development perspective, but from the administrative controls necessary to manage it would make such a requirement extremely expensive to implement. Further, we expect that such a system would contribute significant complexity to the customer data safeguard programs required under GLBA regulations

forcing a realignment of customer data safeguards and operational procedures, thus adding additional expense.

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

As noted above, such a policy would generate significant administrative and technical expenses to design, maintain and administer.

**c) Please describe any experience you may have had of this approach.**

Although we have not had direct experience with this approach, the complexity of designing and maintaining customer data safeguard protections to accommodate a variety of affiliate and nonaffiliated third party information sharing activities indicates that the optional opt-out would be extremely expensive to implement and administer. It would add a layer of technical and operational complexity without appreciable privacy protection. Further, as noted earlier, some financial institutions are simply not organized to survive in such a regulatory framework because of the reliance on affiliates sharing corporate wide resources.