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To: 'study.comments@ots.treas.gov'
Subject: GLBA Comments

April 1, 2002

The Honorable Sheila C. Bair
Assistant Secretary
Department of the Treasury
via 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 Madam Secretary:

On behalf of the National Pawnbrokers Association, I am pleased to submit comments on the information sharing practices of our industry.

The National Pawnbrokers Association (NPA) is an association representing approximately 7500 pawn stores across the nation. Most of our members would be considered small businesses. As you might expect, our membership makes loans secured by personal property. Some members also engage in other forms of financial transactions.

In preparing to comply with Title V of the GLBA, some members decided not to share information obtained from consumers and customers. Others elected to share information along the spectrum of information sharing allowed by the GLBA. In addition, our members made different decisions about transfers of information to their affiliates and drafted and distributed the relevant consumer notices explaining the consumers' ability to "opt-out" of any information sharing as provided under the federal Fair Credit Reporting Act.

To this day, NPA members incur very sizeable GLBA compliance expenses that, in proportion, are far larger than other lenders or depository institutions with extensive, multi-faceted relationships with consumers.

Our comments that pertain to the specific questions asked or information called for in the request for comments follow. Please note that we have no

comment on several of the questions included in the Request for Comments.

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

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

NPA Comment: For the most part, NPA members are single-store operations that do not have affiliates with which to share information. Some NPA members are part of larger financial services corporations that have not shared non-public personal information about consumers or customers with affiliates for cross-marketing purposes largely because of the nature of the secured-loan product that is the hallmark of our industry. As a result of both of these factors, many Association members decided not to share information about consumers or customers and adopted privacy policies that reflected that decision. Some members operate various lines of business in separate subsidiaries and have elected to reserve the option of sharing information among its corporate affiliates. Accordingly, they have adopted appropriate privacy policies and have distributed privacy notices reflecting that potential. As NPA members offer additional financial services to their customers, information sharing among affiliates may increase.

b. What types of information do financial institutions share with non-affiliated third parties?

NPA Comment: The type of information that pawnbrokers share with non-affiliated third parties can be broken down into two categories: (1) Information about pawn transactions provided directly to state financial institution regulatory agencies and (2) Information provided to Federal, State, and/or local law enforcement authorities. This information sharing also falls under the Section 502(e) exceptions of the GLBA.

Information provided to federal law enforcement authorities consists primarily of information regarding firearm transactions. Closer to home, state laws and/or local ordinances require pawnbrokers to provide information from pawn tickets (the record of the pawn transaction) to law enforcement on a regular basis. This information includes non-public personal information, including customer names, physical descriptions, addresses, driver's license numbers or other State-issued identity numbers, and a detailed description of the property securing the loan. In a growing number of jurisdictions, the law/ordinance requires pawnbrokers to provide this information in electronic format. Such requirements represent a disturbing trend because of the tremendous potential for abuse. (Please see our answer to question 2.c for more information on this category of information sharing.)

In a concerted effort to prevent improper profiling of pawn customers while

still providing law enforcement with the data necessary to investigate property crimes, several NPA members currently provide transaction data to law enforcement via third party agents, specifically authorized by law enforcement to collect, maintain and disseminate the data in a manner that respects a consumer's right to financial privacy. More information on these agents can be provided upon request.

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

NPA Comment: Please see our comments on questions 1.a and 1.b, above. Beyond the categories of information that NPA members may elect to share (subject to the opt-out provisions of the Fair Credit Reporting Act (FCRA)), and the categories eligible for sharing under the Section 502(e)(5) or (e)(8) exceptions, industry members may share information with their customers as permitted by the GLBA or the FCRA.

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

NPA Comment: Please see our comment on question 1.a, above.

e. For what purposes do financial institutions share information with non-affiliated third parties?

NPA Comment: Please see our comment on question 1.b, above.

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

NPA Comment: Many NPA members elected not to share information with affiliates or non-affiliated third parties except as required by their State's regulatory or licensing agency or pursuant to other State law or local ordinances. These members adopted privacy policies that reflected these decisions and gave appropriate notices to consumers and customers.

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

NPA Comment: In some cases, consumers applying for pawn loans do not have time to await approvals required by other types of loans, although they have the financial wherewithal and credit history to obtain the loan. Under such circumstances, the likelihood of using another financial product offered by an affiliate may be smaller than would be the case if an insured depository institution shared information with a subsidiary or an affiliate.

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?

No NPA Comment.

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.

Industry members employ administrative, technical, and physical protections to ensure the confidentiality and security of the non-public personal information that is in their possession. These protections include limits on the personnel that may access paper-based or electronic records pertaining to consumer transactions as well as training of those personnel regarding the duties of maintaining the confidentiality and security of the data. The technical and physical protections employed by industry members vary by the size of the business and the complexity of its internal operations. Members have access to software designed for the purpose of protecting the confidentiality and security of consumer information, including specially designed software. Physical protections also include limits on physical access to stored information. Association members have followed developing standards for the confidentiality and security of consumer information as announced by federal and state regulatory agencies.

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)?

NPA Comment: The majority of the administrative, technical, and physical safeguards employed by NPA members have been in place for some time. To the extent that the GLBA required the Federal Trade Commission to promulgate regulations implementing the GLBA, members reviewed those standards and have made changes that are appropriate to their circumstances. Our members have appreciated the flexibility provided in the regulations adopted so far.

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

NPA Comment: NPA is concerned that information provided pursuant to state laws, local ordinances and/or to regulatory or licensing agencies is subject, in some jurisdictions, to public access laws so that non-public

personal information might be disclosed to the public through access requests. Our industry has been seeking to have information we obtain, maintain, and may have to provide under one of these circumstances deemed "confidential" so that our customers enjoy the same degree of protection from public disclosure of their consumer loan transactions as the customers of the non-depository financial service providers with whom our industry competes and of depository institutions currently enjoy under existing public access laws. We have supported amendments to access to public records laws, including the 2001 amendment in the State of Indiana.

Moreover, the NPA is concerned that pawn customers may have fewer rights than customers of other institutions engaged in consumer lending. In addition, we are concerned that the risk of improper use of this sensitive data will continue to grow. Some of the risk flows from the stretched resources of local and State law enforcement authorities. Other aspects of this growing risk relate to the fact that the law enforcement exceptions in Section 502(e) are not subject to adequate administrative, technical, and physical safeguards.

We also believe that the scope of the law enforcement exceptions in Section 502(e) is greater and, accordingly, the protection of consumer information narrower, than under other Federal statutes such as the FCRA or the Right to Financial Privacy Act. The NPA would therefore urge consideration of narrowing the Section 502(e) exceptions to more closely parallel the exceptions and procedures specified in the FCRA and the Right to Financial Privacy Act. The NPA would be pleased to provide proposed amendment language for the Section 502(e) exceptions that would properly protect the financial privacy rights of all consumers.

We also note that Congress in Section 203 of the USA Patriot Act recognized both the public's sensitivity to information sharing among law enforcement agencies as well as the wisdom of narrowly targeted authority for such data sharing. For example, Section 223 of the USA Patriot Act provides for civil liability for unauthorized disclosures by officers or employees of the United States or its departments or agencies, (like the FCRA and Right to Financial Privacy Act) but with a statutory penalty of \$10,000 or actual damages, whichever is greater. Moreover, Section 215 of the USA Patriot amends Sections 501 of Title V of the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. 1861 et seq., to provide enhanced access to business records, but requires that applications for access be made to the courts.

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

No NPA Comment.

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?

No NPA Comment.

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

NPA Comment: As noted above, we believe that the scope of the law enforcement exception in Section 502(e) may exceed that appropriate for all cases. Otherwise, we are comfortable with the limitations on data sharing currently contained in the GLBA and FCRA.

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

No NPA Comment.

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):

No NPA Comment on any part of question 4.

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?

NPA Comment: Despite the fact that NPA members often do not have affiliates with which to share information, we believe that customers benefit from learning about other financial products offered by financial service providers in their own communities and with whom they have developed a trust relationship. Newspaper articles over the past year have described pawn customers who were laid off or furloughed by employers who have had and will again have repayment potential to support unsecured loans and to purchase other financial products or services. For industry members who offer diversified financial services, customers who have good experiences with our industry may wish to procure other products from members based in their own communities.

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

No NPA Comment.

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

No NPA Comment.

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

No NPA Comment.

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

No NPA Comment.

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.

There are a number of inconsistencies between the privacy protections afforded by the GLBA and the FCRA, and also between the protections offered by the GLBA and the federal Right to Financial Privacy Act, that ought to be reconciled. As to the former, the FCRA provides far more protection for the consumer whose privacy rights are violated. In addition, the FCRA provides substantive and procedural protection for a consumer whose transactional records may be sought by a government agency that the GLBA does not provide. We believe the GLBA should have included these two forms of stronger privacy protection.

With respect to the scope of consumer privacy rights, we believe that certain restrictions should be placed on State and local law enforcement's ability to obtain information concerning pawn customers and/or their transactions. At the very least, the receipt of that information should be limited to cases in which a specific formal investigation of an alleged theft has been opened.

To the extent that data collected by law enforcement agencies may be manipulated without limitation to investigations pertaining to specific instances of alleged theft, for example, or may be re-used for other purposes, we also prefer the restrictions available under the FCRA and Right to Financial Privacy Act. We are opposed to the disclosure and manipulation of information about pawn customers that customers of other financial institutions do not suffer. An in-depth analysis of this issue by a respected authority on public policy is available upon request.

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

Please see our comment in response to question 6.a, above.

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.

NPA Comment: We believe that privacy and opt-out notices used by NPA members are adequate in light of the requirements of the GLBA and the Federal Trade Commission Rule concerning the Privacy of Consumer Information. Pawnbrokers took the initiative to draft privacy and opt-out notices that met the differing privacy policies of their respective jurisdictions. Other pawnbrokers who wished to reserve rights to share information use notices prepared by experienced consumer finance lawyers.

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.

No NPA comment.

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 non-affiliated 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 non-affiliated third parties? Please explain what effects, both positive and negative, such a requirement would have on financial institutions and on consumers.

NPA Comment: To the extent that NPA members share information with affiliates or non-affiliated third parties as part of efforts to collect debts or to secure the return of property given to consumers as part of a consumer credit transaction, a change from the existing provisions of the GLBA to an "opt-in" opportunity would be a serious concern for the industry. Similarly, an "opt-in" opportunity would be inappropriate for information transfers to law enforcement agencies and regulatory or licensing agencies, and inconsistent with the provisions of other laws such as the USA Patriot Act, the FCRA, and the Right to Financial Privacy Act.

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 non-affiliated 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.)

No NPA Comment.

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.

NPA Comment: As noted in our comment to question 8.a, above, the answer to this question depends on the scope of the "opt out" provision. In this segment of the consumer financial services industry, it would be devastating to lose the ability to share information with affiliates for the purpose of enforcement of a debt or of a contract. Similarly, to the extent that affiliates are permitted under current law to share information about their own experiences with a consumer, a narrowing of the ability to share information would be likely to reduce the reliability of decision-making by the member and, as a result, could cause costs of service to rise.

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

NPA Comment: The key issues relating to permissible methods of opting out of information sharing are (1) control of the incoming communications by the recipient, (2) maintaining the databases of consumers who have opted out, and (3) keeping the opt-out registers current. For small businesses such as the majority of NPA members, the cost of a toll-free number for the purposes of receiving opt-outs by consumers is prohibitive. NPA members could have problems using email or facsimile communications for the opt-out purpose because, depending on the community served by a particular member, fewer of our customers may have easy access to email or other electronic communications.

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?

No NPA Comment.

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

NPA Comment: As mentioned above, any restriction on data sharing for the purposes of enforcing or collecting a specific debt or contract would have a very negative affect on our industry. This concern remains whether the data sharing is between affiliates or between a financial institution and a non-affiliated third party.

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

No NPA Comment.

The Association would be pleased to provide more specific language to implement some of the suggestions made in these comments, or to respond to questions about these comments. Please feel free to contact me for either purpose.

Respectfully submitted,

Morgan Jones
Chair
Government Relations Committee
National Pawnbrokers Association