National Pawnbrokers Association
P.O. Box 420 | Victor, NY 14564

December 30, 2020

Brian P. Brooks, Acting Comptroller of the Currency
Jonathan Gould, Chief Deputy Comptroller and Chief Counsel
Chief Counsel's Office
Office of the Comptroller of the Currency
Suite 3E-218
400 – 7th Street, SW
Washington, D.C. 20216

Attention: Comment Processing

Via email to: Regulations.gov for Docket ID OCC–2020–0042

Re: OCC, Fair Access to Financial Services, Docket ID OCC-2020-0042, and 12 C.F.R. Part 55

Dear Acting Comptroller Brooks and Chief Counsel Gould:

The National Pawnbrokers Association ("NPA") enthusiastically supports your November 2020 proposal to ensure fair access to financial services. We agree that the concept of "fair access" connotes a right of banks' consumer and commercial customers to have and maintain access to banking services "based on their individual characteristics and not on their membership in a particular category of customers." We appreciate the work that went into your proposal and the opportunity to comment.

Before we share our specific comments, we would like to provide some background about pawnbrokers, the NPA, the range of federal and state laws that apply to pawn transactions, and the experience that pawnbrokers have had with OCC-chartered banks, large and small, over the years prior to and since the 2010 amendments to the OCC's organic authority, 12 U.S.C. §1.

I. Background on the NPA, the Pawn Industry, and Federal and State Regulations Applicable to Consumer Financial Products and Services We Offer to the General Public

The NPA is the only national trade association for the pawn industry. For more than 30 years, the NPA has provided advocacy for our members and their consumer customers, as well as business education materials and presentations.

We have approximately 1500 pawn store owner-members across the United States; none are publicly traded companies. Most qualify as "small businesses" under the applicable definition in the Small Business Act.

The balance of this section of our comment explains who our members are, what laws govern their pawn transactions with consumers, and offers comments on how the totality of the laws applicable to our businesses make pawnbrokers among the safest providers of consumer financial products and services in the nation. This section also describes the role that pawn transactions play in the lives of the tens of millions of Americans that are unbanked or underbanked.

A. NPA Members

Many of our members operate a single brick-and-mortar location, and others have multiple store locations. Each location is separately licensed by a state regulator – commonly the same state agency that charters banks and credit unions and licenses other non-depository providers of consumer financial services -- in all but a few states. No state allows a pawn store to relocate without its state regulator's permission.

B. Laws Applicable to Pawn Transactions and Other Laws Applicable to Other Services Pawnbrokers May Offer in Addition to Pawns

1. Federal Laws Applicable to Pawn Transactions – Consumer Financial Protection and Cash Transaction Reporting Requirements

Some pawnbrokers offer other financial services and products to consumers that will qualify as "money services" and others are dealers in precious metals, gemstones, and jewelry. NPA members in these categories are responsible for compliance with FinCEN regulations that govern those aspects of their businesses. These companies will have more than one stream of compliance responsibilities that are identical to those of other non-depository customers of banks.

Pawn transactions are subject to the same federal consumer financial protection statutes and regulations as banks, credit unions, and other lenders must follow. I am enclosing a list of these regulations for your convenience.

Federal law requires pawnbrokers to report transactions with customers that exceed the thresholds for reporting specified in 26 U.S.C. 6060L and the instructions issued by the IRS for Form 8300. Information collected by pawnbrokers to fulfill Form 8300 requirements is comparable to that required for FinCEN Form 104. Our compliance with Form 8300 reporting is examined and audited by the same field personnel that do examinations and audits for FinCEN and the IRS.

Although pawnbrokers were designated as "financial institutions" in the USA PATRIOT Act, pawn transactions remain subject to IRS reporting as firms engaged in "trades or business." The fact that pawnbrokers report to IRS, not FInCEN, may be the source of confusion for some banks' compliance departments. NPA members have reported being asked by their bankers for their "money service business" compliance procedures. Pawnbrokers are not "money service businesses" under federal or state laws.

2. State Laws Regulating Terms and Conditions of Pawn Transactions and State or Local Transaction Reporting Requirements

Pawn loan operations are subject to state regulation for the allowable interest rates and for other terms and conditions on which pawnbrokers make safety-net, non-recourse loans secured by pledges of tangible personal property. We estimate the average pawn transaction to be about $150 to $200. We also purchase second-hand items from the public and sell new items across many categories of consumer goods. These second-hand-goods purchase transactions also are regulated by state and local governments.

State and local laws require pawnbrokers to collect customer-identification information <u>for each transaction</u> – not just for account openings as Section 326 of the USA PATRIOT Act requires of other providers. As these are <u>face-to-face transactions</u>, we are required to compare the customer in front of us with their government-issued identification documents. We know our neighborhood customers from newcomers. This means we know our customers more personally than many banks and credit unions do theirs. Without question, our state and locally based customer-identification requirements are more extensive than federal "Know-Your-Customer" regulations.

Most state or local laws require pawnbrokers to make their records of *each pawn and second-hand-goods transaction* available to a state or local law enforcement agency or to a third-party vendor hired by the law enforcement

agency.[1] Because we collect customer information more frequently than other providers and report transactions to law enforcement agencies or their vendors, our transactions are much more transparent than those of other depository or non-depository providers of consumer financial products and services.

In summary, four features of the laws under which pawnbrokers operate make pawnshops one of the safest providers of consumer financial products and services in the United States – from the perspective of businesses that should have robust banking privileges. These are: (1) the combination of state and local licensure and examination of pawnshops, (2) federal and state regulation of the terms and conditions of pawn transactions offered to consumers, (3) IRS/FinCEN audits of pawnbrokers' compliance with IRS Form 8300 cash transaction reporting, and (4) additional federal audits of other services and products offered by some pawnbrokers.

C. Pawnbrokers' Role in the Broader Financial Services Sector

The most important aspect of pawnbroking, in our opinion, is that pawnbrokers offer *non-recourse, safety-net loans to millions of consumers in the United States every year*. We neither ask for credit reports on our customers nor make reports to consumer reporting agencies. We operate in one of the most heavily regulated business environments of any provider of financial services in the United States. The ranges of loan amounts and the unbanked or underbanked status of many pawn customers means that our members make loans that commercial banks do not offer. Our ability to offer this safety-net, well-regulated consumer financial product is dependent on having deposit accounts at commercial banks for withdrawals and deposits of the cash transactions that are typical of our pawn businesses.

II. Pawnbrokers' Frustrating Loss of Banking Privileges since 2005

Beginning with some bank and bank holding company mergers in 2005 and continuing to the present, pawnbrokers have experienced losses of banking relationships, including deposit accounts, payroll accounts, lines of credit, merchant credit card accounts, and commercial real estate loans.

The frequency of these losses escalated when, in 2013, the Department of Justice announced "Operation Choke Point," and, in September 2013, the Federal Deposit Insurance Corporation (FDIC) issued its Financial Institution Letter 42-2013[2] and classified certain merchants as "high risk." Although this FDIC FIL did not mention pawnbrokers or pawn transactions, it mentioned other lines of business in which some pawnbrokers engage. These included money services, including check cashing, and firearms.

The response to FIL-42-2013 was a surge of discontinuances by national banks – mostly by the largest and more prestigious national banks, but also by some state-chartered, federally insured banks. Because of the FIL, banks' management did not stop to consider that "money services businesses" are required to be licensed by the states and registered with FinCEN or that pawn transactions are not included in the relevant FinCEN or state definitions of that term. Additionally, for those pawnbrokers who held Federal Firearms Licenses, banks' reactions to FIL-42-2013 ignored the fact that Federal Firearms dealers hold *federal* licenses, comply with record-keeping requirements promulgated and enforced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and are examined regularly to ensure compliance. The message in FIL-42-2013 was heard by many banks as "dump your customers in these industries – or else."

The NPA asked for and obtained in-person meetings with senior OCC executives and with FDIC's Division of Risk Management Supervision and had productive conversations. Both OCC and FDIC personnel promised to communicate to

[1] We believe that these reporting responsibilities result in a surveillance of our customers that is not justified by the extremely low incidence of claims against items of property pledged to pawnbrokers. We also believe that these requirements exceed what Congress determined were appropriate consumer financial privacy protections when Congress enacted Title V of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999.

[2] FIL-42-2013 was "revised" in July 2014, but neither was repealed after the Department of Justice abandoned Operation Choke Point. The NPA urged the FDIC to repeal FIL-42-2013 at the point that the FDIC proposed repeal of other FILs it had issued back to 2006.

bank examiners and banks in their respective jurisdictions that FIL-42-2013 did not require abandonment of pawnbrokers as bank customers and that banks should evaluate their customers individually, as former Comptroller Curry urged in his 2014 speech excerpted in your November 25, 2020 Federal Register notice. The help we hoped to get, however, did not staunch the tide of discontinuance.

Through the fall of 2013 and until the FDIC issued Financial Institution Letter 41-2014 on July 28, 2014, pawnbrokers – many offering no money services and not selling firearms – lost their banking arrangements. These terminations often happened with little advance notice to pawnbrokers who had been customers of the same banks for long periods of time. Indeed, we were informed of customers whose relationships spanned 20 or more years prior to termination. Even more frustrating for our members was the fact that local bank officers and managers could not explain why their customers were being terminated.[3] Some offered vague references to instructions from their superiors. None offered hope that pawnbrokers could do much to reverse the termination decisions made from above.

We concluded then, and continue to believe, that banks were feeling pressure from bank examiners and from more senior officials in their own banks to terminate swaths of industries. Our members felt they were unfairly lumped in with "money services businesses" even though the definition of that term did not cover pawn transactions or pawnbrokers, as we mentioned above, and they continued losing their banking relationships.

Since then, we have brought members' concerns about their respective and collective losses of banking relationships to the attention of officials at your agency, the FDIC, and the Board of Governors. We have met and corresponded with members of Congress frequently.

A few fortunate pawnbrokers were advised by their local loan officers or branch managers that they could retain their relationships with those banks if the pawnbrokers removed words such as "pawn," "cash," and "loan" from their corporate names. These recommendations given by national banks to pawnbrokers in many regions of the nation cemented in our minds that pawnbrokers were on a "hit list" communicated by some bank regulators or field examiners. Changing a corporate name is a tedious and expensive course of action and there was no guarantee that it would result in retention of the banking relationships.

In more recent years, we have seen – and not been shy about sharing with regulators and members of Congress – newer patterns of discrimination by national banks against pawnbrokers. In the summer of 2019, we reported episodes in midwestern states by a major nationwide national bank in which debit-card holding consumers were denied use of their debit cards for retail purchases at pawn stores. These same customers could go to nearby ATMs and get the cash needed to complete their purchases. Many retail sales were lost due to customers being inconvenienced or embarrassed by their own banks.

In the spring and summer of 2020, we have seen declinations of debit cards by other national banks from the east to west coasts. Once again, these same consumers can go to nearby ATMs and use the same debit cards to withdraw cash to complete their purchases. Thus, the conclusion pawnbrokers reach is that these national banks have programmed their systems to refuse debit-card retail-purchase transactions from pawn stores as banks realize more income when consumers are 'forced' to use credit cards instead or to pay fees to use ATMs that may be connected to other banks. These consumers were not pleased that their banks were denying them the right to use their own money to make purchases.

Most recently, pawnbrokers in Arizona, California, Maryland, Massachusetts, North Carolina, and other states have reported that debit cards carrying the brands of major nationwide national banks have been declined. We are informed that many of these cards carry CARES Act stimulus payments or unemployment benefits. These consumers are attempting to make retail purchases – that is, to use funds they are entitled to – of merchandise such as used laptops,

[3] We have no reason to believe that any of these members were discontinued for reasons specific to their management of their relationships with the bank involved or that they were likely to be the subjects of suspicious activity reports or other evidence of engaging in conduct that violated any federal or state law.

other electronic devices, and musical instruments. We find these card declinations contrary to good public policy and discriminatory against both the consumers and pawnbrokers.

We thought that Operation Choke Point had been ended by the federal government in August 2017. But episodes since then have persuaded our members that Operation Choke Point remains alive and that some banks have continued "to employ category-based risk evaluations to deny customer access to financial services," as your Federal Register notice observed. This tells us that your "Fair Access" proposal is needed to stop discrimination against commercial customers of national banks.

The continuing negative fallout from Operation Choke Point has been observed since your Fair Access regulations were proposed. For example, during the ten days prior to Christmas, a North Carolina pawnbroker called the major nationwide national bank that issued the customer's declined card and reached a bank employee who stated that "some businesses are flagged because of fraudulent practices and cards are restricted to be used at those types of businesses." This pawnbroker informed the bank employee that he has operated stores in North Carolina for over 30 years, and there was no way the state would allow a fraudulent pawnshop to remain in business. At that point, when the bank employee realized it was a business calling, she started back-tracking from her prior statement by then saying that the card-holder consumer should call the bank if they have a concern. The exchange between our member and the bank employee suggests that the "flags" were directed from more senior management of this bank.

Until your announcement of the proposed Fair Access regulations, our members had seen little relief from the OCC's 2014 and 2016 efforts mentioned in footnote 4 of your November 25, 2020 Federal Register notice. As the above example clearly indicates, our members are still experiencing unfair treatment by national banks.

As providers of consumer financial services that must be licensed and abide by the many federal statutes and regulations described in the enclosure to this letter, as well as state consumer protection laws, we are deeply offended by the bank employee's suggestion that our members' businesses engage in fraudulent conduct. In addition to a robust program of business education that our association and many state pawnbrokers' associations provide, we also monitor the Consumer Financial Protection Bureau's consumer complaint database for any entry about pawn transactions. The results show fewer complaints about pawn transactions than most other consumer financial services and a number less than 55 out of almost 3 million entries around Thanksgiving 2020 – when complaints about big banks and other non-pawn transactions are filtered out. These CFPB numbers firmly refute any correlation between pawn stores and "fraudulent practices" as remarked by the bank employee or any bank or regulator for that matter.

We are encouraged that the OCC will do something to end what clearly appears to our members like discrimination by banks. We agree that it is time to shift from guidance to requirements with the force and effect of law, that is, by regulation. We also urge that your field examiners receive instructions on the changes that your "Fair Access" final regulation will require.

III. Comments on the OCC's November 2020 Proposal

As a preliminary matter, we agree with your assessments of the influence on services and pricing that major nationwide national banks have over other banks and their customers. The loss of a banking relationship with one major bank poses nearly insurmountable obstacles for pawnbrokers to secure new services from similar banks or smaller community national banks in some cases. We saw this phenomenon play out for a New York City pawnbroker that had been in business for more than 100 years, and with pawnbrokers in South Carolina, Florida, and California.

We also agree with the need to shift from agency guidance to legally enforceable regulatory requirements because of the scant progress the OCC apparently has seen in banks' compliance with prior guidance and bank educational efforts.

Now, to specifics, we believe that the following aspects of the proposal are appropriate and likely to offer some suitable relief to our members:

- the concise statement of principles in proposed Part 55. This proposal rests on considerations with which national banks are already familiar – independent, quantifiable risk management measures, safety and soundness, and consideration of both the industry and geographic markets in which the banks' customers operate.
- the emphasis on offering services to customers engaged in "lawful businesses." Services to customers who hold specialty licenses issued by state or federal agencies and whose businesses are examined or otherwise closely supervised by those licensing agencies should be maintained in the absence of specific, quantifiable, and observed failures by customers to meet banks' compliance obligations. Termination of customers from one or more of the services they already receive from the bank should be determined not because of generic concerns about the industry in which the customer engages. And,
- the requirement that financial services be offered to all persons in the geographic markets served by the bank on a "proportional basis."[4] We appreciate that some customers will not require access to all services a major bank may offer, but we believe that – depending on the lines of business in which the banks' customers engage – commercial customers should be able to access deposit accounts, payroll accounts, debit- and credit-card privileges both as purchasers for their business needs and as sellers of goods and services to their own customers. Consumers that use these commercial bank customers should not be denied the right to use their own debit cards to access their personal deposit accounts to make purchases of goods or services from commercial customers so long as the products or services are lawful.

We also submit that the goals of proposed Part 55 might be enhanced if the OCC made clear that termination of existing customers should occur only when the bank has specific and quantifiable evidence of the customer's failure to comply with applicable compliance requirements, loses a license to operate from its federal or state regulator, or mishandles the banking services the customer has obtained from the bank. This approach could have prevented the stresses our members have suffered when told they are losing deposit or loan services on short notice and without an opportunity to cure or without honest and adequate explanation of the reasons behind the bank's decision.

With respect to the coverage of proposed Part 55, we suggest that all national banks should be subject to the same legal requirements. National banks, including the smaller community national banks, enjoy the privileges of their federal charters, including the implicit guarantees that their charters convey, access to capital markets, and access to the discount window and other extraordinary services provided by the Federal Reserve System.

The definition of the term "covered banks" in proposed section 55.1(a) should not be limited to cases in which the bank's grant or denial of services is used "in favor of or to the advantage of" a person other than the commercial or consumer customer. A bank's denial of services to consumer or commercial customers will impede those customers in their individual or business activities regardless of who else may benefit.

Similarly, the proposed limitation of the term "covered bank" to cases in which the bank "has the ability to raise the price a person has to pay to obtain" a financial service may be too narrow. We suggest that "fair access" should be conceived of as a broader concept than pricing. The difficulty – and in extreme cases, the inability -- of some members to replace services lost during the period since Operation Choke Point began without substantial and time-consuming searches and applications remains a problem in our members' lives.

Additionally, although we are not familiar with details of the discontinuance events described in the November 25, 2020 Federal Register notice, we believe that a broader overall concept of which bank customers may be hurt than the proposed version may be needed.

[4] We suggest that the OCC's sense of what a "proportional basis" will be would have helped commenters provide more fulsome comments on this aspect of the proposal.

IV. Concluding Thoughts

On behalf of pawnbrokers across the United States, the NPA applauds the proposed addition of Part 55 and the OCC's efforts to ensure "fair access" for all persons and businesses operating lawfully who need banking services. The cultural and political pressures that prompted some major national banks to terminate their relationships with pawnbrokers amounted to discrimination in our view and has caused substantial anxiety and unnecessary work for our members and significant inconvenience for their consumer customers who have not been able to use debit cards to make retail purchases in our members' stores.

We look forward to working with the OCC to end discrimination against lawfully operating businesses and to broaden the banking services made available by national banks across the United States. Please do not hesitate to contact our Government Relations Liaison (and former national president) Fran Bishop at grc@nationalpawnbrokers.org or our Washington counsel, Cliff Andrews at cliff@capcityadvocates.com.

Sincerely,

Kerry D. Rainey
President

Enclosure: Summary of Pawnbrokers' Duties Under Federal Statutes and Regulations Applicable to the Pawn Industry

National Pawnbrokers Association

Pawnbrokers' Duties Under Federal Statutes and Regulations Applicable to the Pawn Industry

1. Internal Revenue Service Form 8300 – Cash transaction reporting by persons engaged in trades or business is required when the customer makes one payment on pawns in cash or in cash plus a monetary instrument that exceeds $10,000 by even a penny, or makes a series of payments in cash or in cash plus monetary instruments that qualify as being "related" under the rules described below.

- "Related transactions" include payments of cash or of cash plus one or more monetary instrument(s), such as cashier's checks, bank drafts, traveler's checks, and money orders, that in total exceed $10,000 if the transactions:
  1) Occur within a single 24-hour period;
  2) Occur over the course of 12 months when a customer renews or extends a pawn by making payments of interest and allowable fees, and then redeems the collateral that (a) served as security for this series of pawns and (b) remained in the pawnbroker's possession over that 12-month period. (IRS refers to such transactions as a series of loans over a rolling calendar year when the original loan is never fully repaid where interest and/or principal payments are made.) This 12-month rule applies whether the same pawn ticket number is used or a new one is issued, because the pawnbroker 'knows or has reason to know' that each payment is one of a series of transactions.
  3) Multiple purchases by a customer using cash and/or monetary instruments equaling more than $10,000 within a 24-hour period are considered "related".
- Pawnbrokers must file Form 8300 within 15 days of their receipt from any customer of cash or cash plus payments that when combined total more than $10,000 (Cash IN) whether that total was met in one, two, or more "related transactions."
- Pawnbrokers must send one annual notice to each customer whose transactions triggered Form 8300 reporting by January 31 of the following year of your filing any Form 8300.
- The IRS does not require reporting for "Cash OUT"—that is, cash you give the customer as proceeds of a pawn or purchase transaction with the customer.
- Suspicious Activity Reports (SARs)…Pawnbrokers may file a SAR if you are suspicious of a customer's behavior or activity. SARs by pawnbrokers are voluntary. They are not intended for reporting an individual's attempt to pawn stolen property, but rather to identify persons trying to "structure" transactions to avoid Form 8300 reporting, for example.
- Do NOT notify any customer on whom you filed a SAR or divulge that information to anyone other than IRS or Treasury agents.

2. Truth in Lending Act and "Regulation Z" – Requires disclosure of credit terms in consumer credit transactions. TILA and Regulation Z ensure all terms are disclosed to consumers completely and easily understood in a prescribed format on the pawn ticket, including:

1) APR (Annual Percentage Rate) must include any fees, charges, or pre-payment penalty
2) Amount Financed
3) Total Amount Due
4) Total Number of Payments
5) Dollar Amount the Credit will Cost the Customer

Pawnbrokers must make TILA-required disclosures even if they give consumers MLA regulation disclosures as described below. Regulation Z can be found at 12 C.F.R. Part 1026.

3. Military Lending Act and DOD's MLA Regulation – limits all interest and other charges for credit to a Military Annual Percentage Rate (MAPR) of 36% for "covered borrowers", defined as active-duty service members, spouses, and certain dependents. DoD's MLA Regulation disclosures are in addition to TILA-required disclosures.

- Failure to comply may result in a court declaring a "void" transaction in a lawsuit by the borrower and penalties imposed by the CFPB, which has primary enforcement authority over the MLA. State attorneys general also can enforce the MLA and Regulation.
- The DoD Regulation provides a means for pawnbrokers to acquire a "safe harbor" from private and agency liability by submitting customers' names, dates of birth, and social security numbers to the DMDC (Defense Manpower Data Center) website, https://mla.dmdc.osd.mil/ to receive a "verified certificate" that must be retained in your records, a process known as a "covered-borrower check."
- The DoD Regulation also permits creditors to design and apply their own methods of determining which consumers are "covered borrowers" through what DoD calls an *"Optional Identification of Covered Borrower."* Creditors' optional methods do not qualify for the Regulation's "safe harbor" protections from private lawsuits or agency enforcement actions.

The DoD regulation can be found at 32 C.F.R. Part 232. The effective date for pawnbrokers was October 3, 2016.

4. U.S. Office of Foreign Assets Control' "Specially Designated Nationals" ("SDN") Regulations – prohibits any "U.S. person" from doing business with persons and organizations on "OFAC's" SDN list and provides for their prosecution and, if found guilty, can be subject to substantial fines.

- Pawnbroker must verify that the customer is not on the SDN list prior to completing a transaction. Many pawn software programs have the SDN list built in; or you can access it on the OFAC website. https://www.treasury.gov/ofac/downloads/sdnlist.pdf
- When must you check the SDN list on your customer? You can check the customer on the front end, or the back end, but the last time to check the list is prior to item redemption of the collateral—the time when the transaction is complete.

  1) Checking on the front end ensures you the customer is clear, and you proceed with the pawn transaction. If the customer is not clear, then you decline to do business with them.
  2) Checking on the back end (at the time of repayment and redemption of the collateral), is permissible as long as you and your employees are trained to handle an irate customer whose name or similar name is on the SDN list and you cannot return their collateral to them unless OFAC expressly releases the property.
- The SDN list changes frequently and a name that is the same as or similar to your customer's name may have been added to the list

5. FinCEN's "Precious Metals Dealers" Rule – Implements Bank Secrecy Act anti-money-laundering compliance obligations of dealers in precious metals, precious gems or stones or jewelry containing any or all whose dealings in "precious metals, gemstones, and jewelry" exceed the $50,000 specified threshold of activity in a given year. There are two exceptions to the $50,000 bought & sold threshold for pawnbrokers.

1) Pawn collateral (not purchased) when the transaction is conducted on licensed premises excludes items later foreclosed on & sold from the $50,000 thresholds.
2) Retail sales of coins and jewelry, and precious metals placed on credit, or exchanged metal for metal (scrap for chain, sizing stock, etc.), with no payment received.

The text of the Previous Metals Dealer regulation can be found at 31 C.F.R. Part 1027.

6. Bank Secrecy Act – "Suspicious Activity Reporting" – *currently is voluntary for the pawn industry unless the pawn business is required to comply with* FinCEN's "Precious Metals Dealers" Rule (see 6. above).

- "Suspicious Activity Reports" (SARs) communicate concerns the pawnbroker may have about customers, such as if a pawnbroker suspects that they customer is trying to "structure" one or more transactions or payments to avoid triggering a Form 8300 report by your company.
- SARs are not intended for reporting an individual's attempt to pawn stolen property.
- Do NOT notify any customer on whom you filed a SAR or divulge that information to anyone other than IRS or Treasury agents.
- A proposed regulation implementing the AML compliance program and Customer Identification Program requirements of the USA PATRIOT Act is still pending at FinCEN, although it was introduced more than 15 years ago. For now, the status of that rulemaking leaves SAR reporting voluntary by pawnbrokers.

7. Gramm-Leach-Bliley Financial Services Modernization Act of 1999 (GLBA)'s Title V (Privacy) – provides financial privacy rights for consumers and requires providers such as pawnbrokers to protect the privacy of "non-public personally identifiable information" obtained from consumers, subject to limited exceptions allowing disclosures.

- Pawnbrokers are required to provide customers with a privacy notice at the time of the first pawn transaction and, thereafter, anytime your policy changes. Pawnbrokers are required to provide customers with a privacy notice at the time of the first pawn transaction and, thereafter, anytime your policy changes.
- If you are either voluntarily or by requirement sending transaction records, including customers' non-public personal information, to law enforcement agencies or their designated agent, your privacy policy should advise customers that you may share their personal information "as required by law."

The provisions of Title V are codified at 15 U.S.C. 6801-6823.

8. CFPB "Privacy" Rule (Regulation PP)--implements the provisions of GLBA's Title V and requires provision of privacy notices at account opening and when your business changes any details of its practices related to your consumer customers' non-public personal information.

9. FTC "Safeguards" Rule--explains and implements provisions of GLBA requiring safeguards for consumers' non-public personal information that you collect in pawn and purchase transactions. Creditors must establish comprehensive information security programs and must ensure that their corporate affiliates and service providers also safeguard customer information in their care. The Rule can be found at 16 C.F.F. Part 314.

10. FTC Consumer Information "Disposal" Rule--implements the 2003 Fair and Accurate Credit Transactions Act amendments to the Fair Credit Reporting Act on disposal of consumer information that your business obtained in a "consumer report" from a consumer reporting agency. The Rule requires proper disposal of sensitive, non-public personal information your business obtained or maintained by taking reasonable measures to protect it from unauthorized access during its disposal. Consider purchasing shredders for daily use near pawn counters and utilize the services of a shredding company for complete document disposal. The "Disposal of Consumer Report Information and Records Rule" can be found at 16 C.F.R. Part 682.

11. FTC "Red Flags" Rule--requires the development of programs and procedures to identify possible identity theft cases.

- Implementation of a written Identity Theft Prevention Program that must include reasonable policies and procedures to identify and 'Red Flag' how identity theft may occur in your day-to-day operation. This Program should be designed to:
  1) detect Red Flags identified by your business practices,
  2) spell out appropriate action when a breach is detected, and
  3) address how your business will determine and prevent new threats.
- Failure can result in up to a $10,000 fine per occurrence in addition to civil litigation.

The FTC Rule can be found at 16 C.F.R. Part 681. The full text of the 2007 Rule can be found at https://www.ftc.gov/sites/default/files/documents/federal_register_notices/identity-theft-red-flags-and-address-discrepancies-under-fair-and-accurate-credit-transactions-act/071109redflags.pdf.

12. Equal Credit Opportunity Act and Regulation B—prohibits discrimination in consumer credit transactions on basis of gender, age, marital status, ethnicity, national origin, religious preference, or receipt of public assistance income. The Act does NOT include the military as a "protected class." However, a few States and a City of Chicago ordinance prohibit discrimination of Active Duty Members of the Military and their spouses. Women-owned businesses enjoy some of the protections of the ECOA and its implementing regulation, both of which are enforced by the CFPB. The ECOA is implemented by CFPB Regulation B, 12 C.F.R. Part 1002. The ECOA can be found at 15 U.S.C. 1691 et seq.

13. Servicemembers Civil Relief Act of 2003—limits interest rates and charges assessable on military personnel for credit transactions entered into prior to their active-duty status and provides specified remedies to service members. The SCRA also limits the interest rate to six per cent—not to a 6% APR—only if the transaction took place BEFORE the active-duty status of the service member began. Then during the period of the active-duty status, the maximum interest rate is 6%. If interest in excess of 6% is charged or collected during the active-duty period, the creditor must refund and permanently forgive the excess. DoD maintains a separate DMDC-SCRA website to use for checking active-duty status. https://scra.dmdc.osd.mil/

14. Fair Credit Reporting Act-- Restricts sharing of consumers' non-public personal information with unaffiliated third parties to recipients that have "permissible purposes" to receive the information. The Act also:

- Requires care in disposal of consumers' information.
- Requires establishment of procedures for fair & equitable reporting of consumers' information for accuracy, relevancy, and proper utilization.
- Limits reporting or sharing information from "consumer reports" by consumer reporting agencies to government agencies, including to law enforcement agencies.
- Pawnbrokers normally do not report transactions with their customers to credit reporting agencies. However, pawnbrokers could use credit reporting agencies to conduct their DoD MLA Rule "covered borrower" checks, but there is little evidence of this practice being conducted.

The National Pawnbrokers Association Does Not Provide Any Form of Legal Advice