



National Pawnbrokers Association®

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



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Introduction

The NPA is the national voice of the pawn industry on both the federal and grass roots levels. We proactively monitor all federal statutes and regulations to keep pawnbrokers informed of their compliance responsibilities.

The NPA is committed to representing the pawn industry before Congress and federal regulatory agencies. We inform and educate consumer groups, research firms, media and others about the positive financial services our industry makes available to the general public.



GET INVOLVED: The NPA keeps our members abreast of successes and challenges facing the pawn industry and informs them of Washington's legislative and regulatory activities through the government relations section of our website as well as 'This Week in Pawn' emails. updates. Access more tools like this resource at nationalpawnbrokers.org!

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.

Visit [IRS.gov](https://www.irs.gov) to learn more

2. Truth in Lending Act and "Regulation Z"

The Truth in Lending Act (TILA) 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)
- 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.

3. Military Lending Act and DOD's MLA Regulation

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, 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.

Visit the Military
Lending Act
website

[https://mla.dmdc.
osd.mil/](https://mla.dmdc.osd.mil/)

4. U.S. Office of Foreign Assets Control's "Specially Designated Nationals" (SDN) Regulations

The U.S. Office of Foreign Assets Control's (OFAC) "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.
- When must you check the SDN list on your customer? You can check the customer on the front end, or the back end of the transaction, but the last time to check the list is prior to 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, a process that takes time.
- 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

Visit the OFAC website to learn more

5. FinCEN's "Precious Metals Dealers" Rule

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 when the dealer's business 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) Retail sales of foreclosed pawn collateral (not purchases) when the pawn transaction is conducted on licensed premises.
- 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.

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 5, above).

- “Suspicious Activity Reports” (SARs) communicate concerns the pawnbroker may have about customers, such as if a pawnbroker suspects that the 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 fifteen 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)

The GLBA 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.
- 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.”

8. CFPB “Privacy” Rule (Regulation PP)

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

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.

10. FTC Consumer Information “Disposal”

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. This rule protects consumer reports you may have requested on applicants for jobs, for example. 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.

11. FTC “Red Flags” Rule

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

12. Equal Credit Opportunity Act and Regulation B

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 Regulation B, both of which are enforced by the CFPB.

13. Servicemembers Civil Relief Act of 2003

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 of more than 6% is charged or collected during the active-duty period, the creditor must refund and permanently forgive the excess.

The Department of Defense maintains a separate DMDC-SCRA website for checking active-duty status: <https://scra.dmdc.osd.mil/>

14. Fair Credit Reporting Act

Fair Credit Reporting Act-- restricts “consumer reporting agencies” from sharing of consumers’ non-public personal information with unaffiliated third parties unless the recipients have “permissible purposes” to receive the information. The Act does not limit creditors’ ability to share information about their own experiences with the consumer with others. 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 that pawnbrokers are doing “covered borrower” checks via consumer reporting agencies.



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