26

Via e-mail: study.comments@ots.treas.gov

April 30, 2002

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

Re: Public Comment for Study on Information Sharing Practices Among Financial Institutions and Their Affiliates

Ladies and Gentlemen:

Thank you for the opportunity to comment on the information sharing practices among financial institutions and their affiliates. Household Bank (Nevada), N.A., Household Bank (SB), N.A., Household Bank, f.s.b., Household Credit Services, Inc., Household Finance Corporation, Household Automotive Credit Corporation, and Household Retail Services, Inc. (collectively "Household"), respectfully provide the following comments.

Household is a leading provider of consumer financial products with over 50 million customers and 32,000 employees worldwide. Advances in information technology have contributed significantly to the expansion of credit availability in the United States, making it accessible to an unprecedented number of consumers. However, we recognize that the benefits that information sharing provides, including cost reductions and fraud control, must be balanced with the legitimate privacy expectations and interests of consumers.

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

    Question - Why do financial institutions share information with affiliates? What types of information do financial institutions share with affiliates?

Financial institutions share information with their affiliates for a wide variety of business reasons. As a starting point, it is important to note that the corporate structure of many financial services companies is driven by licensing, tax, and other legal considerations, creating legal entity structures that may not be apparent to consumers. Household International, Inc. ("Household"), for example, consists of several hundred separate legal entities, nearly all of which are related to its core business of consumer lending. While some of these affiliates provide services to Household's financial institutions, other affiliates offer additional financial products and services to consumers. With respect to servicing affiliates, our financial institutions share a wide variety of information, including various types of corporate financial information and customer account information, depending upon what is necessary for the affiliate to perform the services effectively. Affiliated financial institutions may also share customer information, including experience information, name and address, telephone number, and (as permitted by applicable law) credit information. Such customer information may be shared for a variety of purposes, including fraud control, underwriting, collections, and marketing.

> Question - Why do financial institutions share information with nonaffiliated third parties? What types of information do financial institutions share with nonaffiliated third parties?

Non-affiliated third parties encompass a wide variety of entities with which a financial institution does business. These range from companies that provide services – e.g., legal, printing, accounting, finance, mailing, security, programming, and customer service; to companies that offer products jointly with the financial institution – e.g., co-brand and affinity partners, tax preparers, and retailers; to companies that offer their own products to a financial institution's customers. Servicing companies receive corporate and customer information relating to the services to be provided. For example, a company hired to mail statements for a bank will receive a list of names and addresses, a lawyer hired to collect accounts will receive customer information related to those accounts, and a programmer hired to develop software for a financial institution may be given access to the institution's computer systems that house various types of data. Marketing partners will also receive various amounts of customer information, depending upon the product offered and the nature of the relationship. Some examples include: a bank that offers an airline "mileage" program sharing information on customers' credit card usage with the airline, a bank that offers a private label credit card for a retailer sharing information on purchases with the retailer, a bank that offers an affinity credit card sharing a list of group members who have the affinity credit card with the affinity group, or a lender that finances the purchase of automobiles or appliances sharing its credit decisions with the retailer offering the automobiles or appliances. Sharing also occurs in connection with other financial institutions. For example, upon the request of an applicant, a financial institution may provide that applicant's credit information to another financial institution that offers different types of credit products. Financial institutions also exchange demographic information on customers for collection purposes and fraud control (e.g., "skip-tracing"). Finally, financial institutions provide information on customer accounts to third-party credit bureaus.

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

Significant business reasons exist to restrict the sharing of customer information with third parties. First, the security of corporate and customer data is vital to the success of any financial institution, as the compromise of that data can have negative financial ramifications to both a financial institution and its customers. Thus, data should only be shared in a context where safeguards are in place and the risk of unauthorized use or re-release of the data is limited. Note also that customer information is often one of the most valuable assets of a financial institution. Thus, whether in a servicing or marketing context, economic reasons will limit sharing to situations, some of which are outlined above, where the importance and security of customer information is recognized and a clear benefit to the financial institution exists.

> Question - 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?

Legal restrictions, including both state and federal laws, significantly limit the extent to which private customer data can be released to third parties. While the federal restrictions enacted in the Gramm-Leach-Bliley Act provide a balanced approach to third-party sharing, the threat of conflicting state laws continues to grow. For example, the ability of nationwide lenders to share information with third parties is currently prohibited with respect to Vermont customers, unless those customers specifically consent to such sharing. The operational complexities and resultant expense produced by a patchwork of conflicting state laws are thus becoming significant – for example, issuing privacy notices that differ by state, or programming systems that will allow for either "opt-in" or "opt-out" by state, or that allow for different types of information sharing.

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

> 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. To what extent are the safeguards described above

required under existing law, such as the GLBA (see, e.g., 12 CFR 30, Appendix B)?

Financial institutions have developed comprehensive safeguards to protect the security of information. The primary catalyst for the continued development and maintenance of these safeguards is a business one – a financial institution's assets are based on information, and any risk to that information presents a serious threat to the financial institution. Thus, in many cases, the safeguards that exist both pre-date and exceed the requirements of existing law and regulation. Some examples of these safeguards are listed below:

- Administrative – policies and procedures, employee background investigations, and employee training programs, govern the daily treatment of confidential information by employees.

- Technical – technical protections include passwords and other access restrictions, firewalls, and encryption technology.

- Physical – physical protections include access restrictions to areas where confidential information is maintained, procedures governing how confidential information is disseminated, and requirements relating to how information is to be destroyed.

Question - Do existing statutory and regulatory requirements protect information adequately? Please explain why or why not. What, if any, new or revised statutory or regulatory protections would be useful? Please explain.

For a financial institution to remain competitive, it must continually evaluate and maintain the methods it uses to safeguard information. General guidelines such as 12 CFR 30, Appendix B, are important as guidance for an effective information protection system, and regulatory oversight to monitor compliance with these guidelines will provide an added level of security. However, in light of the speed at which technology is advancing, it would not be useful to include more specific technical and procedural requirements within the regulatory structure.

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

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

Answering these questions depends upon one's definition of a "privacy risk," and the question of from whom a particular customer wants to keep his/her information private. Thus, it could be useful to frame this issue in terms of a customer's privacy expectations. As noted previously, there are a wide variety of business reasons that drive both affiliate and third-party information sharing. As a result, customers have expectations that information will be shared with some parties and not with others. From a true financial risk perspective, in our experience, customers expect that information will not be released in a manner that could have a significant detrimental effect on their financial profile. These risks include any release of information that could result in identity theft, or any unauthorized access to a deposit or loan account. Such risks are a function of the security standards in place at a particular financial institution, and are not specifically related to information sharing with affiliates and third-parties for servicing or marketing purposes. In contrast, a customer would expect that a company that provides services to a financial institution such as fraud prevention, payment processing, printing, or collections, would have access to certain account information – regardless of whether those companies are affiliates of the financial institution or third parties.

With respect to marketing and functions outside of pure "servicing," individual expectations may vary widely and are highly fact dependent. In many cases, however, customers benefit from information sharing and expect that information will be shared with certain organizations. For example, individuals denied for a mortgage may consider that fact private, but may want the information automatically given to other lenders (whether affiliates or third parties) who may be able to offer them a loan on different terms. Consumers also expect that a financial institution approving them for credit at a retail store will convey that information immediately to the retail store so that they can leave with their purchases. Similarly, customers of co-branded credit programs have an expectation that information will be shared with a third party, for instance, with an airline that is providing mileage benefits based upon credit card usage. Customers of a credit card issuer would also likely assume that their good payment history with that financial institution would be shared with the institution's affiliated mortgage company when they apply for a mortgage loan with that company. Moreover, it would likely not surprise consumers that bad payment history would be shared as well. While some consumers may consider it a "risk" that negative experience information might be shared with an affiliated financial institution, as noted above, this type of information sharing enhances the safety and soundness of the loan underwriting process, which in turn reduces the cost of credit for all consumers.

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):

   Question - In what ways do financial institutions benefit from sharing information with affiliates? In what ways do financial institutions benefit from sharing information with nonaffiliated third parties? In what ways do affiliates benefit when financial institutions share information with them? In what ways do affiliates benefit from sharing information that they obtain from other affiliates with nonaffiliated third parties? What effects would further limitations on such sharing of information have on financial institutions and affiliates?

Sharing with and obtaining information from affiliates and third parties enables financial institutions to outsource servicing functions, enhance underwriting, speed credit decisioning, obtain customers, limit fraud, locate delinquent borrowers, and offer their customers products that they could not offer alone. Thus, advanced information technology is one key to the widely available, low-cost, and immediate consumer credit that is available in the United States today. Further, limits on information sharing could raise the cost of credit, limit the availability of certain products, negatively affect the safety and soundness of financial services providers, and reduce customer convenience.

Specific examples of the benefits of information sharing to financial institutions are numerous. For example, an affiliate's experience information with a customer may provide important underwriting data to a related financial institution. If negative, such information has important safety and soundness value to the receiving institution, as it may relate to poor payment history or raise the possibility of fraud. If positive, the information may be valuable to both the receiving institution and to the customer who may be able to qualify for loan products that were previously unavailable to him. A financial institution and its customer may also benefit when data sharing enables the financial institution's affiliate to refinance the customer's loan on terms that benefit both parties (e.g., a mortgage lending affiliate offering a debt consolidation loan to a delinquent credit card customer). Address and telephone information held by one affiliate may be shared for collection purposes, in the case where a borrower is in default to more than one related financial institution. Finally, affiliates may benefit from the opportunity to cross-market their customers, by sharing customer lists and other data, for example, whether a customer owns a home and thus could be candidate for a home equity loan.

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

> Question - In what ways does a customer benefit from the sharing of such information by a financial institution with its affiliates? In what ways does a customer benefit from the sharing of such information by a financial institution with nonaffiliated third parties? In what ways does a customer benefit when affiliates share information they obtained from other affiliates with nonaffiliated third parties? What, if any, alternatives are there to achieve the same or similar benefits for customers without such sharing of such information? What effects, positive or negative, would further limitations on the sharing of such information have on customers?

Customers benefit when financial institutions are able to run efficiently by outsourcing servicing functions, underwriting and collecting effectively, and controlling for fraud, as these factors reduce the cost of credit and increase its availability. Customers also may benefit from learning about products offered by an affiliate or third party (e.g., homeowner's insurance or a home equity line of credit for an individual who has just purchased a home, mortgage products offered as a result of referrals under a "turn-down" program, debt consolidation loan for a customer having problems making payments on credit card debt, or a home equity line to pay off a customer's higher rate automobile loan). In many instances, these products are made available at a reduced cost to existing customers, based on the customer's relationship with the financial institution. As described above, information sharing also benefits customers who take advantage of "instant credit" at retailers, awards and mileage programs offered by credit card issuers, products offered to affinity group members, and price reductions offered on bundled products. Customers also benefit when financial institutions are able to use information to specifically target marketing campaigns toward particular consumers, as this practice reduces expenses for financial institutions and decreases the quantity of mail or other contacts, such as telemarketing, received by individuals. The information systems and capabilities that exist today are, to a large extent, responsible for many of these benefits that customers want and expect. Replacing the existing framework of information sharing would thus drive up the cost of credit and limit the availability of products that customers want and need.

6. <u>The adequacy of existing laws to protect customer privacy:</u>

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

To serve their customers and function effectively, financial institutions must be able to share certain types of information with servicers and partners, whether they are affiliates or third parties. And to compete in the markets as they exist today, financial institutions must be able to operate on a level playing field with other types of companies that are able to leverage customer information to develop and market their products. However, substantial privacy protections do currently exist and result from a combination of factors – the information safeguards implemented by financial institutions, laws such as the Right to Financial Privacy Act ("RFPA"), and industry practices such as the "Do Not Call" list implemented by members of the Direct Marketing Association. Statutes such as the Gramm-Leach-Bliley Act and the FCRA add a further level of privacy protection by prohibiting sharing of certain categories of information with certain types of entities. All of these measures and laws aim to strike a balance between the need for security of certain information with the necessity of some information being shared among certain types of entities, and some information being public.

It is worth noting that certain types of information have been required to be maintained as public for centuries, such as the identity of lienholders and purchasers of property. The public nature of this information has allowed various types of property to be transferred with certainty and for the lending business to thrive. As the consumer lending business has matured, it has been recognized that the public is served by financial institutions sharing other types of information, like a borrower's payment history on a specific debt. This sharing has resulted in the credit reporting system in existence today. Finally, throughout the history of the banking industry, financial institutions have recognized that certain customer information should, for most purposes, be kept private. The GLBA and the FCRA reflect this last proposition, balancing a financial institution's ability to offer its products and function in a safe and sound manner with the ability of an individual to protect certain types of information from certain types of disclosure. These two statutes address the privacy expectations of individuals by requiring financial institutions to inform customers about what information they collect, what that information is used for, and how, subject to well-considered exceptions necessary for financial institutions to conduct their day-to-day business, the customer can restrict the disclosure of that information. Going forward, maintaining these laws as a consistent federal standard will enhance consumer understanding of their privacy choices while allowing financial services providers to operate efficiently. Further layers of regulation or legislation added on top of this balance, particularly in the case of conflicting state requirements, would be counterproductive and costly.

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

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

Considerable resources at all financial institutions have been devoted to the task of developing and distributing privacy notices that comply with the requirements of the GLBA, as well as its implementing regulations. The notices adequately describe the information-sharing practices of financial institutions. We do not think it is necessary, nor would it be useful, to add new requirements or make revisions to the privacy statement requirements after less than a year of experience with the GLBA. In fact, we would be concerned that any such revisions or additions would serve to undermine the comfort level that consumers have already achieved with respect to these privacy notices.

Additionally, it is worth noting that in the hierarchy of information that loan customers seek, many of the required privacy disclosures fall much lower than, say, what the annual percentage rate will be on their mortgage, or the late fee on their credit card, or the number of payments they must make before their automobile loan will be paid off. Yet, for customers who do want to find out what information is collected and where it will go, the privacy notices adequately disclose that information. Thus, if any statutory or regulatory change is proposed on this issue, we urge consideration of a simplified version of the notice that would benefit customers by being more easily readable and less distracting from other disclosures. Any ensuing reduction in regulatory burden would also benefit consumers by helping financial institutions keep the costs of the lending process down.

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:

> Question - 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. 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.) 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. 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.

Requiring an "opt-in" before sharing customer information with third parties and affiliates could significantly limit the availability of products and services, and the ease at which consumers can obtain them. This situation would result because, in large part, outside of the application process, it is difficult to get individuals to return forms and respond to offers. With less information shared, it becomes more difficult to screen potential customers, and thus for financial institutions to effectively underwrite and offer products. These reduced operational efficiencies would lead to increased costs and time expenditures for both financial institutions and their customers.

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:

   Question - 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? What effects, both positive and negative, would such a policy have on financial institutions and on consumers? Please describe any experience you may have had of this approach.

As noted previously, financial institutions already operate subject to a myriad of state and federal laws that impact customer privacy. As a direct result of this legal environment, the information policies and systems required to support a large organization are increasingly complex and expensive. Moreover, as previously indicated, consumers have significant expectations that information will be shared, at least among affiliates and, in some cases, with third parties. FCRA and GLBA (as well as other statutes such as the RFPA) already provide significant information and protection to consumers, and any additional legal or regulatory overlays to the current system would be a costly experiment in regulatory burden that would not benefit consumers. To the contrary, further restrictions could raise the cost of consumer credit, restrict its availability, reduce the ability of financial institutions to combat fraud, limit underwriting effectiveness, and generally disadvantage both consumers and the financial services industry.

We appreciate this opportunity to submit comments on the information sharing practices at financial institutions.

Yours truly,

Martha A. Pampel
Associate General Counsel
Federal Regulatory Coordination
(847) 564-7941

cc: Dina Ellis