



MARY JACKSON
VICE PRESIDENT – PUBLIC AND GOVERNMENTAL RELATIONS

DIRECT DIAL NUMBER: 817/570-1623
TELECOPY NUMBER: 817/570-1645
E-MAIL ADDRESS: mjackson@casham.com

April 22, 2003

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, Virginia 22183-0039
ATTN: Section 352 - Jewelry Dealer Regulations

via email to regcomments@fincen.treas.gov

Cash America International, Inc. is pleased to have the opportunity to respond to your February 21, 2003 notice of proposed rule-making concerning Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels (“Proposed Jewelry Dealer Rules”).

By way of background, Cash America operates over 390 pawnshops offering pawn loans to customers in 16 states. Pawn loans are short-term extensions of credit secured by pledges of personal property collateral. A pawn loan customer can either (a) pay the pawn loan in full, in which case the merchandise the customer pledged to the pawnshop as collateral is returned to the customer, or (b) forfeit title in the collateral to the pawnshop in lieu of paying back the pawn loan. If the pawn loan customer forfeits title in the collateral to the pawnshop, the collateral becomes the property of the pawnshop and is typically sold by the pawnshop as retail inventory. As of December 31, 2002, Cash America’s average pawnshop had an average balance of approximately \$187,000 in pawn loans outstanding and, on average, approximately \$130,000 of merchandise on hand for disposition. At that time, approximately 53% of the total of all collateral securing the outstanding pawn loans and all merchandise then held by Cash America for disposition was jewelry. Given that jewelry is involved in a significant portion of Cash America’s transactions, the Proposed Jewelry Dealer Rules are of great significance to Cash America.

As of December 31, 2002, Cash America’s average pawn loan dollar amount was approximately \$84 per pawn loan. As a result of the small size of its pawn loans, the potential to launder large sums of money through a Cash America pawnshop is extremely low. It would take a great many transactions to move much money through our pawnshops. In addition, like members of the banking industry, Cash America pawnshops are licensed by state licensing agencies. Like many other providers of consumer credit, including banks, our industry has state-promulgated record-keeping responsibilities for *each and every transaction in which we engage*, and our books and records are subject to regular inspection by our primary regulators. These regulations have been in place for decades. However, unlike regulations governing other small loan transactions, local laws in every state, as well as state laws in some states, also require pawnbrokers to report to law enforcement on *each pawn loan transaction in which we engage*. This means that there is no

threshold amount for reportable pawn loan transactions (unlike the threshold amounts under the Bank Secrecy Act.) Consequently, pawnshops report 100% of their loan transactions to law enforcement. To our knowledge, neither the banking industry, nor virtually any other industry subject to the Bank Secrecy Act or the USA Patriot Act, is mandated to report each and every one of their loan transactions to law enforcement. Moreover, many localities require these types of reports of transactions to be filed on a daily basis, while others require reports to be submitted on a weekly basis. For convenience and speed, many of these reports are made in electronic form directly to law enforcement agencies. Our stores are also subject to spot inspections for record-keeping and other purposes by law enforcement agencies at various state and local levels. In this regard, it is possible that pawnbrokers provide more detailed and frequent information on loan transactions to law enforcement agencies than almost any other type of business that may be covered by the USA Patriot Act and/or the Bank Secrecy Act.

As a result of the substantial regulations to which our business is already subject and as a result of the record-keeping and reporting requirements under which we have been operating for years, our business is distinct from the class of specialized dealers in precious metals, stones and jewels that your Notice of Proposed Rule Making describes as “not generally regulated as financial institutions.” In addition, state laws relating to pawnbrokers are full-fledged licensing and supervisory laws and regulations, in marked contrast to the primarily consumer protection type laws applicable to jewelry dealers in most states that are mentioned in your Notice of Proposed Rule Making. Judging from the estimated number of potential record-keepers noted in the Notice of Proposed Rule Making (20,000), it is possible that in drafting the notice pawnbrokers were not even considered to be part of this industry, given that there may be more than 12,000 pawnshops in the United States in addition to the many thousands of conventional jewelry manufacturers, retailers and wholesalers.

Because Cash America offers diverse consumer financial services products in addition to pawn loans, such as short-term cash advances and check-cashing services, our company has had a formal anti-money laundering program for Currency Transaction Reporting and Suspicious Activity Reporting for some time. Last summer, we began formulating anti-money laundering programs to comply with Section 352 of the Patriot Act with an eye toward the upcoming effective date for the Section 352 regulations for our industry. We are confident that our company has effective anti-money laundering programs in place for its current anti-money laundering compliance responsibilities across the diversified product lines we offer the public and that we will be able to revise these compliance programs to meet the Section 352 regulations that may come in future. With this in mind, compliance with the Proposed Jewelry Dealer Rules could present further regulatory restrictions to the already extensive, anti-crime regulatory burdens imposed on pawnbrokers at the state, local and federal (i.e., firearms and existing anti-money laundering regulations) levels. This brings us to the specific concerns and suggestions we have about the proposed regulations for dealers in precious metals, stones and jewels (“Jewelry Dealers”).

First and foremost, Cash America firmly believes that given the unique nature of the pawn business, pawnbrokers should be required to have only one comprehensive, federal anti-money laundering compliance program in place. Because we expect pawnbrokers to be covered by the more comprehensive pawnbroker rules currently contemplated under Section 352 (“Pawnbroker Rules”), and because the local and state requirements for record-keeping and reporting of each pawn transaction that have been in place for years will remain in place, we suggest that the final version of the Proposed Jewelry Dealer Rules explicitly provide that compliance with the Pawnbroker Rules is satisfactory compliance for both the Pawnbroker Rules and the final version of the Proposed Jewelry Dealer Rules. Assuming that the final Pawnbroker Rules so provide, pawnbrokers will conduct risk assessments and institute compliance programs that cover transactions involving precious metals, stones and jewels as part of their larger Section 352 compliance responsibilities. This would allow Cash America and other pawnbrokers to have a single master compliance program, rather

than being required to produce separate plans for the specific sub-categories of financial products pawnbrokers offer. In the alternative, because we will be regulated by both the forthcoming Pawnbroker Rules and the state and local rules described above, we believe an exemption from the final version of the Proposed Jewelry Dealer Rules would be appropriate for pawnbrokers. Either of these approaches will assist us in meeting our full compliance responsibilities in the least burdensome way.

The additional comments in this letter relate to our requested changes for the Proposed Jewelry Dealer Rules if pawnbrokers are ultimately required to operate under the Proposed Jewelry Dealer Rules. Please understand that Cash America greatly hopes that a complete analysis of the following comments can be deferred until such time as proposed Pawnbroker Rules are issued for the pawn industry. However, because proposed Pawnbroker Rules for pawnbrokers have not yet been issued and because the Proposed Jewelry Dealer Rules could arguably apply to pawnbrokers, Cash America would like to make some specific suggestions to the Proposed Jewelry Dealer Rules, just in case the Proposed Jewelry Dealer Rules are ultimately determined to apply to pawnbrokers. Even if pawnbrokers are not ultimately subject to the final version of the Proposed Jewelry Dealer Rules, the following suggestions could still be meaningful when FinCEN prepares a single comprehensive set of proposed Pawnbroker Rules.

1. The \$50,000-dollar threshold in the Proposed Jewelry Dealer Rules may require adjustment or replacement. Although we approve of the effort to reduce compliance burdens for small businesses, the \$50,000 annual threshold might not be as effective as it could be. For example, the \$50,000 threshold would not cover a small jewelry retailer that buys virtually all of its inventory from dealers, but also buys one or two high-end jewelry pieces at \$20,000 a piece from members of the public in a year. These high-value transactions would seem to be the types of transactions in which FinCEN would have an interest. Yet, as drafted, the Proposed Jewelry Dealer Rules would not cover this type of jewelry retailer. In this regard, a per-transaction threshold might better serve FinCEN than an annual dollar value threshold for purposes of determining which parties should be covered by the Proposed Jewelry Dealer Rules. We further detail a possible per transaction threshold in the comments that follow.
2. Basically, the Proposed Jewelry Dealer Rules define a Jewelry Dealer as one who purchases more than \$50,000 in precious metals, stones or jewels in a year or one who receives more than \$50,000 in gross proceeds from transactions in precious metals, stones or jewels in a year. The following questions of Cash America regarding this threshold definition serve to further illustrate the need for a single comprehensive set of rules for pawnbrokers:
 - A. Does acquiring jewelry through a forfeited loan constitute a purchase of jewelry for purposes of determining whether or not one has purchased more than \$50,000 of precious metals, stones or jewels? (Cash America typically does not purchase much jewelry from the public in straight purchase/non-loan transactions. Most of Cash America's jewelry inventory comes from forfeited loans.)
 - B. If the answer to Question A above is "yes," is the loan amount or the estimated fair market value of the collateral used to determine whether or not the \$50,000 threshold is satisfied? (We suggest that the loan amount would be the appropriate figure since estimated fair market values of second-hand jewelry can be subjective and arbitrary – it would be extremely difficult to create and administer a method for objectively established such values throughout the industry.)
 - C. Is a pawn loan a "transaction" in precious metals, stones or jewels? If so,

would gross proceeds from a pawn loan secured by jewelry (i.e., principal and/or interest payments) be considered gross proceeds from a transaction in precious metals, stones or jewels for purposes of determining whether or not a pawnbroker has received more than \$50,000 in gross proceeds from a jewelry transaction?

- D. With the foregoing in mind, at what point would a pawnbroker be deemed to have purchased more than \$50,000 in precious metals, stones and jewels? (At the time they have loaned an aggregate total of \$50,000 on jewelry collateral, at the time they have made loans on jewelry collateral that arguably has a fair market value of \$50,000, or simply at the time they have actually purchased \$50,000 of jewelry in straight purchase/non-loan transactions)?
- E. Similarly, at what point would a pawnbroker be deemed to have received gross proceeds from a transaction in jewelry? (At the time the customer pays the loan in full, at the time the loan forfeits, or simply at the time the collateral is sold at retail?)

As you can see, there are quite a few issues that are unique to pawnbrokers just in the threshold definition alone. For this reason, we reiterate our request for a single comprehensive set of rules for pawnbrokers. Nonetheless, if pawnbrokers are ultimately covered by the Proposed Jewelry Dealer Rules, we would request a bright line threshold that pawnbrokers could easily follow based on single transaction amounts. This could be simply stated as follows: if a pawnshop makes a loan or a series of seemingly related, [structured] loans in a short time span such as one or two days totaling \$10,000 or more in a particular year, or if a pawnshop sells jewelry for gross proceeds in excess of \$10,000 in one transaction (or a series of seemingly related [structured] transactions in a short time span, such as one or two days) in a particular year, then the pawnshop would be subject to the Proposed Jewelry Dealer Rules. Besides the ease of determining who is covered by the rule, the \$10,000 per transaction threshold would make a pawnbroker's compliance with the Proposed Jewelry Dealer Rules more consistent with the compliance responsibilities of banks and other "financial institutions;" especially financial institutions that, like pawnshops, are covered by other extensive regulations, including anti-money laundering obligations related to currency transaction reporting requirements. Moreover, because each pawn loan is subject to state record-keeping and local or state reporting responsibilities, creating a \$10,000 threshold for USA Patriot Act purposes would not mean that law enforcement would have no information about the individuals involved in transactions under \$10,000. Please keep in mind that many other financial institutions that are subject to currency transaction reporting requirements, are not required to report information on less substantial transactions to law enforcement agencies. This is not the case for pawnbrokers, as each and every pawn loan transaction is reported to law enforcement agencies, in some form or fashion, whether or not the amount of the transaction is more than \$10,000.

- 3. The timing of the annual effectiveness of the Proposed Jewelry Dealer Rules may also require clarification. As drafted, if the pawnbroker did not meet the applicable threshold (whatever it may be) in the preceding year, it would have no responsibilities in the year that it did meet the applicable threshold; rather, its responsibilities would begin in the following year. In addition, if after meeting the applicable threshold in one year, the pawnbroker did not meet the applicable threshold in a subsequent year, it appears that the pawnbroker would not have responsibilities for the following year. This on-again, off-again compliance requirement is likely to result in less overall watchfulness and rigor in designing and implementing anti-

money laundering compliance programs, and also may be more confusing to smaller businesses covered by this draft regulation. We also believe that consistency of reporting transactions is one of the most important goals of the anti-money laundering regulations, and a tighter rule may be an easier, brighter-line basis for pawnbrokers and other small businesses to measure their compliance responsibilities. Accordingly, the final regulation should clarify what happens (1) in any year that the dealer meets the threshold (whatever it may be) and (2) in any subsequent year in which the dealer does not meet the threshold once it has had a single year in which it met the threshold requirement.

4. Cash America has centralized its current anti-money laundering compliance program in a centralized location, and plans to keep it centralized. We have found this centralized program to be very effective. In this connection, we believe that the proposed requirement that anti-money laundering plans be available for inspection at every location at which Cash America does business is not practical. Instead, we suggest that the final rule require that the anti-money laundering compliance plan be available for inspection at the company's headquarters or wherever the designated compliance officer works, which in Cash America's case is in our field support center in Fort Worth, Texas. Since Cash America has hundreds of locations across several states, we believe this centralization of responsibility is the key to maintaining quality oversight of the anti-money laundering compliance programs. Accordingly, the requirement to have the company's anti-money laundering plans available for inspection should be clarified to require that the plan be available for inspection *at the company's headquarters or at another location at which it houses its designated anti-money laundering compliance officer.*

We appreciate the opportunity to present our views regarding compliance with the USA Patriot Act and the Bank Secrecy Act and look forward to further participation in this important work. Please do not hesitate to contact me if you require additional information about any issues discussed in these comments, or any other issues related to implementing the USA Patriot Act.

Sincerely,

Mary Jackson
Vice President – Public and Governmental Relations

Attachment: Comment on Questions concerning the collection of Information



MARY JACKSON
VICE PRESIDENT – PUBLIC AND GOVERNMENTAL RELATIONS

DIRECT DIAL NUMBER: 817/570-1623
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E-MAIL ADDRESS: mjackson@casham.com

April 22, 2003

Desk Officer for the Department of the Treasury
Office of Information and Regulatory Affairs
Office of Management and Budget
Paperwork Reduction Project (1506)
Washington, D.C. 20503

via email to jlackeyj@omb.eop.gov

Re: ATTN: Section 352-Jewelry Dealer Regulations

Dear Sir or Madam:

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transactions, local laws in every state, as well as state laws in some states, also require pawnbrokers to report to law enforcement on *each pawn loan transaction in which we engage*. This means that there is no threshold amount for reportable pawn loan transactions (unlike the threshold amounts under the Bank Secrecy Act.) Consequently, pawnshops report 100% of their loan transactions to law enforcement. To our knowledge, neither the banking industry, nor virtually any other industry subject to the Bank Secrecy Act or the USA Patriot Act, is mandated to report each and every one of their loan transactions to law enforcement. Moreover, many localities require these types of reports of transactions to be filed on a daily basis, while others require reports to be submitted on a weekly basis. For convenience and speed, many of these reports are made in electronic form directly to law enforcement agencies. Our stores are also subject to spot inspections for record-keeping and other purposes by law enforcement agencies at various state and local levels. In this regard, it is possible that pawnbrokers provide more detailed and frequent information on loan transactions to law enforcement agencies than almost any other type of business that may be covered by the USA Patriot Act and/or the Bank Secrecy Act.

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As noted, we have direct experience with anti-crime record-keeping and reporting regulations across 16 states in the nation. With this in mind, compliance with the Proposed Jewelry Dealer Rules could present further regulatory restrictions to the already extensive, anti-crime regulatory burdens imposed on pawnbrokers at the state, local and federal (i.e., firearms and existing anti-money laundering regulations) levels. It is from this perspective that we offer the following comments on the Paperwork Reduction Act aspects of the proposed Section 352 regulations for dealers in precious metals, stones, or jewels. The following responds to the questions raised in the Notice of Proposed Rule Making in the order in which the questions appear:

(A) Given the extensive state record-keeping and local or state reporting requirements affecting the pawn industry, we are not persuaded that imposing separate anti-money laundering compliance program requirements on pawnbrokers who would qualify as “dealers” in these commodities would provide practical utility for the nature of the compliance burden it could generate.

(B) We suspect that the estimate of the burden of collecting information and the estimate of the number of “dealers” subject to the proposed regulation is low. On the former subject, we believe that a more realistic estimate of the time required to create and implement the anti-money laundering compliance program will differ from dealer to dealer, but we believe that a minimum of 100 hours would be expended to make a risk assessment and design a compliance program (depending on the volume of business in these commodities) by Cash America and that additional time would be required to conduct training and conduct periodic reviews of the compliance programs. On the latter question, we believe it is possible that the entire pawn industry was omitted from the estimate of the total number of persons who would qualify as dealers as the proposed regulation was drafted.

(C) We have suggested a number of ways to enhance the utility and clarity of the proposed regulation in our comment to FinCEN (attached).

(D) We have suggested a few ways to minimize the burden of the proposed regulation in our comment to FinCEN (attached).

(E) In our view, most of the capital and start-up costs associated with the proposed regulation are small with the exception of creating and conducting training and periodic reviews and assessments of the programs. However, if the proposed rules ultimately require Cash America to gather more information on the fair market value of each transaction than it already does, the systems and training costs for implementing such a process will be extensive and burdensome. However, without significant systems changes, the greater expense in the overall USA Patriot Act compliance responsibilities for the pawn industry lies in the expenses associated with comparing customers with the OFAC lists as Section 326 requires. These expenses are large and occur on a daily basis for members of our industry.

Thank you for the opportunity to share our thoughts about the burden of compliance with the proposed Section 352 regulations for dealers in precious metals, stones, or jewels. Please feel free to contact me if you require additional information about any of the responses provided in this letter.

Sincerely,

Mary Jackson
Vice President of Public and Governmental Relations