

1 **TITLE V—PRIVACY**
2 **Subtitle A—Disclosure of**
3 **Nonpublic Personal Information**

4 **SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFOR-**
5 **MATION.**

6 (a) **PRIVACY OBLIGATION POLICY.**—It is the policy
7 of the Congress that each financial institution has an af-
8 firmative and continuing obligation to respect the privacy
9 of its customers and to protect the security and confiden-
10 tiality of those customers' nonpublic personal information.

11 (b) **FINANCIAL INSTITUTIONS SAFEGUARDS.**—In fur-
12 therance of the policy in subsection (a) and consistent with
13 the requirements of section 504, each agency or authority
14 described in section 505(a) shall establish appropriate
15 standards for the financial institutions subject to their ju-
16 risdiction relating to administrative, technical, and phys-
17 ical safeguards—

18 (1) to assure the security and confidentiality of
19 nonpublic personal information;

20 (2) to protect against any anticipated threats or
21 hazards to the security or integrity of such informa-
22 tion; and

23 (3) to protect against unauthorized access to or
24 unauthorized use of such information which could

1 result in substantial harm or substantial inconven-
2 ience to any consumer.

3 **SEC. 502. REQUIREMENTS WITH RESPECT TO DISCLOSURES**
4 **OF PERSONAL INFORMATION.**

5 (a) NOTICE REQUIREMENTS.—Except as otherwise
6 provided in this subtitle, a financial institution may not,
7 directly or through any affiliate, disclose to a nonaffiliated
8 third party any nonpublic personal information, unless
9 such financial institution provides or has provided to the
10 consumer a disclosure that complies with section 503.

11 (b) OPT OUT.—

12 (1) IN GENERAL.—A financial institution may
13 not disclose nonpublic personal information to non-
14 affiliated third parties unless—

15 (A) such financial institution clearly and
16 conspicuously discloses to the consumer, in
17 writing or in electronic form (or other form per-
18 mitted by the regulations prescribed under sec-
19 tion 504), that such information may be dis-
20 closed to such third parties;

21 (B) the consumer is given the opportunity,
22 before the time that such information is initially
23 disclosed, to direct that such information not be
24 disclosed to such third parties; and

1 (C) the consumer is given an explanation
2 of how the consumer can exercise that non-
3 disclosure option.

4 (2) EXCEPTION.—This subsection shall not pro-
5 hibit a financial institution from providing nonpublic
6 personal information to a nonaffiliated third party—

7 (A) to perform services for, or functions on
8 behalf of, the financial institution, including
9 marketing of the financial institution's own
10 products or services; or

11 (B) to provide financial products or serv-
12 ices offered pursuant to a joint agreement that
13 complies with the requirements imposed by the
14 applicable regulations prescribed under section
15 504 and that is between two or more financial
16 institutions, or between one or more inde-
17 pendent financial institutions and any other
18 person;

19 if the financial institution clearly and conspicuously
20 discloses the providing of such information and the
21 third party maintains the confidentiality of such in-
22 formation from further disclosure in accordance with
23 this subtitle and the regulations thereunder.

24 (c) LIMITS ON REDISCLOSURE OF INFORMATION.—
25 Except as otherwise provided in this subtitle, a non-

1 affiliated third party that receives from a financial institu-
2 tion nonpublic personal information under this section
3 shall not, directly or through an affiliate of such receiving
4 third party, disclose such information to any other person
5 that is a nonaffiliated third party of both the financial
6 institution and such receiving third party, unless such dis-
7 closure would be permitted by this subtitle if made directly
8 to such other person by the financial institution.

9 (d) LIMITATIONS ON THE SHARING OF ACCOUNT
10 NUMBER INFORMATION FOR MARKETING PURPOSES.—A
11 financial institution shall not disclose an account number
12 or similar form of access number or access code for a cred-
13 it card account, deposit account, or transaction account
14 of a consumer to any nonaffiliated third party for use in
15 telemarketing, direct mail marketing, or other marketing
16 through electronic mail to the consumer.

17 (e) GENERAL EXCEPTIONS.—Subsections (a) and (b)
18 shall not prohibit the disclosure of nonpublic personal
19 information—

20 (1) as necessary to effect, administer, or en-
21 force a transaction requested or authorized by the
22 consumer, or in connection with—

23 (A) servicing or processing a financial
24 product or service requested or authorized by
25 the consumer;

1 (B) maintaining or servicing the con-
2 sumer's account with the financial institution;
3 or

4 (C) a proposed or actual securitization,
5 secondary market sale (including sales of serv-
6 icing rights), or similar transaction related to a
7 transaction of the consumer;

8 (2) with the consent or at the direction of the
9 consumer;

10 (3)(A) to protect the confidentiality or security
11 of the financial institution's records pertaining to
12 the consumer, the service or product, or the trans-
13 action therein; (B) to protect against or prevent ac-
14 tual or potential fraud, unauthorized transactions,
15 claims, or other liability; (C) for required institu-
16 tional risk control, or for resolving customer disputes
17 or inquiries; (D) to persons holding a legal or bene-
18 ficial interest relating to the consumer; or (E) to
19 persons acting in a fiduciary or representative capac-
20 ity on behalf of the consumer;

21 (4) to provide information to insurance rate ad-
22 visory organizations, guaranty funds or agencies, ap-
23 plicable rating agencies of the financial institution,
24 persons assessing the financial institution's compli-
25 ance with industry standards, organizations for the

1 performance of credit or insurance underwriting
2 modeling service, and the financial institution's at-
3 torneys, accountants, and auditors;

4 (5) to the extent specifically permitted or re-
5 quired under other provisions of law and in accord-
6 ance with the Right to Financial Privacy Act of
7 1978, to law enforcement agencies (including a Fed-
8 eral functional regulator, a State insurance author-
9 ity, or the Federal Trade Commission), self-regu-
10 latory organizations, or for an investigation on a
11 matter related to public safety;

12 (6)(A) to a consumer reporting agency in ac-
13 cordance with the Fair Credit Reporting Act, or (B)
14 from a consumer credit report reported by a con-
15 sumer reporting agency;

16 (7) in connection with a proposed or actual
17 sale, merger, transfer, or exchange of all or a por-
18 tion of a business or operating unit, if the disclosure
19 of nonpublic personal information concerns solely
20 consumers of such business or unit; or

21 (8) to comply with Federal, State, or local laws,
22 rules, and other applicable legal requirements; to
23 comply with an authorized civil, criminal, or regu-
24 latory investigation or subpoena by Federal, State,
25 or local authorities; or to respond to judicial process

1 or government regulatory authorities having jurisdic-
2 tion over the financial institution for examination,
3 compliance, or other purposes as authorized by law.

4 **SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.**

5 (a) DISCLOSURE REQUIRED.—At the time of estab-
6 lishing a customer relationship with a consumer and not
7 less than annually during the continuation of such rela-
8 tionship, a financial institution shall provide a clear and
9 conspicuous disclosure to such consumer, in writing or in
10 electronic form (or other form permitted by the regula-
11 tions prescribed under section 504), of such financial insti-
12 tution's policies and practices with respect to protecting
13 the nonpublic personal information of consumers in ac-
14 cordance with the regulations prescribed under section
15 504.

16 (b) INFORMATION TO BE INCLUDED.—The disclosure
17 required by subsection (a) shall include—

18 (1) the policies and practices of the financial in-
19 stitution with respect to disclosing nonpublic per-
20 sonal information to nonaffiliated third parties,
21 other than agents of the financial institution, con-
22 sistent with section 502, and including—

23 (A) the categories of persons to whom the
24 information is or may be disclosed, other than
25 the persons to whom the information may be

1 provided pursuant to subsection (b)(2) or (e) of
2 section 502; and

3 (B) the policies and practices of the finan-
4 cial institution with respect to disclosing non-
5 public personal information of persons who have
6 ceased to be customers of the financial institu-
7 tion;

8 (2) the categories of nonpublic personal infor-
9 mation that are collected by the financial institution;

10 (3) the policies and practices that the financial
11 institution maintains to protect the confidentiality
12 and security of nonpublic personal information in ac-
13 cordance with section 501; and

14 (4) the disclosures required, if any, under sec-
15 tion 603(d)(2)(A)(iii) of the Fair Credit Reporting
16 Act.

17 **SEC. 504. RULEMAKING.**

18 (a) REGULATORY AUTHORITY.—

19 (1) SEPARATE RULEMAKING.—The Federal
20 banking agencies, the National Credit Union Admin-
21 istration, the Secretary of the Treasury, and the Se-
22 curities and Exchange Commission, shall each pre-
23 scribe, after consultation with the Federal Trade
24 Commission, representatives of State insurance au-
25 thorities designated by the National Association of

1 Insurance Commissioners, the Federal Housing Fi-
2 nance Board, and the Office of Federal Housing En-
3 terprise Oversight, such regulations as may be nec-
4 essary to carry out the purposes of this subtitle.

5 (2) COORDINATION, CONSISTENCY, AND COM-
6 PARABILITY.—Each of the agencies and authorities
7 required under paragraph (1) to prescribe regula-
8 tions shall consult and coordinate with the other
9 such agencies and authorities for the purposes of as-
10 suring, to the extent possible, that the regulations
11 prescribed by each such agency and authority are
12 consistent and comparable with the regulations pre-
13 scribed by the other such agencies and authorities.

14 (3) PROCEDURES AND DEADLINE.—Such regu-
15 lations shall be prescribed in accordance with appli-
16 cable requirements of title 5, United States Code,
17 and shall be issued in final form not later than one
18 year after the date of the enactment of this Act.

19 (b) AUTHORITY TO GRANT EXCEPTIONS.—The regu-
20 lations prescribed under subsection (a) may include such
21 additional exceptions to section 502 as are deemed con-
22 sistent with the purposes of this subtitle.

23 **SEC. 505. ENFORCEMENT.**

24 (a) IN GENERAL.—This subtitle and the regulations
25 prescribed thereunder shall be enforced by the Federal

1 functional regulators, the State insurance authorities, and
2 the Federal Trade Commission with respect to financial
3 institutions subject to their jurisdiction under applicable
4 law, as follows:

5 (1) Under section 8 of the Federal Deposit In-
6 surance Act, in the case of—

7 (A) national banks, Federal branches and
8 Federal agencies of foreign banks, and any sub-
9 sidiaries of such entities (except brokers, deal-
10 ers, persons providing insurance, investment
11 companies, and investment advisers), by the Of-
12 fice of the Comptroller of the Currency;

13 (B) member banks of the Federal Reserve
14 System (other than national banks), branches
15 and agencies of foreign banks (other than Fed-
16 eral branches, Federal agencies, and insured
17 State branches of foreign banks), commercial
18 lending companies owned or controlled by for-
19 eign banks, organizations operating under sec-
20 tion 25 or 25A of the Federal Reserve Act, and
21 bank holding companies and their nonbank sub-
22 sidiaries or affiliates (except brokers, dealers,
23 persons providing insurance, investment compa-
24 nies, and investment advisers), by the Board of
25 Governors of the Federal Reserve System;

1 (C) banks insured by the Federal Deposit
2 Insurance Corporation (other than members of
3 the Federal Reserve System), insured State
4 branches of foreign banks, and any subsidiaries
5 of such entities (except brokers, dealers, per-
6 sons providing insurance, investment compa-
7 nies, and investment advisers), by the Board of
8 Directors of the Federal Deposit Insurance Cor-
9 poration; and

10 (D) savings associations the deposits of
11 which are insured by the Federal Deposit In-
12 surance Corporation, and any subsidiaries of
13 such savings associations (except brokers, deal-
14 ers, persons providing insurance, investment
15 companies, and investment advisers), by the Di-
16 rector of the Office of Thrift Supervision.

17 (2) Under the Federal Credit Union Act, by the
18 Board of the National Credit Union Administration
19 with respect to any federally insured credit union,
20 and any subsidiaries of such an entity.

21 (3) Under the Securities Exchange Act of 1934,
22 by the Securities and Exchange Commission with re-
23 spect to any broker or dealer.

1 (4) Under the Investment Company Act of
2 1940, by the Securities and Exchange Commission
3 with respect to investment companies.

4 (5) Under the Investment Advisers Act of 1940,
5 by the Securities and Exchange Commission with re-
6 spect to investment advisers registered with the
7 Commission under such Act.

8 (6) Under the Federal Housing Enterprises Fi-
9 nancial Safety and Soundness Act of 1992 (12 U.
10 S. C. 4501 et seq.), by the Office of Federal Hous-
11 ing Enterprise Oversight with respect to the Federal
12 National Mortgage Association and the Federal
13 Home Loan Mortgage Corporation.

14 (7) Under the Federal Home Loan Bank Act,
15 by the Federal Housing Finance Board with respect
16 to Federal home loan banks.

17 (8) Under State insurance law, in the case of
18 any person engaged in providing insurance, by the
19 applicable State insurance authority of the State in
20 which the person is domiciled, subject to section 104
21 of this Act.

22 (9) Under the Federal Trade Commission Act,
23 by the Federal Trade Commission for any other fi-
24 nancial institution that is not subject to the jurisdic-

1 tion of any agency or authority under paragraphs
2 (1) through (8) of this subsection.

3 (b) ENFORCEMENT OF SECTION 501.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the agencies and authorities described in
6 subsection (a) shall implement the standards pre-
7 scribed under section 501(b) in the same manner, to
8 the extent practicable, as standards prescribed pur-
9 suant to section 39(a) of the Federal Deposit Insur-
10 ance Act are implemented pursuant to such section.

11 (2) EXCEPTION.—The agencies and authorities
12 described in paragraphs (3), (4), (5), (8), and (9) of
13 subsection (a) shall implement the standards pre-
14 scribed under section 501(b) by rule with respect to
15 the financial institutions subject to their respective
16 jurisdictions under subsection (a).

17 (c) ABSENCE OF STATE ACTION.—If a State insur-
18 ance authority fails to adopt regulations to carry out this
19 subtitle, such State shall not be eligible to override, pursu-
20 ant to section 45(g)(2)(B)(iii) of the Federal Deposit In-
21 surance Act, the insurance customer protection regula-
22 tions prescribed by a Federal banking agency under sec-
23 tion 45(a) of such Act.

1 (d) REMEDIES.—The remedies provided in this sec-
2 tion are the exclusive remedies for violations of this sub-
3 title and the standards established under this subtitle.

4 (e) DEFINITIONS.—The terms used in subsection
5 (a)(1) that are not defined in this subtitle or otherwise
6 defined in section 3(s) of the Federal Deposit Insurance
7 Act shall have the meaning given to them in section 1(b)
8 of the International Banking Act of 1978.

9 **SEC. 506. FAIR CREDIT REPORTING ACT AMENDMENT.**

10 (a) AMENDMENT.—Section 621(d) of the Fair Credit
11 Reporting Act (15 U.S.C. 1681s) is amended by striking
12 everything following the end of the second sentence.

13 (b) RELATION TO OTHER PROVISIONS.—Except for
14 the amendment made by subsection (a), nothing in this
15 title shall be construed to modify, limit, or supersede the
16 operation of the Fair Credit Reporting Act, and no infer-
17 ence shall be drawn on the basis of the provisions of this
18 title regarding whether information is transaction or expe-
19 rience information under section 603 of such Act.

20 **SEC. 507. STUDY OF INFORMATION.**

21 (a) IN GENERAL.—The Secretary of the Treasury, in
22 conjunction with the Federal functional regulators and the
23 Federal Trade Commission, shall conduct a study of infor-
24 mation sharing practices among financial institutions and
25 their affiliates. Such study shall include—

1 (1) the purposes for the sharing of confidential
2 customer information with affiliates or with non-
3 affiliated third parties;

4 (2) the extent and adequacy of security protec-
5 tions for such information;

6 (3) the potential risks for customer privacy of
7 such sharing of information;

8 (4) the potential benefits for financial institu-
9 tions and affiliates of such sharing of information;

10 (5) the potential benefits for customers of such
11 sharing of information;

12 (6) the adequacy of existing laws to protect cus-
13 tomer privacy;

14 (7) the adequacy of financial institution privacy
15 policy and privacy rights disclosure under existing
16 law;

17 (8) the feasibility of different approaches, in-
18 cluding opt-out and opt-in, to permit customers to
19 direct that confidential information not be shared
20 with affiliates and nonaffiliated third parties; and

21 (9) the feasibility of restricting sharing of infor-
22 mation for specific uses or of permitting customers
23 to direct the uses for which information may be
24 shared.

1 (b) CONSULTATION.—The Secretary shall consult
2 with representatives of State insurance authorities des-
3 ignated by the National Association of Insurance Commis-
4 sioners, and with financial services industry, consumer or-
5 ganizations and privacy groups, and other representatives
6 of the general public, in formulating and conducting the
7 study required by subsection (a).

8 (c) REPORT.—Before the end of the 18-month period
9 beginning on the date of the enactment of this Act, the
10 Secretary shall submit a report to the Congress containing
11 the findings and conclusions of the study required under
12 subsection (a), together with such recommendations for
13 legislative or administrative action as may be appropriate.

14 **SEC. 509. DEFINITIONS.**

15 As used in this subtitle:

16 (1) FEDERAL BANKING AGENCY.—The term
17 “Federal banking agency” has the meanings given
18 to such terms in section 3 of the Federal Deposit In-
19 surance Act.

20 (2) FEDERAL FUNCTIONAL REGULATOR.—The
21 term “Federal functional regulator” means—

22 (A) the Board of Governors of the Federal
23 Reserve System;

24 (B) the Office of the Comptroller of the
25 Currency;

1 (C) the Board of Directors of the Federal
2 Deposit Insurance Corporation;

3 (D) the Director of the Office of Thrift
4 Supervision;

5 (E) the National Credit Union Administra-
6 tion Board;

7 (F) the Securities and Exchange Commis-
8 sion;

9 (G) the Federal Housing Finance Board;
10 and

11 (H) the Office of Federal Housing Enter-
12 prise Oversight.

13 (3) FINANCIAL INSTITUTION.—

14 (A) IN GENERAL.—The term “financial in-
15 stitution” means any institution the business of
16 which is engaging in financial activities as de-
17 scribed in section 4(k) of the Bank Holding
18 Company Act of 1956.

19 (B) PERSONS SUBJECT TO CFTC REGU-
20 LATION.—Notwithstanding subparagraph (A),
21 the term ‘financial institution’ does not include
22 any person or entity with respect to any finan-
23 cial activity that is subject to the jurisdiction of
24 the Commodity Futures Trading Commission
25 under the Commodity Exchange Act.

1 (C) FARM CREDIT INSTITUTIONS.—Not-
2 withstanding subparagraph (A), the term ‘fi-
3 nancial institution’ does not include the Federal
4 Agricultural Mortgage Corporation, any Federal
5 land bank, Federal land bank association, Fed-
6 eral intermediate credit bank, or production
7 credit association under the Farm Credit Act of
8 1971.

9 (4) INDEPENDENT FINANCIAL INSTITUTION.—
10 The term “independent financial institution” means
11 a financial institution that is not—

12 (A) a financial holding company that has
13 filed a declaration with the Board of Governors
14 of the Federal Reserve System under section
15 4(l)(1)(C) of the Bank Holding company Act of
16 1956, or an affiliate of such a holding company;

17 (B) a national bank that controls a finan-
18 cial subsidiary under section 5136A of the Re-
19 vised Statutes, or a financial subsidiary of such
20 a national bank; or

21 (C) a savings and loan holding company
22 that is described in section 10(e)(3) of the
23 Home Owners Loan Act and that is engaged in
24 any activity, or has acquired and retained the
25 shares of any company engaged in any activity,

1 that a bank holding company was not permitted
2 to engage in the day before the date of the en-
3 actment of the Financial Services Moderniza-
4 tion Act of 1999, or an affiliate of such a hold-
5 ing company.

6 (5) NONPUBLIC PERSONAL INFORMATION.—

7 (A) The term “nonpublic personal informa-
8 tion” means personally identifiable financial
9 information—

10 (i) provided by a consumer to a finan-
11 cial institution;

12 (ii) resulting from any transaction
13 with the consumer or any service per-
14 formed for the consumer; or

15 (iii) otherwise obtained by the finan-
16 cial institution.

17 (B) Such term does not include publicly
18 available information, as such term is defined
19 by the regulations prescribed under section 504.

20 (C) Notwithstanding subparagraph (B),
21 such term—

22 (i) shall include any list, description,
23 or other grouping of consumers (and pub-
24 licly available information pertaining to
25 them) that is derived using any personally

1 identifiable financial information other
2 than publicly available information; but

3 (ii) shall not include any list, descrip-
4 tion, or other grouping of consumers (and
5 publicly available information pertaining to
6 them) that is derived without using any
7 personally identifiable financial information
8 other than publicly available information.

9 (6) NONAFFILIATED THIRD PARTIES.—The
10 term “nonaffiliated third parties” means any entity
11 that is not an affiliate of the financial institution,
12 but does not include a joint employee of such insti-
13 tution.

14 (7) AFFILIATE.—The term “affiliate” means—

15 (A) any company that controls, is con-
16 trolled by, or is under common control with an-
17 other company; or

18 (B) any mutually or cooperatively owned
19 entity, and its affiliates (within the meaning of
20 subparagraph (A)), that have entered into a
21 formal contractual agreement to make products
22 or services, or both, available to such entity or
23 its members.

1 (8) NECESSARY TO EFFECT, ADMINISTER, OR
2 ENFORCE.—The term “as necessary to effect, ad-
3 minister or enforce the transaction” means—

4 (A) the disclosure is required, or is a
5 usual, appropriate or acceptable method, to
6 carry out the transaction or the product or
7 service business of which the transaction is a
8 part, including recording, servicing, or main-
9 taining the consumer’s account in the ordinary
10 course of providing the financial service or fi-
11 nancial product, or to administer or service ben-
12 efits or claims relating to the transaction or the
13 product or service business of which it is a part,
14 and includes—

15 (i) providing the consumer or the con-
16 sumer’s agent or broker with a confirma-
17 tion, statement, or other record of the
18 transaction, or information on the status
19 or value of the financial service or financial
20 product; and

21 (ii) the accrual or recognition of in-
22 centives or bonuses associated with the
23 transaction that are provided by the finan-
24 cial institution or any other party;

1 (B) the disclosure is required, or is one of
2 the lawful or appropriate methods, to enforce
3 the rights of the financial institution or of other
4 persons engaged in carrying out the financial
5 transaction, or providing the product or service;

6 (C) the disclosure is required, or is a
7 usual, appropriate, or acceptable method, for
8 insurance underwriting at the consumer's re-
9 quest or for reinsurance purposes, or for any of
10 the following purposes as they relate to a con-
11 sumer's insurance: account administration, re-
12 porting, investigating, or preventing fraud or
13 material misrepresentation, processing premium
14 payments, processing insurance claims, admin-
15 istering insurance benefits (including utilization
16 review activities), participating in research
17 projects, or as otherwise required or specifically
18 permitted by Federal or State law; or

19 (D) the disclosure is required, or is a
20 usual, appropriate or acceptable method, in con-
21 nection with—

22 (i) the authorization, settlement, bill-
23 ing, processing, clearing, transferring, rec-
24 onciling, or collection of amounts charged,
25 debited, or otherwise paid using a debit,

1 credit, stored value, or other payment card,
2 check, or account number, or by other pay-
3 ment means;

4 (ii) the transfer of receivables, ac-
5 counts or interests therein; or

6 (iii) the audit of debit, credit or other
7 payment information.

8 (9) STATE INSURANCE AUTHORITY.—The term
9 “State insurance authority” means, in the case of
10 any person engaged in providing insurance, the
11 State insurance authority of the State in which the
12 person is domiciled.

13 (10) CONSUMER.—The term “consumer”
14 means—

15 (A) an individual who obtains, from a fi-
16 nancial institution, financial products or serv-
17 ices which are to be used primarily for personal,
18 family, or household purposes; and

19 (B) the legal representative of an indi-
20 vidual described in subparagraph (A).

21 (11) JOINT AGREEMENT.—The term “joint
22 agreement” means a formal written contract pursu-
23 ant to which two or more persons, at least one of
24 which is a financial institution, offer, endorse, or
25 sponsor a financial product or service.

1 **SEC. 510. EFFECTIVE DATE.**

2 This subtitle shall take effect 18 months after the
3 date of the enactment of this Act, except—

4 (1) to the extent that a later date is specified
5 in the regulations prescribed under section 504;
6 and

7 (2) that section 504 and 506 shall be effective
8 upon enactment.

9 **Subtitle B—Fraudulent Access to**
10 **Financial Information**

11 **SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMA-**
12 **TION OF FINANCIAL INSTITUTIONS.**

13 (a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
14 MATION BY FALSE PRETENSES.—It shall be a violation
15 of this subtitle for any person to obtain or attempt to ob-
16 tain, or cause to be disclosed or attempt to cause to be
17 disclosed to any person, customer information of a finan-
18 cial institution relating to another person—

19 (1) by making a false, fictitious, or fraudulent
20 statement or representation to an officer, employee,
21 or agent of a financial institution;

22 (2) by making a false, fictitious, or fraudulent
23 statement or representation to a customer of a fi-
24 nancial institution; or

25 (3) by providing any document to an officer,
26 employee, or agent of a financial institution, know-

1 ing that the document is forged, counterfeit, lost, or
2 stolen, was fraudulently obtained, or contains a
3 false, fictitious, or fraudulent statement or represen-
4 tation.

5 (b) PROHIBITION ON SOLICITATION OF A PERSON TO
6 OBTAIN CUSTOMER INFORMATION FROM FINANCIAL IN-
7 STITUTION UNDER FALSE PRETENSES.—It shall be a vio-
8 lation of this subtitle to request a person to obtain cus-
9 tomer information of a financial institution, knowing that
10 the person will obtain, or attempt to obtain, the informa-
11 tion from the institution in any manner described in sub-
12 section (a).

13 (c) NONAPPLICABILITY TO LAW ENFORCEMENT
14 AGENCIES.—No provision of this section shall be con-
15 strued to prevent any action by a law enforcement agency,
16 or any officer, employee, or agent of such agency, to obtain
17 customer information of a financial institution in connec-
18 tion with the performance of the official duties of the
19 agency.

20 (d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS
21 IN CERTAIN CASES.—No provision of this section shall be
22 construed to prevent any financial institution, or any offi-
23 cer, employee, or agent of a financial institution, from ob-
24 taining customer information of such financial institution
25 in the course of—

1 (1) testing the security procedures or systems
2 of such institution for maintaining the confiden-
3 tiality of customer information;

4 (2) investigating allegations of misconduct or
5 negligence on the part of any officer, employee, or
6 agent of the financial institution; or

7 (3) recovering customer information of the fi-
8 nancial institution which was obtained or received by
9 another person in any manner described in sub-
10 section (a) or (b).

11 (e) NONAPPLICABILITY TO INSURANCE INSTITU-
12 TIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No
13 provision of this section shall be construed to prevent any
14 insurance institution, or any officer, employee, or agency
15 of an insurance institution, from obtaining information as
16 part of an insurance investigation into criminal activity,
17 fraud, material misrepresentation, or material nondis-
18 closure that is authorized for such institution under State
19 law, regulation, interpretation, or order.

20 (f) NONAPPLICABILITY TO CERTAIN TYPES OF CUS-
21 TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No
22 provision of this section shall be construed to prevent any
23 person from obtaining customer information of a financial
24 institution that otherwise is available as a public record

1 filed pursuant to the securities laws (as defined in section
2 3(a)(47) of the Securities Exchange Act of 1934).

3 (g) NONAPPLICABILITY TO COLLECTION OF CHILD
4 SUPPORT JUDGMENTS.—No provision of this section shall
5 be construed to prevent any State-licensed private investi-
6 gator, or any officer, employee, or agent of such private
7 investigator, from obtaining customer information of a fi-
8 nancial institution, to the extent reasonably necessary to
9 collect child support from a person adjudged to have been
10 delinquent in his or her obligations by a Federal or State
11 court, and to the extent that such action by a State-li-
12 censed private investigator is not unlawful under any other
13 Federal or State law or regulation, and has been author-
14 ized by an order or judgment of a court of competent juris-
15 diction.

16 **SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

17 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
18 SION.—Except as provided in subsection (b), compliance
19 with this subtitle shall be enforced by the Federal Trade
20 Commission in the same manner and with the same power
21 and authority as the Commission has under the Fair Debt
22 Collection Practices Act to enforce compliance with that
23 title.

24 (b) ENFORCEMENT BY OTHER AGENCIES IN CER-
25 TAIN CASES.—

1 (1) IN GENERAL.—Compliance with this sub-
2 title shall be enforced under—

3 (A) section 8 of the Federal Deposit Insur-
4 ance Act, in the case of—

5 (i) national banks, and Federal
6 branches and Federal agencies of foreign
7 banks, by the Office of the Comptroller of
8 the Currency;

9 (ii) member banks of the Federal Re-
10 serve System (other than national banks),
11 branches and agencies of foreign banks
12 (other than Federal branches, Federal
13 agencies, and insured State branches of
14 foreign banks), commercial lending compa-
15 nies owned or controlled by foreign banks,
16 and organizations operating under section
17 25 or 25A of the Federal Reserve Act, by
18 the Board;

19 (iii) banks insured by the Federal De-
20 posit Insurance Corporation (other than
21 members of the Federal Reserve System
22 and national nonmember banks) and in-
23 sured State branches of foreign banks, by
24 the Board of Directors of the Federal De-
25 posit Insurance Corporation; and

1 (iv) savings associations the deposits
2 of which are insured by the Federal De-
3 posit Insurance Corporation, by the Direc-
4 tor of the Office of Thrift Supervision; and
5 (B) the Federal Credit Union Act, by the
6 Administrator of the National Credit Union Ad-
7 ministration with respect to any Federal credit
8 union.

9 (2) VIOLATIONS OF THIS SUBTITLE TREATED
10 AS VIOLATIONS OF OTHER LAWS.—For the purpose
11 of the exercise by any agency referred to in para-
12 graph (1) of its powers under any Act referred to in
13 that paragraph, a violation of this subtitle shall be
14 deemed to be a violation of a requirement imposed
15 under that Act. In addition to its powers under any
16 provision of law specifically referred to in paragraph
17 (1), each of the agencies referred to in that para-
18 graph may exercise, for the purpose of enforcing
19 compliance with this subtitle, any other authority
20 conferred on such agency by law.

21 **SEC. 523. CRIMINAL PENALTY.**

22 (a) IN GENERAL.—Whoever knowingly and inten-
23 tionally violates, or knowingly and intentionally attempts
24 to violate, section 521 shall be fined in accordance with

1 title 18, United States Code, imprisoned for not more than
2 5 years, or both.

3 (b) ENHANCED PENALTY FOR AGGRAVATED
4 CASES.—Whoever violates, or attempts to violate, section
5 521 while violating another provision of Federal law or
6 as part of a pattern of any illegal activity involving more
7 than \$100,000 in a 12-month period shall be fined twice
8 the amount provided in subsection (b)(3) or (c)(3) (as the
9 case may be) of section 3571 of title 18, United States
10 Code, imprisoned for not more than 10 years, or both.

11 **SEC. 524. RELATION TO STATE LAWS.**

12 (a) IN GENERAL.—This subtitle shall not be con-
13 strued as superseding, altering, or affecting any statute,
14 regulation, order, or interpretation in effect in any State,
15 except to the extent that such statute, regulation, order,
16 or interpretation are inconsistent with the provisions of
17 this subtitle, and then only to the extent of the inconsis-
18 ency.

19 (b) GREATER PROTECTION UNDER STATE LAW.—
20 For purposes of this section, a State statute, regulation,
21 order, or interpretation is not inconsistent with this sub-
22 title if the protection such statute, regulation, order, or
23 interpretation affords any person is greater than the pro-
24 tection provided under this subtitle as determined by the

1 Commission, on its own motion or upon the petition of
2 any interested party.

3 **SEC. 525. REPORTS.**

4 (a) REPORT TO THE CONGRESS.—Before the end of
5 the 18-month period beginning on the date of the enact-
6 ment of this Act, the Comptroller General, in consultation
7 with the Federal Trade Commission, Federal banking
8 agencies, the National Credit Union Administration, the
9 Securities and Exchange Commission, appropriate Federal
10 law enforcement agencies, and appropriate State insur-
11 ance regulators, shall submit to the Congress a report on
12 the following:

13 (1) The efficacy and adequacy of the remedies
14 provided in this subtitle in addressing attempts to
15 obtain financial information by fraudulent means or
16 by false pretenses.

17 (2) Any recommendations for additional legisla-
18 tive or regulatory action to address threats to the
19 privacy of financial information created by attempts
20 to obtain information by fraudulent means or false
21 pretenses.

22 (b) ANNUAL REPORT BY ADMINISTERING AGEN-
23 CIES.—The Federal Trade Commission and the Attorney
24 General shall submit to Congress an annual report on

1 number and disposition of all enforcement actions taken
2 pursuant to this subtitle.

3 **SEC. 526. DEFINITIONS.**

4 For purposes of this subtitle, the following definitions
5 shall apply:

6 (1) CUSTOMER.—The term “customer” means,
7 with respect to a financial institution, any person (or
8 authorized representative of a person) to whom the
9 financial institution provides a product or service,
10 including that of acting as a fiduciary.

11 (2) CUSTOMER INFORMATION OF A FINANCIAL
12 INSTITUTION.—The term “customer information of
13 a financial institution” means any information main-
14 tained by or for a financial institution which is de-
15 rived from the relationship between the financial in-
16 stitution and a customer of the financial institution
17 and is identified with the customer.

18 (3) DOCUMENT.—The term “document” means
19 any information in any form.

20 (4) FINANCIAL INSTITUTION.—

21 (A) IN GENERAL.—The term “financial in-
22 stitution” means any institution engaged in the
23 business of providing financial services to cus-
24 tomers who maintain a credit, deposit, trust, or

1 other financial account or relationship with the
2 institution.

3 (B) CERTAIN FINANCIAL INSTITUTIONS
4 SPECIFICALLY INCLUDED.—The term “financial
5 institution” includes any depository institution
6 (as defined in section 19(b)(1)(A) of the Fed-
7 eral Reserve Act), any broker or dealer, any in-
8 vestment adviser or investment company, any
9 insurance company, any loan or finance com-
10 pany, any credit card issuer or operator of a
11 credit card system, and any consumer reporting
12 agency that compiles and maintains files on
13 consumers on a nationwide basis (as defined in
14 section 603(p) of the Fair Credit Reporting
15 Act).

16 (C) SECURITIES INSTITUTIONS.—For pur-
17 poses of subparagraph (B)—

18 (i) the terms “broker” and “dealer”
19 have the meanings provided in section 3 of
20 the Securities Exchange Act of 1934 (15
21 U.S.C. 78c);

22 (ii) the term “investment adviser” has
23 the meaning provided in section 202(a)(11)
24 of the Investment Advisers Act of 1940
25 (15 U.S.C. 80b-2(a)); and

1 (iii) the term “investment company”
2 has the meaning provided in section 3 of
3 the Investment Company Act of 1940 (15
4 U.S.C. 80a-3).

5 (D) FURTHER DEFINITION BY REGULA-
6 TION.—The Federal Trade Commission, after
7 consultation with Federal banking agencies and
8 the Securities and Exchange Commission, may
9 prescribe regulations clarifying or describing
10 the types of institutions which shall be treated
11 as financial institutions for purposes of this
12 subtitle.