

Union Calendar No. 269

109TH CONGRESS
2^D SESSION

H. R. 3997

[Report No. 109–454, Parts I and II]

To amend the Fair Credit Reporting Act to provide for secure financial data, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2005

Mr. LATOURETTE (for himself, Ms. HOOLEY, Mr. CASTLE, Ms. PRYCE of Ohio, and Mr. MOORE of Kansas) introduced the following bill; which was referred to the Committee on Financial Services

MAY 4, 2006

Reported with an amendment and referred to the Committee on Energy and Commerce for a period ending not later than June 2, 2006, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(f), rule X

[Strike out all after the enacting clause and insert the part printed in *italic*]

JUNE 2, 2006

Additional sponsors: Mr. KENNEDY of Minnesota, Ms. HARRIS, Mr. JONES of North Carolina, Mr. GILLMOR, Mr. TIBERI, Mr. RENZI, Mrs. BIGGERT, Mr. PEARCE, Mr. NEY, Mr. SHAYS, Mr. PRICE of Georgia, Mr. SCOTT of Georgia, Ms. BEAN, Mr. MCHUGH, Mr. CLEAVER, Mr. WOLF, Mr. McCOTTER, Mr. FOLEY, Mr. HINOJOSA, and Mr. HOLDEN

JUNE 2, 2006

Reported from the Committee on Energy and Commerce with amendments; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on October 6, 2005]

A BILL

To amend the Fair Credit Reporting Act to provide for secure financial data, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “Fi-*
5 *ancial Data Protection Act of 2006”.*

6 (b) *FINDINGS.*—*The Congress finds as follows:*

7 (1) *Protecting the security of sensitive informa-*
8 *tion relating to consumers is important to limiting*
9 *account fraud and identity theft.*

10 (2) *While the Gramm-Leach-Bliley Act requires*
11 *financial institutions to protect the security and con-*
12 *fidentiality of the nonpublic personal information of*
13 *the customers of financial institutions, the scope of*
14 *covered entities and type of information needs to be*
15 *broadened to fully protect consumers.*

16 (3) *Some Federal agencies have issued model*
17 *guidance under the Gramm-Leach-Bliley Act requir-*
18 *ing banks to investigate and provide notice to cus-*
19 *tomers of breaches of data security involving customer*

1 *information that could lead to account fraud or iden-*
2 *tity theft, but these standards need to be broadened to*
3 *apply to other entities acting as consumer reporters,*
4 *in order to create a single, uniform data security*
5 *standard that applies to all parties to transactions*
6 *involving such financial information.*

7 (4) *Requiring all consumer reporters handling*
8 *sensitive financial personal information to provide*
9 *notice to consumers of data security breaches that are*
10 *likely to result in harm or inconvenience will help*
11 *consumers protect themselves and mitigate against the*
12 *risk of identity theft or account fraud.*

13 (5) *Therefore, all consumer reporters should—*

14 (A) *protect sensitive financial personal in-*
15 *formation;*

16 (B) *investigate potential data security*
17 *breaches;*

18 (C) *provide breach notices as appropriate to*
19 *the United States Secret Service, functional reg-*
20 *ulators, involved third parties, and consumers;*

21 (D) *restore the security of the information*
22 *and improve safeguards after a breach; and*

23 (E) *provide consumers free file monitoring*
24 *where appropriate to reduce the risk of identity*
25 *theft.*

1 **SEC. 2. DATA SECURITY SAFEGUARDS.**

2 (a) *IN GENERAL.*—As set forth in section 630 of the
3 *Fair Credit Reporting Act*, as amended by the Act, in the
4 event a consumer reporter becomes aware of information
5 suggesting a breach of data security, such consumer reporter
6 shall immediately conduct an investigation, and notify au-
7 thorities and consumers as appropriate.

8 (b) *FCRA DATA SECURITY AMENDMENT.*—The *Fair*
9 *Credit Reporting Act* (15 U.S.C. 1681) is amended by add-
10 ing at the end the following new section:

11 **“SEC. 630. DATA SECURITY SAFEGUARDS.**

12 “(a) *PROTECTION OF SENSITIVE FINANCIAL PER-*
13 *SONAL INFORMATION.*—

14 “(1) *DATA SECURITY OBLIGATION POLICY.*—It is
15 the policy of the Congress that each consumer reporter
16 has an affirmative and continuing obligation to pro-
17 tect the security and confidentiality of sensitive fi-
18 nancial personal information.

19 “(2) *SECURITY POLICIES AND PROCEDURES.*—
20 Each consumer reporter shall have an affirmative ob-
21 ligation to implement, and a continuing obligation to
22 maintain, reasonable policies and procedures to pro-
23 tect the security and confidentiality of sensitive fi-
24 nancial personal information relating to any con-
25 sumer that is handled by such consumer reporter
26 against any loss, unauthorized access, or misuse that

1 *is reasonably likely to result in harm or inconven-*
2 *ience to such consumer.*

3 “(3) *DATA DESTRUCTION AND DATA DISPOSAL*
4 *POLICIES AND PROCEDURES.*—*The policies and proce-*
5 *dures described in paragraph (2) shall include pro-*
6 *viding for the proper disposal of sensitive financial*
7 *personal information in accordance with the stand-*
8 *ards, guidelines, or regulations issued pursuant to*
9 *this title.*

10 “(b) *INVESTIGATION REQUIREMENTS.*—

11 “(1) *INVESTIGATION TRIGGER.*—*A consumer re-*
12 *porter shall immediately conduct a data security*
13 *breach investigation if it—*

14 “(A) *becomes aware of any information in-*
15 *dicating a reasonable likelihood that a data secu-*
16 *rity breach has occurred or is unavoidable;*

17 “(B) *becomes aware of information indi-*
18 *cating an unusual pattern of misuse of sensitive*
19 *financial personal information handled by a*
20 *consumer reporter indicative of financial fraud;*
21 *or*

22 “(C) *receives a notice under subsection (e).*

23 “(2) *SCOPE OF INVESTIGATION.*—*Such investiga-*
24 *tion shall be conducted in a manner commensurate*
25 *with the nature and the amount of the sensitive fi-*

1 *nancial personal information that is subject to the*
2 *breach of data security, including appropriate actions*
3 *to—*

4 *“(A) assess the nature and scope of the po-*
5 *tential breach;*

6 *“(B) identify the sensitive financial per-*
7 *sonal information potentially involved;*

8 *“(C) determine whether such information is*
9 *usable by the parties causing the breach; and*

10 *“(D) determine the likelihood that such in-*
11 *formation has been, or will be, misused in a*
12 *manner that may cause harm or inconvenience*
13 *to the related consumer.*

14 *“(3) ENCRYPTION AND OTHER SAFEGUARDS.—*

15 *“(A) SUGGESTED SAFEGUARDS.—The regu-*
16 *lators described in subsection (k)(1) shall jointly*
17 *develop standards and guidelines to identify and*
18 *regularly update appropriate technology safe-*
19 *guards for making consumer reporter’s sensitive*
20 *financial personal information unusable in a*
21 *manner commensurate with the nature and the*
22 *amount of such information, including—*

23 *“(i) consideration of the encryption*
24 *standards adopted by the National Institute*

1 *of Standards and Technology for use by the*
2 *Federal Government; and*

3 “(ii) *appropriate management and*
4 *protection of keys or codes necessary to pro-*
5 *tect the integrity of encrypted information.*

6 “(B) *SAFEGUARD FACTORS.—In deter-*
7 *mining the likelihood of a data security breach,*
8 *a consumer reporter may consider whether the*
9 *information subject to the potential breach is un-*
10 *usable because it is encrypted, redacted, requires*
11 *technology to use that is not generally commer-*
12 *cially available, or has otherwise similarly been*
13 *rendered unreadable.*

14 “(C) *SAFE HARBOR FOR PROTECTED*
15 *DATA.—As set forth in the standards and guide-*
16 *lines issued pursuant to subparagraph (A), a*
17 *consumer reporter may reasonably conclude that*
18 *a data security breach is not likely to have oc-*
19 *curred where the sensitive personal financial in-*
20 *formation involved has been encrypted, redacted,*
21 *requires technology to use that is not generally*
22 *commercially available, or is otherwise unlikely*
23 *to be usable*

24 “(D) *EXCEPTION.—Subparagraphs (B) and*
25 *(C) shall not apply if the consumer reporter be-*

1 *comes aware of information that would reason-*
2 *ably indicate that the information that was the*
3 *subject of the potential breach is usable by the*
4 *entities causing the breach or potentially mis-*
5 *using the information, for example because—*

6 *“(i) an encryption code is potentially*
7 *compromised,*

8 *“(ii) the entities are believed to have*
9 *the technology to access the information; or*

10 *“(iii) there is an unusual pattern of*
11 *misuse of such information indicative of fi-*
12 *nancial fraud.*

13 *“(c) BREACH NOTICES.—If a consumer reporter deter-*
14 *mines that a breach of data security has occurred, is likely*
15 *to have occurred, or is unavoidable, the consumer reporter*
16 *shall in the order listed—*

17 *“(1) promptly notify the United States Secret*
18 *Service;*

19 *“(2) promptly notify the appropriate functional*
20 *regulatory agency for the consumer reporter;*

21 *“(3) notify as appropriate and without unrea-*
22 *sonable delay—*

23 *“(A) any third party entity that owns or is*
24 *obligated on an affected financial account as set*
25 *forth in the standards or guidelines pursuant to*

1 *subsection (k)(1)(G), including in such notifica-*
2 *tion information reasonably identifying the na-*
3 *ture and scope of the breach and the sensitive fi-*
4 *nancial personal information involved; and*

5 *“(B) any other appropriate critical third*
6 *parties whose involvement is necessary to inves-*
7 *tigate the breach; and*

8 *“(4) without unreasonable delay notify any af-*
9 *ected consumers to the extent required in subsection*
10 *(f), as well as—*

11 *“(A) each nationwide consumer reporting*
12 *agency, in the case of a breach involving sen-*
13 *sitive financial identity information relating to*
14 *1,000 or more consumers; and*

15 *“(B) any other appropriate critical third*
16 *parties who will be required to undertake further*
17 *action with respect to such information to pro-*
18 *tect such consumers from resulting fraud or iden-*
19 *tity theft.*

20 *“(d) SYSTEM RESTORATION REQUIREMENTS.—If a*
21 *consumer reporter determines that a breach of data security*
22 *has occurred, is likely to have occurred, or is unavoidable,*
23 *the consumer reporter shall take prompt and reasonable*
24 *measures to—*

1 “(1) repair the breach and restore the security
2 and confidentiality of the sensitive financial personal
3 information involved to limit further unauthorized
4 misuse of such information; and

5 “(2) restore the integrity of the consumer report-
6 er’s data security safeguards and make appropriate
7 improvements to its data security policies and proce-
8 dures.

9 “(e) *THIRD PARTY DUTIES.*—

10 “(1) *COORDINATED INVESTIGATION.*—Whenever
11 any consumer reporter that handles sensitive finan-
12 cial personal information for or on behalf of another
13 party becomes aware that an investigation is required
14 under subsection (b) with respect to such information,
15 the consumer reporter shall—

16 “(A) promptly notify the other party of the
17 breach;

18 “(B) conduct a coordinated investigation
19 with the other party as described in subsection
20 (b); and

21 “(C) ensure that the appropriate notices are
22 provided as required under subsection (f).

23 “(2) *CONTRACTUAL OBLIGATION REQUIRED.*—No
24 consumer reporter may provide sensitive financial
25 personal information to a third party, unless such

1 *third party agrees to fulfill the obligations imposed by*
2 *subsections (a), (d), and (h), as well as that whenever*
3 *the third party becomes aware that a breach of data*
4 *security has occurred, is reasonably likely to have oc-*
5 *curred, or is unavoidable, with respect to such infor-*
6 *mation, the third party shall be obligated—*

7 *“(A) to provide notice of the potential*
8 *breach to the consumer reporter;*

9 *“(B) to conduct a coordinated investigation*
10 *with the consumer reporter to identify the sen-*
11 *sitive financial personal information involved*
12 *and determine if the potential breach is reason-*
13 *ably likely to result in harm or inconvenience to*
14 *any consumer to whom the information relates;*
15 *and*

16 *“(C) provide any notices required under*
17 *this section, except to the extent that such notices*
18 *are provided by the consumer reporter in a man-*
19 *ner meeting the requirements of this section.*

20 *“(f) CONSUMER NOTICE.—*

21 *“(1) POTENTIAL IDENTITY THEFT RISK AND*
22 *FRAUDULENT TRANSACTION RISK.—A consumer re-*
23 *porter shall provide a consumer notice if, at any*
24 *point the consumer reporter becomes aware—*

1 “(A) that a breach of data security is rea-
2 sonably likely to have occurred or be unavoid-
3 able, with respect to sensitive financial personal
4 information handled by the consumer reporter;

5 “(B) of information reasonably identifying
6 the nature and scope of the breach; and

7 “(C) that such information is reasonably
8 likely to have been or to be misused in a manner
9 causing harm or inconvenience against the con-
10 sumers to whom such information relates to—

11 “(i) commit identity theft if the infor-
12 mation is sensitive financial identity infor-
13 mation, or

14 “(ii) make fraudulent transactions on
15 such consumers’ financial accounts if the
16 information is sensitive financial account
17 information.

18 “(2) SECURITY PROGRAM SAFEGUARDS AND REG-
19 ULATIONS.—

20 “(A) STANDARDS FOR SAFEGUARDS.—The
21 regulators described in subsection (k)(1) shall
22 issue guidelines relating to the types of sophisti-
23 cated neural networks and security programs
24 that are likely to detect fraudulent account activ-
25 ity and at what point detection of such activity

1 *is sufficient to avoid consumer notice under this*
2 *subsection.*

3 “(B) *ALTERNATIVE SAFEGUARDS.*—*In de-*
4 *termining the likelihood of misuse of sensitive fi-*
5 *nancial account information and whether a no-*
6 *tice is required under paragraph (1), the con-*
7 *sumer reporter may additionally consider—*

8 “(i) *consistent with any standards pro-*
9 *mulgated under subparagraph (A), whether*
10 *any neural networks or security programs*
11 *used by, or on behalf of, the consumer re-*
12 *porter have detected, or are likely to detect*
13 *on an ongoing basis over a reasonable pe-*
14 *riod of time, fraudulent transactions result-*
15 *ing from the breach of data security; or*

16 “(ii) *whether no harm or inconven-*
17 *ience is reasonably likely to have occurred,*
18 *because for example the related consumer*
19 *account has been closed or its number has*
20 *been changed.*

21 “(3) *COORDINATION WITH THE FAIR DEBT COL-*
22 *LECTION PRACTICES ACT.*—*The provision of a notice*
23 *to the extent such notice and its contents are required*
24 *under this section shall not be considered a commu-*
25 *nication under the Fair Debt Collection Practices Act.*

1 “(4) *COORDINATION OF CONSUMER NOTICE DATA-*
2 *BASE.—*

3 “(A) *IN GENERAL.—The Commission shall*
4 *coordinate with the other government entities*
5 *identified in this section to create a publicly*
6 *available list of data security breaches that have*
7 *triggered a notice to consumers under this sub-*
8 *section within the last 12 months.*

9 “(B) *LISTED INFORMATION.—The publicly*
10 *available list described in subparagraph (A)*
11 *shall include the following:*

12 “(i) *The identity of the party respon-*
13 *sible that suffered the breach.*

14 “(ii) *A general description of the na-*
15 *ture and scope of the breach.*

16 “(iii) *Any financial fraud mitigation*
17 *or other services provided by such party to*
18 *the affected consumers, including the tele-*
19 *phone number and other appropriate con-*
20 *tact information for accessing such services.*

21 “(g) *TIMING, CONTENT, AND MANNER OF NOTICES.—*

22 “(1) *DELAY OF NOTICE FOR LAW ENFORCEMENT*
23 *PURPOSES.—If a consumer reporter receives a written*
24 *request from an appropriate law enforcement agency*
25 *indicating that the provision of a notice under sub-*

1 *section (c)(3) or (f) would impede a criminal or civil*
2 *investigation by that law enforcement agency, or an*
3 *oral request from an appropriate law enforcement*
4 *agency indicating that such a written request will be*
5 *provided within 2 business days—*

6 *“(A) the consumer reporter shall delay, or*
7 *in the case of a foreign law enforcement agency*
8 *may delay, providing such notice until—*

9 *“(i) the law enforcement agency in-*
10 *forms the consumer reporter that such no-*
11 *tice will no longer impede the investigation;*
12 *or*

13 *“(ii) the law enforcement agency fails*
14 *to—*

15 *“(I) provide within 10 days a*
16 *written request to continue such delay*
17 *for a specific time that is approved by*
18 *a court of competent jurisdiction; or*

19 *“(II) in the case of an oral request*
20 *for a delay, provide a written request*
21 *within 2 business days, and if such*
22 *delay is requested for more than 10 ad-*
23 *ditional days, such request must be ap-*
24 *proved by a court of competent juris-*
25 *isdiction; and*

1 “(B) the consumer reporter may—

2 “(i) conduct appropriate security
3 measures that are not inconsistent with
4 such request; and

5 “(ii) contact such law enforcement
6 agency to determine whether any such in-
7 consistency would be created by such meas-
8 ures.

9 “(2) *HOLD HARMLESS PROVISION.*—A consumer
10 reporter shall not be liable for any fraud mitigation
11 costs or for any losses that would not have occurred
12 but for notice to or the provision of sensitive financial
13 personal information to law enforcement, or the delay
14 provided for under this subsection, except that—

15 “(A) nothing in this subparagraph shall be
16 construed as creating any inference with respect
17 to the establishment or existence of any such li-
18 ability; and

19 “(B) this subparagraph shall not apply if
20 the costs or losses would not have occurred had
21 the consumer reporter undertaken reasonable sys-
22 tem restoration requirements to the extent re-
23 quired under subsection (d), or other similar
24 provision of law, except to the extent that such

1 *system restoration was delayed at the request of*
2 *law enforcement.*

3 “(3) *CONTENT OF CONSUMER NOTICE.—Any no-*
4 *tice required to be provided by a consumer reporter*
5 *to a consumer under subsection (f)(1), and any notice*
6 *required in accordance with subsection (e)(2)(A), shall*
7 *be provided in a standardized transmission or exclu-*
8 *sively colored envelope, and shall include the following*
9 *in a clear and conspicuous manner:*

10 “(A) *An appropriate heading or notice title.*

11 “(B) *A description of the nature and types*
12 *of information and accounts as appropriate that*
13 *were, or are reasonably believed to have been,*
14 *subject to the breach of data security.*

15 “(C) *A statement identifying the party re-*
16 *sponsible, if known, that suffered the breach, in-*
17 *cluding an explanation of the relationship of*
18 *such party to the consumer.*

19 “(D) *If known, the date, or the best reason-*
20 *able approximation of the period of time, on or*
21 *within which sensitive financial personal infor-*
22 *mation related to the consumer was, or is rea-*
23 *sonably believed to have been, subject to a breach.*

24 “(E) *A general description of the actions*
25 *taken by the consumer reporter to restore the se-*

1 *curity and confidentiality of the breached infor-*
2 *mation.*

3 “(F) *A telephone number by which a con-*
4 *sumer to whom the breached information relates*
5 *may call free of charge to obtain additional in-*
6 *formation about how to respond to the breach.*

7 “(G) *With respect to notices involving sen-*
8 *sitive financial identity information, a copy of*
9 *the summary of rights of consumer victims of*
10 *fraud or identity theft prepared by the Commis-*
11 *sion under section 609(d), as well as any addi-*
12 *tional appropriate information on how the con-*
13 *sumer may—*

14 “(i) *obtain a copy of a consumer re-*
15 *port free of charge in accordance with sec-*
16 *tion 612;*

17 “(ii) *place a fraud alert in any file re-*
18 *lating to the consumer at a consumer re-*
19 *porting agency under section 605A to dis-*
20 *courage unauthorized use; and*

21 “(iii) *contact the Commission for more*
22 *detailed information.*

23 “(H) *With respect to notices involving sen-*
24 *sitive financial identity information, a promi-*
25 *nent statement in accordance with subsection (h)*

1 that file monitoring will be made available to the
2 consumer free of charge for a period of not less
3 than six months, together with a telephone num-
4 ber for requesting such services, and may also in-
5 clude such additional contact information as a
6 mailing address, e-mail, or Internet website ad-
7 dress.

8 “(I) The approximate date the notice is
9 being issued.

10 “(4) OTHER TRANSMISSION OF NOTICE.—The no-
11 tice described in paragraph (3) may be made by other
12 means of transmission (such as electronic or oral) to
13 a consumer only if—

14 “(A) the consumer has affirmatively con-
15 sented to such use, has not withdrawn such con-
16 sent, and with respect to electronic transmissions
17 is provided with the appropriate statements re-
18 lated to such consent as described in section
19 101(c)(1) of the *Electronic Signatures in Global*
20 *and National Commerce Act*; and

21 “(B) all of the relevant information in
22 paragraph (3) is communicated to such con-
23 sumer in such transmission.

24 “(5) DUPLICATIVE NOTICES.—

1 “(A) *IN GENERAL.*—A consumer reporter,
2 *whether acting directly or in coordination with*
3 *another entity—*

4 “(i) *shall not be required to provide*
5 *more than 1 notice with respect to any*
6 *breach of data security to any affected con-*
7 *sumer, so long as such notice meets all the*
8 *applicable requirements of this section, and*

9 “(ii) *shall not be required to provide a*
10 *notice with respect to any consumer if a no-*
11 *tice meeting the applicable requirements of*
12 *this section has already been provided to*
13 *such consumer by another entity.*

14 “(B) *UPDATING NOTICES.*—*If a consumer*
15 *notice is provided to consumers pursuant only to*
16 *subsection (f)(1)(C)(ii) (relating to sensitive fi-*
17 *nancial account information), and the consumer*
18 *reporter subsequently becomes aware of a reason-*
19 *able likelihood that sensitive financial personal*
20 *information involved in the breach is being mis-*
21 *used in a manner causing harm or inconven-*
22 *ience against such consumer to commit identity*
23 *theft, an additional notice shall be provided to*
24 *such consumers as well any other appropriate*
25 *parties under this section, including a copy of*

1 *the Commission’s summary of rights and file*
2 *monitoring mitigation instructions under sub-*
3 *paragraphs (G) and (H) of paragraph (3).*

4 “(6) *RESPONSIBILITY AND COSTS.—*

5 “(A) *IN GENERAL.—Except as otherwise es-*
6 *tablished by written agreement between the con-*
7 *sumer reporter and its agents or third party*
8 *servicers, the entity that suffered a breach of*
9 *data security shall be—*

10 “(i) *primarily responsible for pro-*
11 *viding any consumer notices and file moni-*
12 *toring required under this section with re-*
13 *spect to such breach; and*

14 “(ii) *responsible for the reasonable ac-*
15 *tual costs of any notices provided under this*
16 *section.*

17 “(B) *IDENTIFICATION TO CONSUMERS.—No*
18 *such agreement shall restrict the ability of a con-*
19 *sumer reporter to identify the entity responsible*
20 *for the breach to consumers*

21 “(C) *NO CHARGE TO CONSUMERS.— The*
22 *cost for the notices and file monitoring described*
23 *in subparagraph (A) may not be charged to the*
24 *related consumers.*

25 “(h) *FINANCIAL FRAUD MITIGATION.—*

1 “(1) *FREE FILE MONITORING.*—Any consumer
2 reporter that is required to provide notice to a con-
3 sumer under subsection (f)(1)(C)(i), or that is deemed
4 to be in compliance with such requirement by oper-
5 ation of subsection (j), if requested by the consumer
6 before the end of the 90-day period beginning on the
7 date of such notice, shall make available to the con-
8 sumer, free of charge and for at least a 6-month pe-
9 riod—

10 “(A) a service that monitors nationwide
11 credit activity regarding a consumer from a con-
12 sumer reporting agency described in section
13 603(p); or

14 “(B) a service that provides identity-moni-
15 toring to consumers on a nationwide basis that
16 meets the guidelines described in paragraph (2).

17 “(2) *IDENTITY MONITORING NETWORKS.*—The
18 regulators described in subsection (k)(1) shall issue
19 guidelines on the type of identity monitoring net-
20 works that are likely to detect fraudulent identity ac-
21 tivity regarding a consumer on a nationwide basis
22 and would satisfy the requirements of paragraph (1).

23 “(3) *JOINT RULEMAKING FOR SAFE HARBOR.*—
24 In accordance with subsection (j), the Secretary of the
25 Treasury, the Board of Governors of the Federal Re-

1 *serve System, and the Commission shall jointly de-*
2 *velop standards and guidelines, which shall be issued*
3 *by all functional regulatory agencies, that, in any*
4 *case in which—*

5 *“(A) free file monitoring is offered under*
6 *paragraph (1) to a consumer;*

7 *“(B) subsequent to the offer, another party*
8 *misuses sensitive financial identity information*
9 *on the consumer obtained through the breach of*
10 *data security (that gave rise to such offer) to*
11 *commit identity theft against the consumer; and*

12 *“(C) at the time of such breach the con-*
13 *sumer reporter met the requirements of sub-*
14 *sections (a) and (d),*

15 *exempts the consumer reporter from any liability for*
16 *any harm to the consumer resulting from such mis-*
17 *use, other than any direct pecuniary loss or loss pur-*
18 *suant to agreement by the consumer reporter, except*
19 *that nothing in this paragraph shall be construed as*
20 *creating any inference with respect to the establish-*
21 *ment or existence of any such liability.*

22 *“(i) CREDIT SECURITY FREEZE.—*

23 *“(1) DEFINITIONS.—For purposes of this sub-*
24 *section, the following definitions shall apply:*

1 “(A) *SECURITY FREEZE.*—The term ‘secu-
2 *urity freeze*’ means a notice placed in a credit re-
3 *port on a consumer, at the request of the con-*
4 *sumer who is a victim of identity theft, that pro-*
5 *hibits the consumer reporting agency from re-*
6 *leasing all or any part of the credit report, with-*
7 *out the express authorization of the consumer, ex-*
8 *cept as otherwise provided in this section.*

9 “(B) *REVIEWING THE ACCOUNT; ACCOUNT*
10 *REVIEW.*—The terms ‘*reviewing the account*’ and
11 ‘*account review*’ include activities related to ac-
12 *count maintenance, monitoring, credit line in-*
13 *creases, and account upgrades and enhance-*
14 *ments.*

15 “(2) *REQUEST FOR A SECURITY FREEZE.*—

16 “(A) *IN GENERAL.*—A consumer who has
17 *been the victim of identity theft may place a se-*
18 *curity freeze on the file of such consumer at any*
19 *consumer reporting agency by—*

20 “(i) *making a request in writing by*
21 *certified mail to the consumer reporting*
22 *agency;*

23 “(ii) *submitting an identity theft re-*
24 *port to the consumer reporting agency; and*

1 “(iii) providing such evidence of the
2 identity of the consumer as such consumer
3 reporting agency may require under para-
4 graph (5).

5 “(B) *PROMPT IMPOSITION OF FREEZE.*—A
6 consumer reporting agency shall place a security
7 freeze on a credit report on a consumer no later
8 than 5 business days after receiving a written re-
9 quest from the consumer in accordance with sub-
10 paragraph (A).

11 “(C) *EFFECT OF FREEZE.*—

12 “(i) *IN GENERAL.*—Except as otherwise
13 provided in this subsection, if a security
14 freeze is in place with respect to any con-
15 sumer, information from the consumer’s
16 credit report may not be released by the
17 consumer reporting agency or reseller to
18 any third party, including another con-
19 sumer reporting agency or reseller, without
20 the prior express authorization from the
21 consumer or as otherwise permitted in this
22 section.

23 “(ii) *ADVISING OF EXISTENCE OF SE-*
24 *CURITY FREEZE.*—Clause (i) shall not be
25 construed as preventing a consumer report-

1 *ing agency or reseller from advising a third*
2 *party that a security freeze is in effect with*
3 *respect to the credit report on the consumer.*

4 *“(D) CONFIRMATION OF FREEZE; ACCESS*
5 *CODE.—Any consumer reporting agency that re-*
6 *ceives a consumer request for a security freeze in*
7 *accordance with subparagraph (A) shall—*

8 *“(i) send a written confirmation of the*
9 *security freeze to the consumer within 10*
10 *business days of placing the freeze; and*

11 *“(ii) at the same time, provide the con-*
12 *sumer with a unique personal identification*
13 *number or password (other than the Social*
14 *Security account number of any consumer)*
15 *to be used by the consumer when providing*
16 *authorization for the release of the credit re-*
17 *port of the consumer to a specific party or*
18 *for a specific period of time.*

19 *“(3) ACCESS PURSUANT TO CONSUMER AUTHOR-*
20 *IZATION DURING SECURITY FREEZE.—*

21 *“(A) NOTICE BY CONSUMER.—If the con-*
22 *sumer wishes to allow the credit report on the*
23 *consumer to be accessed by a specific party or for*
24 *a specific period of time while a freeze is in*
25 *place, the consumer shall—*

1 “(i) contact the consumer reporting
2 agency in any manner the agency may pro-
3 vide;

4 “(ii) request that the security freeze be
5 temporarily lifted; and

6 “(iii) provide—

7 “(I) proper identification;

8 “(II) the unique personal identi-
9 fication number or password provided
10 by the consumer reporting agency pur-
11 suant to paragraph (2)(D)(ii); and

12 “(III) the proper information re-
13 garding the third party who is to re-
14 ceive the credit report or the time pe-
15 riod for which the report shall be avail-
16 able to users of the credit report.

17 “(B) *TIMELY RESPONSE REQUIRED.*—A
18 consumer reporting agency that receives a re-
19 quest from a consumer to temporarily lift a secu-
20 rity freeze on a credit report in accordance with
21 subparagraph (A) shall comply with the request
22 no later than 3 business days after receiving the
23 request.

24 “(C) *PROCEDURES FOR REQUESTS.*—A con-
25 sumer reporting agency may develop procedures

1 *involving the use of telephone, fax, or, upon the*
2 *consent of the consumer in the manner required*
3 *by the Electronic Signatures in Global and Na-*
4 *tional Commerce Act for notices legally required*
5 *to be in writing, by the Internet, e-mail, or other*
6 *electronic medium to receive and process a re-*
7 *quest from a consumer to temporarily lift a secu-*
8 *rity freeze on a credit report pursuant to sub-*
9 *paragraph (A) in an expedited manner.*

10 “(4) *LIFTING OR REMOVING SECURITY*
11 *FREEZE.—*

12 “(A) *IN GENERAL.—A consumer reporting*
13 *agency may remove or temporarily lift a secu-*
14 *rity freeze placed on a credit report on a con-*
15 *sumer only in the following cases:*

16 “(i) *Upon receiving a consumer request*
17 *for a temporary lift of the security freeze in*
18 *accordance with paragraph (3)(A).*

19 “(ii) *Upon receiving a consumer re-*
20 *quest for the removal of the security freeze*
21 *in accordance with subparagraph (C).*

22 “(iii) *Upon a determination by the*
23 *consumer reporting agency that the security*
24 *freeze was imposed on the credit report due*

1 to a material misrepresentation of fact by
2 the consumer.

3 “(B) NOTICE TO CONSUMER OF DETERMINA-
4 TION.—If a consumer reporting agency makes a
5 determination described in subparagraph
6 (A)(iii) with a respect to a security freeze im-
7 posed on the credit report on any consumer, the
8 consumer reporting agency shall notify the con-
9 sumer of such determination in writing prior to
10 removing the security freeze on such credit re-
11 port.

12 “(C) REMOVING SECURITY FREEZE.—

13 “(i) IN GENERAL.—Except as provided
14 in this subsection, a security freeze shall re-
15 main in place until the consumer requests
16 that the security freeze be removed.

17 “(ii) PROCEDURE FOR REMOVING SE-
18 CURITY FREEZE.—A consumer reporting
19 agency shall remove a security freeze within
20 3 business days of receiving a request for re-
21 moval from the consumer who provides—

22 “(I) proper identification; and

23 “(II) the unique personal identi-
24 fication number or password provided

1 *by the consumer reporting agency pur-*
2 *suant to paragraph (2)(D)(ii).*

3 “(5) *PROPER IDENTIFICATION REQUIRED.—A*
4 *consumer reporting agency shall require proper iden-*
5 *tification of any person who makes a request to im-*
6 *pose, temporarily lift, or permanently remove a secu-*
7 *rity freeze on the credit report of any consumer under*
8 *this section.*

9 “(6) *THIRD PARTY REQUESTS.—If—*

10 “(A) *a third party requests access to a con-*
11 *sumer’s credit report on which a security freeze*
12 *is in effect under this section in connection with*
13 *an application by the consumer for credit or any*
14 *other use; and*

15 “(B) *the consumer does not allow the con-*
16 *sumer’s credit report to be accessed by that spe-*
17 *cific party or during the specific period such ap-*
18 *plication is pending,*

19 *the third party may treat the application as incom-*
20 *plete.*

21 “(7) *CERTAIN ENTITY EXEMPTIONS.—*

22 “(A) *AGGREGATORS AND OTHER AGEN-*
23 *CIES.—This subsection shall not apply to a con-*
24 *sumer reporting agency that acts only as a re-*
25 *seller of credit information by assembling and*

1 *merging information contained in the database*
2 *of another consumer reporting agency or mul-*
3 *tiple consumer reporting agencies, and does not*
4 *maintain a permanent database of credit infor-*
5 *mation from which new credit reports are pro-*
6 *duced.*

7 “(B) *OTHER EXEMPTED ENTITIES.*—*The*
8 *following entities shall not be required to place*
9 *a security freeze in a credit report:*

10 “(i) *An entity which provides check*
11 *verification or fraud prevention services, in-*
12 *cluding but not limited to, reports on inci-*
13 *dents of fraud, verification or authentica-*
14 *tion of a consumer’s identification, or au-*
15 *thorizations for the purpose of approving or*
16 *processing negotiable instruments, electronic*
17 *funds transfers, or similar methods of pay-*
18 *ments.*

19 “(ii) *A deposit account information*
20 *service company, which issues reports re-*
21 *garding account closures due to fraud, sub-*
22 *stantial overdrafts, automated teller ma-*
23 *chine abuse, or similar negative informa-*
24 *tion regarding a consumer, to inquiring*
25 *banks or other financial institutions for use*

1 *only in reviewing a consumer request for a*
2 *deposit account at the inquiring bank or*
3 *other financial institution.*

4 “(8) *EXCEPTIONS.—This subsection shall not*
5 *apply with respect to the use of a consumer credit re-*
6 *port by any of the following for the purpose described:*

7 “(A) *A person, or any affiliate, agent, or*
8 *assignee of any person, with whom the consumer*
9 *has or, prior to an assignment, had an account,*
10 *contract, or debtor-creditor relationship for the*
11 *purposes of reviewing the account or collecting*
12 *the financial obligation owing for the account,*
13 *contract, or debt.*

14 “(B) *An affiliate, agent, assignee, or pro-*
15 *spective assignee of a person to whom access has*
16 *been granted under paragraph (3) for purposes*
17 *of facilitating the extension of credit or other*
18 *permissible use of the report in accordance with*
19 *the consumer’s request under such paragraph.*

20 “(C) *Any State or local agency, law enforce-*
21 *ment agency, trial court, or person acting pursu-*
22 *ant to a court order, warrant, or subpoena.*

23 “(D) *A Federal, State, or local agency that*
24 *administers a program for establishing an en-*

1 *forcing child support obligations for the purpose*
2 *of administering such program.*

3 “(E) *A Federal, State, or local health agen-*
4 *cy, or any agent or assignee of such agency, act-*
5 *ing to investigate fraud within the jurisdiction*
6 *of such agency.*

7 “(F) *A Federal, State, or local tax agency,*
8 *or any agent or assignee of such agency, acting*
9 *to investigate or collect delinquent taxes or un-*
10 *paid court orders or to fulfill any of other statu-*
11 *tory responsibility of such agency.*

12 “(G) *Any person that intends to use the in-*
13 *formation in accordance with section 604(c).*

14 “(H) *Any person administering a credit file*
15 *monitoring subscription or similar service to*
16 *which the consumer has subscribed.*

17 “(I) *Any person for the purpose of pro-*
18 *viding a consumer with a copy of the credit re-*
19 *port or credit score of the consumer upon the*
20 *consumer’s request.*

21 “(9) *PROHIBITION ON FEE.—A consumer report-*
22 *ing agency may not impose a fee for placing, remov-*
23 *ing, or removing for a specific party or parties a se-*
24 *curity freeze on a credit report.*

1 “(10) *NOTICE OF RIGHTS.*—*At any time that a*
2 *consumer is required to receive a summary of rights*
3 *required under section 609(c)(1) or 609(d)(1) the fol-*
4 *lowing notice shall be included:*

5 “*Consumers Who Are Victims of Identity*
6 *Theft Have the Right to Obtain a Security*
7 *Freeze on Your Consumer Report*

8 “*You may obtain a security freeze on your*
9 *consumer credit report at no charge if you are*
10 *a victim of identity theft and you submit a copy*
11 *of an identity theft report you have filed with a*
12 *law enforcement agency about unlawful use of*
13 *your personal information by another person.*

14 “*The security freeze will prohibit a credit*
15 *reporting agency from releasing any information*
16 *in your consumer credit report without your ex-*
17 *press authorization. A security freeze must be re-*
18 *quested in writing by certified mail.*

19 “*The security freeze is designed to prevent*
20 *credit, loans, and services from being approved*
21 *in your name without your consent. However,*
22 *you should be aware that using a security freeze*
23 *to take control over who gains access to the per-*
24 *sonal and financial information in your con-*
25 *sumer credit report may delay, interfere with, or*

1 *prohibit the timely approval of any subsequent*
2 *request or application you make regarding new*
3 *loans, credit, mortgage, insurance, government*
4 *services or payments, rental housing, employ-*
5 *ment, investment, license, cellular phone, utili-*
6 *ties, digital signature, internet credit card trans-*
7 *action, or other services, including an extension*
8 *of credit at point of sale.*

9 *“When you place a security freeze on your*
10 *consumer credit report, within 10 business days*
11 *you will be provided a personal identification*
12 *number or password to use if you choose to re-*
13 *move the freeze on your consumer credit report*
14 *or authorize the release of your consumer credit*
15 *report for a specific party, parties or period of*
16 *time after the freeze is in place.*

17 *“To provide that authorization, you must*
18 *contact the consumer reporting agency and pro-*
19 *vide all of the following: (1) The unique personal*
20 *identification number or password provided by*
21 *the consumer reporting agency (2) Proper identi-*
22 *fication to verify your identity (3) The proper*
23 *information regarding the third party or parties*
24 *who are trying to receive the consumer credit re-*

1 *port or the period of time for which the report*
2 *shall be available to users of the consumer report.*

3 *“A consumer reporting agency that receives*
4 *a request from a consumer to lift temporarily a*
5 *freeze on a consumer credit report shall comply*
6 *with the request no later than 3 days after re-*
7 *ceiving the request.*

8 *“A security freeze does not apply to a per-*
9 *son or entity, or its affiliates, or collection agen-*
10 *cies acting on behalf of the person or entity with*
11 *which you have an existing account that requests*
12 *information in your consumer credit report for*
13 *the purposes of reviewing or collecting the ac-*
14 *count, if you have previously given your consent*
15 *to this use of your consumer credit report. Re-*
16 *viewing the account includes activities related to*
17 *account maintenance, monitoring, credit line in-*
18 *creases, and account up-grades and enhance-*
19 *ments.*

20 *“If you are actively seeking credit, you*
21 *should understand that the procedures involved*
22 *in lifting a security freeze may slow your own*
23 *applications for credit. You should plan ahead*
24 *and lift a freeze, either completely or temporarily*
25 *if you are shopping around, or specifically for a*

1 *certain creditor, a few days before actually ap-*
2 *plying for new credit.’*

3 “(j) *EFFECT ON GLBA.*—

4 “(1) *DEPOSITORY INSTITUTIONS.*—*The current*
5 *and any future breach notice regulations and guide-*
6 *lines under section 501(b) of the Gramm-Leach-Bliley*
7 *Act with respect to depository institutions shall be su-*
8 *perseded, as of the effective date of the regulations re-*
9 *quired under subsection (k)(3)(A), relating to the spe-*
10 *cific requirements of this section.*

11 “(2) *NONDEPOSITORY INSTITUTIONS.*—*The cur-*
12 *rent and any future data security regulations and*
13 *guidelines under section 501(b) of the Gramm-Leach-*
14 *Bliley Act with respect to nondepository institutions*
15 *shall be superseded as of the effective date of the regu-*
16 *lations required under subsection (k)(3)(A), relating*
17 *to the responsibilities under this section.*

18 “(k) *UNIFORM DATA SECURITY SAFEGUARD REGULA-*
19 *TIONS.*—

20 “(1) *UNIFORM STANDARDS.*—*The Secretary of*
21 *the Treasury, the Board of Governors of the Federal*
22 *Reserve System, and the Commission shall jointly,*
23 *and the Federal functional regulatory agencies that*
24 *have issued guidance on consumer breach notification*
25 *shall jointly with respect to the entities under their*

1 *jurisdiction, develop standards and guidelines to im-*
2 *plement this section, including—*

3 “(A) *prescribing specific standards with re-*
4 *spect to subsection (g)(3) setting forth a reason-*
5 *ably unique and, pursuant to paragraph (2)(B),*
6 *exclusive color and titling of the notice, and*
7 *standardized formatting of the notice contents*
8 *described under such subsection to standardize*
9 *such communications and make them more likely*
10 *to be reviewed, and understood by, and helpful to*
11 *consumers, including to the extent possible plac-*
12 *ing the critical information for consumers in an*
13 *easily understood and prominent text box at the*
14 *top of each notice;*

15 “(B) *providing in such standards and*
16 *guidelines that the responsibility of a consumer*
17 *reporter to provide notice under this section—*

18 “(i) *has been satisfied with respect to*
19 *any particular consumer, even if the con-*
20 *sumer reporter is unable to contact the con-*
21 *sumer, so long as the consumer reporter has*
22 *made reasonable efforts to obtain a current*
23 *address or other current contact informa-*
24 *tion with respect to such consumer;*

1 “(ii) may be made by public notice in
2 appropriate cases in which—

3 “(I) such reasonable efforts de-
4 scribed in clause (i) have failed; or

5 “(II) a breach of data security in-
6 volves a loss or unauthorized acquisi-
7 tion of sensitive financial personal in-
8 formation in paper documents or
9 records that has been determined to be
10 usable, but the identities of specific
11 consumers are not determinable; and

12 “(iii) with respect to paragraph (3) of
13 subsection (c), may be communicated to en-
14 tities in addition to those specifically re-
15 quired under such paragraph through any
16 reasonable means, such as through an elec-
17 tronic transmission normally received by all
18 of the consumer reporter’s business cus-
19 tomers; and

20 “(C) providing in such standards and
21 guidelines elaboration on how to determine
22 whether a technology is generally commercially
23 available for the purposes of subsection (b), focus-
24 ing on the availability of such technology to per-
25 sons who potentially could seek to breach the

1 *data security of the consumer reporter, and how*
2 *to determine whether the information is likely to*
3 *be usable under subsection (b)(3);*

4 “(D) *providing for a reasonable and fair*
5 *manner of providing required consumer notices*
6 *where the entity that directly suffered the breach*
7 *is unavailable to pay for such notices, because*
8 *for example the entity is bankrupt, outside of the*
9 *jurisdiction of the United States, or otherwise*
10 *can not be compelled to provide such notice;*

11 “(E) *providing for periodic instead of indi-*
12 *vidual notices to regulators and law enforcement*
13 *under subsection (c)(1) and (2) where the con-*
14 *sumer reporter determines that only a de mini-*
15 *mus number of consumers are reasonably likely*
16 *to be affected;*

17 “(F) *providing, to the extent appropriate,*
18 *notice to the United States Secret Service, a con-*
19 *sumer reporter’s functional regulator, and the*
20 *entities described in paragraphs (1) through (3)*
21 *of subsection (c), whenever the consumer report-*
22 *er’s sensitive financial personal information has*
23 *been lost or illegally obtained but such loss or ac-*
24 *quisition does not result in a breach, for example*

1 *because the information was sufficiently*
2 *encrypted or otherwise unusable; and*

3 “(G) *establishing what types of accounts*
4 *might be subject to unauthorized transactions*
5 *after a breach involving sensitive financial ac-*
6 *count information, for example because such ac-*
7 *counts are open-end credit plans or are described*
8 *in section 903(2) of the Electronic Fund Trans-*
9 *fer Act.*

10 “(2) *MODEL NOTICE FORMS.—*

11 “(A) *IN GENERAL.—The Secretary of the*
12 *Treasury, Board of Governors of the Federal Re-*
13 *serve System, and the Commission shall jointly*
14 *establish and publish model forms and disclosure*
15 *statements to facilitate compliance with the no-*
16 *tice requirements of subsection (g) and to aid the*
17 *consumer in understanding the information re-*
18 *quired to be disclosed relating to a breach of data*
19 *security and the options and services available to*
20 *the consumer for obtaining additional informa-*
21 *tion, consumer reports, and credit monitoring*
22 *services.*

23 “(B) *USE OPTIONAL.—A consumer reporter*
24 *may utilize a model notice or any model state-*
25 *ment established under this paragraph for pur-*

1 poses of compliance with this section, at the dis-
2 cretion of the consumer reporter.

3 “(C) *EFFECT OF USE.*—A consumer re-
4 porter that uses a model notice form or disclo-
5 sure statement established under this paragraph
6 shall be deemed to be in compliance with the re-
7 quirement to provide the required disclosure to
8 consumers to which the form or statement relates.

9 “(3) *ENFORCEMENT.*—

10 “(A) *REGULATIONS.*—Each of the func-
11 tional regulatory agencies shall prescribe such
12 regulations as may be necessary, consistent with
13 the standards in paragraph (1), to ensure com-
14 pliance with this section with respect to the per-
15 sons subject to the jurisdiction of such agency
16 under subsection (l).

17 “(B) *MISUSE OF UNIQUE COLOR AND TI-*
18 *TLES OF NOTICES.*—Any person who uses the
19 unique color and titling adopted under para-
20 graph (1)(A) for notices under subsection (f)(1)
21 in a way that is likely to create a false belief in
22 a consumer that a communication is such a no-
23 tice shall be liable in the same manner and to
24 the same extent as a debt collector is liable under
25 section 813 for any failure to comply with any

1 *provision of the Fair Debt Collection Practices*
2 *Act.*

3 “(4) *PROCEDURES AND DEADLINE.*—

4 “(A) *PROCEDURES.*—*Standards and guide-*
5 *lines issued under this subsection shall be issued*
6 *in accordance with applicable requirements of*
7 *title 5, United States Code.*

8 “(B) *DEADLINE FOR INITIAL STANDARDS*
9 *AND GUIDELINES.*—*The standards and guidelines*
10 *required to be issued under paragraph (1) shall*
11 *be published in final form before the end of the*
12 *9-month period beginning on the date of the en-*
13 *actment of the Financial Data Protection Act of*
14 *2006.*

15 “(C) *DEADLINE FOR ENFORCEMENT REGU-*
16 *LATIONS.*—*The standards and guidelines re-*
17 *quired to be issued under paragraph (2) shall be*
18 *published in final form before the end of the 6-*
19 *month period beginning on the date standards*
20 *and guidelines described in subparagraph (B)*
21 *are published in final form.*

22 “(D) *AUTHORITY TO GRANT EXCEPTIONS.*—
23 *The regulations prescribed under paragraph (2)*
24 *may include such additional exceptions to this*
25 *section as are deemed jointly by the functional*

1 *regulatory agencies to be consistent with the pur-*
2 *poses of this section if such exceptions are nec-*
3 *essary because of some unique aspect of the enti-*
4 *ties regulated or laws governing such entities;*
5 *and such exemptions are narrowly tailored to*
6 *protect the purposes of this Act.*

7 “(E) *CONSULTATION AND COORDINATION.*—
8 *The Secretary of the Treasury, the Board of Gov-*
9 *ernors of the Federal Reserve System, and the*
10 *Commission shall consult and coordinate with*
11 *the other functional regulatory agencies to the ex-*
12 *tent appropriate in prescribing regulations*
13 *under this subsection.*

14 “(F) *FAILURE TO MEET DEADLINE.*—*Any*
15 *agency or authority required to publish stand-*
16 *ards and guidelines or regulations under this*
17 *subsection that fails to meet the deadline for such*
18 *publishing shall submit a report to the Congress*
19 *within 30 days of such deadline describing—*

20 “(i) *the reasons for the failure to meet*
21 *such deadline;*

22 “(ii) *when the agency or authority ex-*
23 *pects to complete the publication required;*
24 *and*

1 “(iii) the detriment such failure to
2 publish by the required deadline will have
3 on consumers and other affected parties.

4 “(G) *UNIFORM IMPLEMENTATION AND IN-*
5 *TERPRETATION.*—It is the intention of the Con-
6 gress that the agencies and authorities described
7 in subsection (l)(1)(G) will implement and inter-
8 pret their enforcement regulations, including any
9 exceptions provided under subparagraph (D), in
10 a uniform manner.

11 “(5) *APPROPRIATE EXEMPTIONS OR MODIFICA-*
12 *TIONS.*—The Secretary of the Treasury, the Board of
13 Governors of the Federal Reserve System, and the
14 Commission, in consultation with the Administrator
15 of the Small Business Administration and the func-
16 tional regulatory agencies, shall provide appropriate
17 exemptions or modifications from requirements of this
18 section relating to sensitive financial personal infor-
19 mation for consumer reporters that do not maintain,
20 service, or communicate a large quantity of such in-
21 formation, taking into account the degree of sensi-
22 tivity of such information, the likelihood of misuse,
23 and the degree of potential harm or inconvenience to
24 the related consumer.

25 “(6) *COORDINATION.*—

1 “(A) *IN GENERAL.*—*Each functional regu-*
2 *latory agency shall consult and coordinate with*
3 *each other functional regulatory agency so that,*
4 *to the extent possible, the regulations prescribed*
5 *by each agency are consistent and comparable.*

6 “(B) *MODEL REGULATIONS.*—*In prescribing*
7 *implementing regulations under paragraph (1),*
8 *the functional regulatory agencies agencies re-*
9 *ferred to in such paragraph shall use the*
10 *Gramm-Leach-Bliley Act (including the guid-*
11 *ance and regulations issued thereunder) as a*
12 *base, adding such other consumer protections as*
13 *appropriate under this section.*

14 “(l) *ADMINISTRATIVE ENFORCEMENT.*—

15 “(1) *IN GENERAL.*—*Notwithstanding section 616,*
16 *617, or 621, compliance with this section and the regu-*
17 *lations prescribed under this section shall be en-*
18 *forced by the functional regulatory agencies with re-*
19 *spect to financial institutions and other persons sub-*
20 *ject to the jurisdiction of each such agency under ap-*
21 *plicable law, as follows:*

22 “(A) *Under section 8 of the Federal Deposit*
23 *Insurance Act, in the case of—*

24 “(i) *national banks, Federal branches*
25 *and Federal agencies of foreign banks, and*

1 *any subsidiaries of such entities (except bro-*
2 *kers, dealers, persons providing insurance,*
3 *investment companies, and investment ad-*
4 *visers), by the Comptroller of the Currency;*

5 *“(ii) member banks of the Federal Re-*
6 *serve System (other than national banks),*
7 *branches and agencies of foreign banks*
8 *(other than Federal branches, Federal agen-*
9 *cies, and insured State branches of foreign*
10 *banks), commercial lending companies*
11 *owned or controlled by foreign banks, orga-*
12 *nizations operating under section 25 or 25A*
13 *of the Federal Reserve Act, and bank hold-*
14 *ing companies and their nonbank subsidi-*
15 *aries or affiliates (except brokers, dealers,*
16 *persons providing insurance, investment*
17 *companies, and investment advisers), by the*
18 *Board of Governors of the Federal Reserve*
19 *System;*

20 *“(iii) banks insured by the Federal De-*
21 *posit Insurance Corporation (other than*
22 *members of the Federal Reserve System), in-*
23 *sured State branches of foreign banks, and*
24 *any subsidiaries of such entities (except bro-*
25 *kers, dealers, persons providing insurance,*

1 *investment companies, and investment ad-*
2 *visers), by the Board of Directors of the*
3 *Federal Deposit Insurance Corporation; and*

4 “(iv) *savings associations the deposits*
5 *of which are insured by the Federal Deposit*
6 *Insurance Corporation, and any subsidi-*
7 *aries of such savings associations (except*
8 *brokers, dealers, persons providing insur-*
9 *ance, investment companies, and investment*
10 *advisers), by the Director of the Office of*
11 *Thrift Supervision.*

12 “(B) *Under the Federal Credit Union Act,*
13 *by the Board of the National Credit Union Ad-*
14 *ministration with respect to any federally in-*
15 *sured credit union, and any subsidiaries of such*
16 *an entity.*

17 “(C) *Under the Securities Exchange Act of*
18 *1934, by the Securities and Exchange Commis-*
19 *sion with respect to any broker, dealer, or*
20 *nonbank transfer agent.*

21 “(D) *Under the Investment Company Act of*
22 *1940, by the Securities and Exchange Commis-*
23 *sion with respect to investment companies.*

24 “(E) *Under the Investment Advisers Act of*
25 *1940, by the Securities and Exchange Commis-*

1 *sion with respect to investment advisers reg-*
2 *istered with the Commission under such Act.*

3 *“(F) Under the provisions of title XIII of*
4 *the Housing and Community Development Act of*
5 *1992, by the Director of the Office of Federal*
6 *Housing Enterprise Oversight (and any suc-*
7 *cessor to such functional regulatory agency) with*
8 *respect to the Federal National Mortgage Asso-*
9 *ciation, the Federal Home Loan Mortgage Cor-*
10 *poration, and any other entity or enterprise or*
11 *bank (as defined in such title XIII) subject to the*
12 *jurisdiction of such functional regulatory agency*
13 *under such title, including any affiliate of any*
14 *such enterprise.*

15 *“(G) Under State insurance law, in the case*
16 *of any person engaged in the business of insur-*
17 *ance, by the applicable State insurance authority*
18 *of the State in which the person is domiciled.*

19 *“(H) Under the Federal Home Loan Bank*
20 *Act, by the Federal Housing Finance Board*
21 *(and any successor to such functional regulatory*
22 *agency) with respect to the Federal home loan*
23 *banks and any other entity subject to the juris-*
24 *isdiction of such functional regulatory agency, in-*
25 *cluding any affiliate of any such bank.*

1 “(I) Under the Federal Trade Commission
2 Act, by the Commission for any other person
3 that is not subject to the jurisdiction of any
4 agency or authority under subparagraphs (A)
5 through (G) of this subsection, except that for the
6 purposes of this subparagraph a violation of this
7 section shall be treated as an unfair and decep-
8 tive act or practice in violation of a regulation
9 under section 18(a)(1)(B) of the Federal Trade
10 Commission Act regarding unfair or deceptive
11 acts or practices.

12 “(2) *EXERCISE OF CERTAIN POWERS.*—For the
13 purpose of the exercise by any agency referred to in
14 paragraph (1) of its powers under any Act referred
15 to in such paragraph, a violation of any requirement
16 imposed under this section shall be deemed to be a
17 violation of a requirement imposed under that Act. In
18 addition to its powers under any provision of law
19 specifically referred to in paragraph (1), each of the
20 agencies referred to in that paragraph may exercise,
21 for the purpose of enforcing compliance with any re-
22 quirement imposed under this section, any other au-
23 thority conferred on it by law.

24 “(3) *USE OF UNDISTRIBUTED FUNDS FOR FINAN-*
25 *CIAL EDUCATION.*—If—

1 “(A) in connection with any administrative
2 action under this section, a fund is created or a
3 functional regulatory agency has obtained
4 disgorgement; and

5 “(B) the functional regulatory agency deter-
6 mines that—

7 “(i) due to the size of the fund to be
8 distributed, the number of individuals af-
9 fected, the nature of the underlying viola-
10 tion, or for other reasons, it would be infea-
11 sible to distribute such fund or disgorgement
12 to the victims of the violation; or

13 “(ii) there are excess monies remaining
14 after the distribution of the fund or
15 disgorgement to victims,

16 the functional regulatory agency may issue an order
17 in an administrative proceeding requiring that the
18 undistributed amount of the fund or disgorgement be
19 used in whole or in part by the functional regulatory
20 agency for education programs and outreach activi-
21 ties of consumer groups, community based groups,
22 and the Financial Literacy and Education Commis-
23 sion established under the Fair and Accurate Credit
24 Transactions Act of 2003 that are consistent with and
25 further the purposes of this title.

1 “(m) *DEFINITIONS.*—For purposes of this section, the
2 following definitions shall apply:

3 “(1) *BREACH OF DATA SECURITY.*—The term
4 ‘breach of data security’ or ‘data security breach’
5 means any loss, unauthorized acquisition, or misuse
6 of sensitive financial personal information handled by
7 a consumer reporter that could be misused to commit
8 financial fraud (such as identity theft or fraudulent
9 transactions made on financial accounts) in a man-
10 ner causing harm or inconvenience to a consumer.

11 “(2) *CONSUMER.*—The term ‘consumer’ means
12 an individual.

13 “(3) *CONSUMER REPORTER AND RELATED*
14 *TERMS.*—

15 “(A) *CONSUMER FINANCIAL FILE AND CON-*
16 *SUMER REPORTS.*—The term ‘consumer financial
17 file and consumer reports’ includes any written,
18 oral, or other communication of any information
19 by a consumer reporter bearing on a consumer’s
20 credit worthiness, credit standing, credit capac-
21 ity, character, general reputation, personal char-
22 acteristics, personal identifiers, financial account
23 information, or mode of living.

24 “(B) *CONSUMER REPORTER.*—The term
25 ‘consumer reporter’ means any consumer report-

1 *ing agency or financial institution, or any per-*
2 *son which, for monetary fees, dues, on a coopera-*
3 *tive nonprofit basis, or otherwise regularly en-*
4 *gages in whole or in part in the practice of as-*
5 *sembling or evaluating consumer financial file*
6 *and consumer reports, consumer credit informa-*
7 *tion, or other information on consumers, for the*
8 *purpose of furnishing consumer reports to third*
9 *parties or to provide or collect payment for or*
10 *market products and services, or for employment*
11 *purposes, and which uses any means or facility*
12 *of interstate commerce for such purposes.*

13 “(4) *FINANCIAL INSTITUTION.*—*The term ‘finan-*
14 *cial institution’ means—*

15 “(A) *any person the business of which is en-*
16 *gaging in activities that are financial in nature*
17 *as described in or determined under section 4(k)*
18 *of the Bank Holding Company Act;*

19 “(B) *any person that is primarily engaged*
20 *in activities that are subject to the Fair Credit*
21 *Reporting Act; and*

22 “(C) *any person that is maintaining, re-*
23 *ceiving, or communicating sensitive financial*
24 *personal information on an ongoing basis for the*
25 *purposes of engaging in interstate commerce.*

1 “(5) *FUNCTIONAL REGULATORY AGENCY.*—*The*
2 *term ‘functional regulatory agency’ means any agen-*
3 *cy described in subsection (l) with respect to the fi-*
4 *nancial institutions and other persons subject to the*
5 *jurisdiction of such agency.*

6 “(6) *HANDLED BY.*—*The term ‘handled by’ in-*
7 *cludes with respect to sensitive financial personal in-*
8 *formation, any access to or generation, maintenance,*
9 *servicing, or ownership of such information, as well*
10 *as any transfer to or allowed access to or similar*
11 *sharing or servicing of such information by or with*
12 *a third party on a consumer reporter’s behalf.*

13 “(7) *NATIONWIDE CONSUMER REPORTING AGEN-*
14 *CY.*—*The term ‘nationwide consumer reporting agen-*
15 *cy’ means—*

16 “(A) *a consumer reporting agency described*
17 *in section 603(p);*

18 “(B) *any person who notifies the Commis-*
19 *sion that the person reasonably expects to become*
20 *a consumer reporting agency described in section*
21 *603(p) within a reasonable time; and*

22 “(C) *a consumer reporting agency described*
23 *in section 603(w) that notifies the Commission*
24 *that the person wishes to receive breach of data*
25 *security notices under this section that involve*

1 *information of the type maintained by such*
2 *agency.*

3 “(8) *NEURAL NETWORK.*—*The term ‘neural net-*
4 *work’ means an information security program that*
5 *monitors financial account transactions for potential*
6 *fraud, using historical patterns to analyze and iden-*
7 *tify suspicious financial account transactions.*

8 “(9) *SENSITIVE FINANCIAL ACCOUNT INFORMA-*
9 *TION.*—*The term ‘sensitive financial account informa-*
10 *tion’ means a financial account number of a con-*
11 *sumer, such as a credit card number or debit card*
12 *number, in combination with any required security*
13 *code, access code, biometric code, password, or other*
14 *personal identification information that would allow*
15 *access to the financial account.*

16 “(10) *SENSITIVE FINANCIAL IDENTITY INFORMA-*
17 *TION.*—*The term ‘sensitive financial identity infor-*
18 *mation’ means the first and last name, the address,*
19 *or the telephone number of a consumer, in combina-*
20 *tion with any of the following of the consumer:*

21 “(A) *Social Security number.*

22 “(B) *Driver’s license number or equivalent*
23 *State identification number.*

24 “(C) *IRS Individual Taxpayer Identifica-*
25 *tion Number.*

1 “(D) *IRS Adoption Taxpayer Identification*
2 *Number.*

3 “(E) *The consumer’s deoxyribonucleic acid*
4 *profile or other unique biometric data, including*
5 *fingerprint, voice print, retina or iris image, or*
6 *any other unique physical representation.*

7 “(11) *SENSITIVE FINANCIAL PERSONAL INFORMA-*
8 *TION.—The term ‘sensitive financial personal infor-*
9 *mation’ means any information that is sensitive fi-*
10 *nancial account information, sensitive financial iden-*
11 *tity information, or both.*

12 “(12) *HARM OR INCONVENIENCE.—The term*
13 *‘harm or inconvenience’, with respect to a consumer,*
14 *means financial loss to or civil or criminal penalties*
15 *imposed on the consumer or the need for the consumer*
16 *to expend significant time and effort to correct erro-*
17 *neous information relating to the consumer, including*
18 *information maintained by consumer reporting agen-*
19 *cies, financial institutions, or government entities, in*
20 *order to avoid the risk of financial loss or increased*
21 *costs or civil or criminal penalties.*

22 “(n) *RELATION TO STATE LAWS.—*

23 “(1) *IN GENERAL.—No requirement or prohibi-*
24 *tion may be imposed under the laws of any State*
25 *with respect to the responsibilities of any consumer*

1 *reporter or the functional equivalent of such respon-*
2 *sibilities—*

3 *“(A) to protect the security or confiden-*
4 *tiality of information on consumers maintained*
5 *by or on behalf of the person;*

6 *“(B) to safeguard such information from*
7 *potential misuse;*

8 *“(C) to investigate or provide notices of any*
9 *unauthorized access to information concerning*
10 *the consumer, or the potential misuse of such in-*
11 *formation, for fraudulent purposes;*

12 *“(D) to mitigate any loss or harm resulting*
13 *from such unauthorized access or misuse; or*

14 *“(E) involving restricting credit reports*
15 *from being provided, or imposing any require-*
16 *ment on such provision, for a permissible pur-*
17 *pose pursuant to section 604, such as—*

18 *“(i) the responsibilities of a consumer*
19 *reporting agency to honor a request, or*
20 *withdrawal of such a request, to prohibit*
21 *the consumer reporting agency from releas-*
22 *ing any type of information from the file of*
23 *a consumer;*

1 “(ii) the process by which such a re-
2 quest or withdrawal of such a request is
3 made, honored, or denied;

4 “(iii) any notice that is required to be
5 provided to the consumer in connection with
6 such a request or withdrawal of such a re-
7 quest; or

8 “(iv) the ability of a consumer report-
9 ing agency to update or change information
10 in a consumer’s file as a result of such a re-
11 quest or withdrawal of such a request; or

12 “(v) the responsibilities of third parties
13 if information from a consumer’s file is un-
14 available as a result of such a request.

15 “(2) *EXCEPTION FOR CERTAIN STATE LAWS.*—
16 *Paragraph (1) shall not apply with respect to—*

17 “(A) *State laws governing professional con-*
18 *fidentiality; or*

19 “(B) *State privacy laws limiting the pur-*
20 *poses for which information may be disclosed.*

21 “(3) *EXCEPTION FOR CERTAIN COVERED ENTI-*
22 *TIES.*—*Paragraph (1) shall not apply with respect to*
23 *the entities described in subsection (l)(1)(G) to the ex-*
24 *tent that such entities are acting in accordance with*
25 *subsection (k)(4)(G) in a manner that is consistent*

1 *with this section and the implementation of this sec-*
2 *tion by the regulators described in subsection (k)(1).”.*

3 (b) *CLERICAL AMENDMENT.*—*The table of sections for*
4 *the Fair Credit Reporting Act is amended by inserting after*
5 *the item relating to section 629 the following new item:*

 “630. *Data security safeguards.*”.

6 (c) *EFFECTIVE DATE.*—*The provisions of section 630*
7 *of the Fair Credit Reporting Act (as added by this section),*
8 *other than subsection (k) of such section, shall take effect*
9 *on the date of publication of the regulations required under*
10 *paragraph (3) of such subsection, with respect to any person*
11 *under the jurisdiction of each regulatory agency publishing*
12 *such regulations.*

13 **SEC. 3. NATIONAL SUMMIT ON DATA SECURITY.**

14 *Not later than April 30, 2008, the President or the des-*
15 *ignee of the President shall convene a National Summit on*
16 *Data Security Safeguards for Sensitive Personal Financial*
17 *Information in the District of Columbia.*

18 **SEC. 4. GAO STUDY.**

19 (a) *STUDY REQUIRED.*—*The Comptroller General*
20 *shall conduct a study to determine a system that would pro-*
21 *vide notices of data breaches to consumers in languages*
22 *other than English and identify what barriers currently*
23 *exist to the implementation of such a system.*

24 (b) *REPORT.*—*The Comptroller General shall submit*
25 *a report to the Congress before the end of the 1-year period*

1 *beginning on the date of the enactment of this Act con-*
2 *taining the findings and conclusion of the study under sub-*
3 *section (a) and such recommendations for legislative and*
4 *administrative action as the Comptroller General may de-*
5 *termine to be appropriate.*

6 **SEC. 5. ENHANCED DATA COLLECTION ON DATA SECURITY**

7 **BREACHES AND ACCOUNT FRAUD.**

8 *In order to improve law enforcement efforts relating*
9 *to data security breaches and fighting identity theft and*
10 *account fraud, the Federal Trade Commission shall compile*
11 *information on the race and ethnicity of consumers, as de-*
12 *finied and volunteered by the consumers, who are victims*
13 *of identity theft, account fraud, and other types of financial*
14 *fraud. The Commission shall consult with the various inter-*
15 *national, national, State, and local law enforcement officers*
16 *and agencies who work with such victims for the purpose*
17 *of enlisting the cooperation of such officers and agencies in*
18 *the compilation of such information. Notwithstanding any*
19 *other provision of law, such compilation of information*
20 *shall be made available exclusively to the Commission and*
21 *law enforcement entities.*

22 **SEC. 6. CLARIFICATION RELATING TO CREDIT MONITORING**

23 **SERVICES.**

24 *(a) IN GENERAL.—Section 403 of the Credit Repair*
25 *Organizations Act (15 U.S.C. 1679a) is amended—*

1 (1) *by striking “For purposes of this title” and*
2 *inserting “(a) IN GENERAL.—For purposes of this*
3 *title”; and*

4 (2) *by adding at the end the following new sub-*
5 *section:*

6 “(b) *CLARIFICATION WITH RESPECT TO CERTAIN*
7 *CREDIT MONITORING SERVICES UNDER CERTAIN CIR-*
8 *CUMSTANCES.—*

9 “(1) *IN GENERAL.—Subject to paragraph (2)—*

10 “(A) *the provision of, or provision of access*
11 *to, credit reports, credit monitoring notifications,*
12 *credit scores and scoring algorithms, and other*
13 *credit score-related tools to a consumer (includ-*
14 *ing generation of projections and forecasts of*
15 *such consumer’s potential credit scores under*
16 *various prospective trends or hypothetical or al-*
17 *ternative scenarios);*

18 “(B) *any analysis, evaluation, and expla-*
19 *nation of such actual or hypothetical credit*
20 *scores, or any similar projections, forecasts,*
21 *analyses, evaluations or explanations; or*

22 “(C) *in conjunction with offering any of the*
23 *services described in subparagraph (A) or (B),*
24 *the provision of materials or services to assist a*
25 *consumer who is a victim of identity theft,*

1 *shall not be treated as activities described in clause*
2 *(i) of subsection (a)(3)(A).*

3 “(2) *CONDITIONS FOR APPLICATION OF PARA-*
4 *GRAPH (1).—Paragraph (1) shall apply with respect*
5 *to any person engaging in any activity described in*
6 *such paragraph only if—*

7 “(A) *the person does not represent, expressly*
8 *or by implication, that such person—*

9 “(i) *will or can modify or remove, or*
10 *assist the consumer in modifying or remov-*
11 *ing, adverse information that is accurate*
12 *and not obsolete in the consumer’s credit re-*
13 *port; or*

14 “(ii) *will or can alter, or assist the*
15 *consumer in altering, the consumer’s identi-*
16 *fication to prevent the display of the con-*
17 *sumer’s credit record, history, or rating for*
18 *the purpose of concealing adverse informa-*
19 *tion that is accurate and not obsolete;*

20 “(B) *in any case in which the person rep-*
21 *resents, expressly or by implication, that it will*
22 *or can modify or remove, or assist the consumer*
23 *in modifying or removing, any information in*
24 *the consumer’s credit report, except for a rep-*
25 *resentation with respect to any requirement im-*

1 posed on the person under section 611 or 623(b)
2 of the Fair Credit Reporting Act, the person dis-
3 closes, clearly and conspicuously, before the con-
4 sumer pays or agrees to pay any money or other
5 valuable consideration to such person, whichever
6 occurs first, the following statement:

7 “NOTICE: Neither you nor any-
8 one else has the right to have accurate
9 and current information removed from
10 your credit report. If information in
11 your report is inaccurate, you have the
12 right to dispute it by contacting the
13 credit bureau directly.”;

14 “(C) the person provides the consumer in
15 writing with the following statement before any
16 contract or agreement between the consumer and
17 the person is executed:

18 “Your Rights Concerning Your Con-
19 sumer Credit File

20 “‘You have a right to obtain a free
21 copy of your credit report once every 12
22 months from each of the nationwide con-
23 sumer reporting agencies. To request your
24 free annual credit report, you may go to
25 www.annualcreditreport.com, or call 877-

1 322–8228, or complete the *Annual Credit*
2 *Report Request Form* and mail it to: *An-*
3 *annual Credit Report Request Service, P.O.*
4 *Box 105281, Atlanta, GA 30348–5281. You*
5 *can obtain additional copies of your credit*
6 *report from a credit bureau, for which you*
7 *may be charged a reasonable fee. There is*
8 *no fee, however, if you have been turned*
9 *down for credit, employment, insurance, or*
10 *a rental dwelling because of information in*
11 *your credit report within the preceding 60*
12 *days. The credit bureau must provide some-*
13 *one to help you interpret the information in*
14 *your credit file. You are entitled to receive*
15 *a free copy of your credit report if you are*
16 *unemployed and intend to apply for em-*
17 *ployment in the next 60 days, if you are a*
18 *recipient of public welfare assistance, or if*
19 *you have reason to believe that there is in-*
20 *accurate information in your credit report*
21 *due to fraud.*

22 *“You have the right to cancel your*
23 *contract with a credit monitoring service*
24 *without fee or penalty at any time, and in*
25 *the case in which you have prepaid for a*

1 *credit monitoring service, you are entitled*
2 *to a pro rata refund for the remaining term*
3 *of the credit monitoring service.*

4 *“The Federal Trade Commission regu-*
5 *lates credit bureaus and credit monitoring*
6 *services. For more information contact:*

7 *“Federal Trade Commission*

8 *“Washington, D.C. 20580*

9 *“1-877-FTC-HELP*

10 *“www.ftc.gov.’; and*

11 *“(D) in any case in which the person offers*
12 *a subscription to a credit file monitoring pro-*
13 *gram to a consumer, the consumer may cancel*
14 *the subscription at any time upon written notice*
15 *to the person without penalty or fee for such can-*
16 *cellation and, in any case in which the consumer*
17 *is billed for the subscription on other than a*
18 *monthly basis, within 60 days of receipt of the*
19 *consumer’s notice of cancellation, the person*
20 *shall make a pro rata refund to the consumer of*
21 *a subscription fee prepaid by the consumer, cal-*
22 *culated from the date that the person receives the*
23 *consumer’s notice of cancellation until the end of*
24 *the subscription period.”.*

1 **(b) CLARIFICATION OF NONEXEMPT STATUS.**—Section
2 403(a) of the Credit Repair Organizations Act (15 U.S.C.
3 1679a) (as so redesignated by subsection (a) of this section)
4 is amended, in paragraph (3)(B)(i), by inserting “and is
5 not for its own profit or for that of its members” before
6 the semicolon at the end.

7 **(c) REVISION OF DISCLOSURE REQUIREMENT.**—Sec-
8 tion 405(a) of the Credit Repair Organizations Act (15
9 U.S.C. 1679c) is amended by striking everything after the
10 heading of the disclosure statement contained in such sec-
11 tion and inserting the following new text of the disclosure
12 statement:

13 “You have a right to dispute inaccurate infor-
14 mation in your credit report by contacting the credit
15 bureau directly. However, neither you nor any “credit
16 repair” company or credit repair organization has
17 the right to have accurate, current, and verifiable in-
18 formation removed from your credit report. The credit
19 bureau must remove accurate, negative information
20 from your report only if it is over 7 years old. Bank-
21 ruptcy information can be reported for 10 years.

22 “You have a right to obtain a free copy of your
23 credit report once every 12 months from each of the
24 nationwide consumer reporting agencies. To request
25 your free annual credit report, you may go to

1 *www.annualcreditreport.com, or call 877-322-8228,*
2 *or complete the Annual Credit Report Request Form*
3 *and mail it to: Annual Credit Report Request Serv-*
4 *ice, P.O. Box 105281, Atlanta, GA 30348-5281. You*
5 *can obtain additional copies of your credit report*
6 *from a credit bureau, for which you may be charged*
7 *a reasonable fee. There is no fee, however, if you have*
8 *been turned down for credit, employment, insurance,*
9 *or a rental dwelling because of information in your*
10 *credit report within the preceding 60 days. The credit*
11 *bureau must provide someone to help you interpret*
12 *the information in your credit file. You are entitled*
13 *to receive a free copy of your credit report if you are*
14 *unemployed and intend to apply for employment in*
15 *the next 60 days, if you are a recipient of public wel-*
16 *fare assistance, or if you have reason to believe that*
17 *there is inaccurate information in your credit report*
18 *due to fraud.*

19 *“You have a right to sue a credit repair organi-*
20 *zation that violates the Credit Repair Organization*
21 *Act. This law prohibits deceptive practices by credit*
22 *repair organizations.*

23 *“You have the right to cancel your contract*
24 *with any credit repair organization for any reason*
25 *within 3 business days from the date you signed it.*

1 *“Credit bureaus are required to follow reason-*
2 *able procedures to ensure that the information they*
3 *report is accurate. However, mistakes may occur.*

4 *“You may, on your own, notify a credit bureau*
5 *in writing that you dispute the accuracy of informa-*
6 *tion in your credit file. The credit bureau must then*
7 *reinvestigate and modify or remove inaccurate or in-*
8 *complete information. The credit bureau may not*
9 *charge any fee for this service. Any pertinent infor-*
10 *mation and copies of all documents you have con-*
11 *cerning an error should be given to the credit bureau.*

12 *“If the credit bureau’s reinvestigation does not*
13 *resolve the dispute to your satisfaction, you may send*
14 *a brief statement to the credit bureau, to be kept in*
15 *your file, explaining why you think the record is in-*
16 *accurate. The credit bureau must include a summary*
17 *of your statement about disputed information with*
18 *any report it issues about you.*

19 *“The Federal Trade Commission regulates cred-*
20 *it bureaus and credit repair organizations. For more*
21 *information contact:*

22 *“Federal Trade Commission*

23 *“Washington, D.C. 20580*

24 *“1-877-FTC-HELP*

25 *“(877 382-4357)*

1 “*www.ftc.gov.*”.

2 SECTION 1. SHORT TITLE.

3 **This Act may be cited as the “Data Ac-**
4 **countability and Trust Act (DATA)”.**

5 SEC. 2. REQUIREMENTS FOR INFORMATION SECURITY.

6 **(a) GENERAL SECURITY POLICIES AND PRO-**
7 **CEDURES.—**

8 **(1) REGULATIONS.—Not later than 1**
9 **year after the date of enactment of this**
10 **Act, the Commission shall promulgate**
11 **regulations under section 553 of title 5,**
12 **United States Code, to require each per-**
13 **son engaged in interstate commerce that**
14 **owns or possesses data in electronic form**
15 **containing personal information, or con-**
16 **tracts to have any third party entity**
17 **maintain such data for such person, to es-**
18 **tablish and implement policies and proce-**
19 **dures regarding information security**
20 **practices for the treatment and protec-**
21 **tion of personal information taking into**
22 **consideration—**

23 **(A) the size of, and the nature,**
24 **scope, and complexity of the activi-**
25 **ties engaged in by, such person;**

1 **(B) the current state of the art in**
2 **administrative, technical, and phys-**
3 **ical safeguards for protecting such in-**
4 **formation; and**

5 **(C) the cost of implementing such**
6 **safeguards.**

7 **(2) REQUIREMENTS.—Such regulations**
8 **shall require the policies and procedures**
9 **to include the following:**

10 **(A) A security policy with respect**
11 **to the collection, use, sale, other dis-**
12 **semination, and maintenance of such**
13 **personal information.**

14 **(B) The identification of an officer**
15 **or other individual as the point of**
16 **contact with responsibility for the**
17 **management of information security.**

18 **(C) A process for identifying and**
19 **assessing any reasonably foreseeable**
20 **vulnerabilities in the system main-**
21 **tained by such person that contains**
22 **such electronic data, which shall in-**
23 **clude regular monitoring for a breach**
24 **of security of such system.**

1 **(D) A process for taking preven-**
2 **tive and corrective action to mitigate**
3 **against any vulnerabilities identified**
4 **in the process required by subpara-**
5 **graph (C), which may include imple-**
6 **menting any changes to security**
7 **practices and the architecture, instal-**
8 **lation, or implementation of network**
9 **or operating software.**

10 **(E) A process for disposing of ob-**
11 **solete data in electronic form con-**
12 **taining personal information by**
13 **shredding, permanently erasing, or**
14 **otherwise modifying the personal in-**
15 **formation contained in such data to**
16 **make such personal information per-**
17 **manently unreadable or**
18 **undecipherable.**

19 **(3) TREATMENT OF ENTITIES GOVERNED**
20 **BY OTHER LAW.—In promulgating the regu-**
21 **lations under this subsection, the Com-**
22 **mission may determine to be in compli-**
23 **ance with this subsection any person who**
24 **is required under any other Federal law**
25 **to maintain standards and safeguards for**

1 **information security and protection of**
2 **personal information that provide equal**
3 **or greater protection than those required**
4 **under this subsection.**

5 **(b) DESTRUCTION OF OBSOLETE PAPER**
6 **RECORDS CONTAINING PERSONAL INFORMA-**
7 **TION.—**

8 **(1) STUDY.—Not later than 1 year after**
9 **the date of enactment of this Act, the**
10 **Commission shall conduct a study on the**
11 **practicality of requiring a standard meth-**
12 **od or methods for the destruction of ob-**
13 **solete paper documents and other non-**
14 **electronic data containing personal infor-**
15 **mation by persons engaged in interstate**
16 **commerce who own or possess such**
17 **paper documents and non-electronic**
18 **data. The study shall consider the cost,**
19 **benefit, feasibility, and effect of a re-**
20 **quirement of shredding or other perma-**
21 **nent destruction of such paper docu-**
22 **ments and non-electronic data.**

23 **(2) REGULATIONS.—The Commission**
24 **may promulgate regulations under sec-**
25 **tion 553 of title 5, United States Code, re-**

1 **quiring a standard method or methods**
2 **for the destruction of obsolete paper doc-**
3 **uments and other non-electronic data**
4 **containing personal information by per-**
5 **sons engaged in interstate commerce who**
6 **own or possess such paper documents**
7 **and non-electronic data if the Commis-**
8 **sion finds that—**

9 **(A) the improper disposal of obso-**
10 **lete paper documents and other non-**
11 **electronic data creates a reasonable**
12 **risk of identity theft, fraud, or other**
13 **unlawful conduct;**

14 **(B) such a requirement would be**
15 **effective in preventing identity theft,**
16 **fraud, or other unlawful conduct;**

17 **(C) the benefit in preventing iden-**
18 **tity theft, fraud, or other unlawful**
19 **conduct would outweigh the cost to**
20 **persons subject to such a require-**
21 **ment; and**

22 **(D) compliance with such a re-**
23 **quirement would be practicable.**

24 **In enforcing any such regulations, the**
25 **Commission may determine to be in com-**

1 **pliance with such regulations any person**
2 **who is required under any other Federal**
3 **law to dispose of obsolete paper docu-**
4 **ments and other non-electronic data con-**
5 **taining personal information if such**
6 **other Federal law provides equal or**
7 **greater protection or personal informa-**
8 **tion than the regulations promulgated**
9 **under this subsection.**

10 **(c) SPECIAL REQUIREMENTS FOR INFORMA-**
11 **TION BROKERS.—**

12 **(1) SUBMISSION OF POLICIES TO THE**
13 **FTC.—The regulations promulgated under**
14 **subsection (a) shall require information**
15 **brokers to submit their security policies**
16 **to the Commission in conjunction with a**
17 **notification of a breach of security under**
18 **section 3 or upon request of the Commis-**
19 **sion.**

20 **(2) POST-BREACH AUDIT.—For any in-**
21 **formation broker required to provide no-**
22 **tification under section 3, the Commis-**
23 **sion shall conduct an audit of the infor-**
24 **mation security practices of such infor-**
25 **mation broker, or require the informa-**

1 **tion broker to conduct an independent**
2 **audit of such practices (by an inde-**
3 **pendent auditor who has not audited**
4 **such information broker's security prac-**
5 **tices during the preceding 5 years). The**
6 **Commission may conduct or require ad-**
7 **ditional audits for a period of 5 years fol-**
8 **lowing the breach of security or until the**
9 **Commission determines that the security**
10 **practices of the information broker are in**
11 **compliance with the requirements of this**
12 **section and are adequate to prevent fur-**
13 **ther breaches of security.**

14 **(3) VERIFICATION OF AND INDIVIDUAL**
15 **ACCESS TO PERSONAL INFORMATION.—**

16 **(A) VERIFICATION.—Each informa-**
17 **tion broker shall establish reasonable**
18 **procedures to verify the accuracy of**
19 **the personal information it collects,**
20 **assembles, or maintains, and any**
21 **other information it collects, assem-**
22 **bles, or maintains that specifically**
23 **identifies an individual, other than**
24 **information which merely identifies**
25 **an individual's name or address.**

1 **(B) CONSUMER ACCESS TO INFORMA-**
2 **TION.—**

3 **(i) ACCESS.—Each information**
4 **broker shall—**

5 **(I) provide to each indi-**
6 **vidual whose personal infor-**
7 **mation it maintains, at the in-**
8 **dividual's request at least 1**
9 **time per year and at no cost**
10 **to the individual, and after**
11 **verifying the identity of such**
12 **individual, a means for the in-**
13 **dividual to review any per-**
14 **sonal information regarding**
15 **such individual maintained**
16 **by the information broker**
17 **and any other information**
18 **maintained by the informa-**
19 **tion broker that specifically**
20 **identifies such individual,**
21 **other than information which**
22 **merely identifies an individ-**
23 **ual's name or address; and**

24 **(II) place a conspicuous**
25 **notice on its Internet website**

1 (if the information broker
2 maintains such a website) in-
3 structing individuals how to
4 request access to the informa-
5 tion required to be provided
6 under subclause (I).

7 (ii) **DISPUTED INFORMATION.—**
8 **Whenever an individual whose in-**
9 **formation the information broker**
10 **maintains makes a written re-**
11 **quest disputing the accuracy of**
12 **any such information, the infor-**
13 **mation broker, after verifying the**
14 **identity of the individual making**
15 **such request and unless there are**
16 **reasonable grounds to believe**
17 **such request is frivolous or irrele-**
18 **vant, shall—**

19 (I) correct any inaccuracy;

20 or

21 (II)(aa) in the case of in-
22 formation that is public
23 record information, inform
24 the individual of the source of
25 the information, and, if rea-

1 sonably available, where a re-
2 quest for correction may be
3 directed; or

4 (bb) in the case of infor-
5 mation that is non-public in-
6 formation, note the informa-
7 tion that is disputed, includ-
8 ing the individual's statement
9 disputing such information,
10 and take reasonable steps to
11 independently verify such in-
12 formation under the proce-
13 dures outlined in subpara-
14 graph (A) if such information
15 can be independently verified.

16 (iii) LIMITATIONS.—An informa-
17 tion broker may limit the access
18 to information required under
19 subparagraph (B) in the following
20 circumstances:

21 (I) If access of the indi-
22 vidual to the information is
23 limited by law or legally rec-
24 ognized privilege.

1 **(II) If the information is**
2 **used for a legitimate govern-**
3 **mental or fraud prevention**
4 **purpose that would be com-**
5 **promised by such access.**

6 **(iv) RULEMAKING.—The Com-**
7 **mission shall issue regulations, as**
8 **necessary, under section 553 of**
9 **title 5, United States Code, on the**
10 **application of the limitations in**
11 **clause (iii).**

12 **(C) TREATMENT OF ENTITIES GOV-**
13 **ERNED BY OTHER LAW.—The Commis-**
14 **sion may promulgate rules (under**
15 **section 553 of title 5, United States**
16 **Code) to determine to be in compli-**
17 **ance with this paragraph any person**
18 **who is a consumer reporting agency,**
19 **as defined in section 603(f) of the Fair**
20 **Credit Reporting Act, with respect to**
21 **those products and services that are**
22 **subject to and in compliance with the**
23 **requirements of that Act.**

24 **(4) REQUIREMENT OF AUDIT LOG OF**
25 **ACCESSED AND TRANSMITTED INFORMA-**

1 **TION.—Not later than 1 year after the date**
2 **of the enactment of this Act, the Commis-**
3 **sion shall promulgate regulations under**
4 **section 553 of title 5, United States Code,**
5 **to require information brokers to estab-**
6 **lish measures which facilitate the audit-**
7 **ing or retracing of any internal or exter-**
8 **nal access to, or transmissions of, any**
9 **data in electronic form containing per-**
10 **sonal information collected, assembled,**
11 **or maintained by such information**
12 **broker.**

13 **(5) PROHIBITION ON PRETEXTING BY IN-**
14 **FORMATION BROKERS.—**

15 **(A) PROHIBITION ON OBTAINING PER-**
16 **SONAL INFORMATION BY FALSE PRE-**
17 **TENSES.—It shall be unlawful for an**
18 **information broker to obtain or at-**
19 **tempt to obtain, or cause to be dis-**
20 **closed or attempt to cause to be dis-**
21 **closed to any person, personal infor-**
22 **mation or any other information re-**
23 **lating to any person by—**

1 **(i) making a false, fictitious,**
2 **or fraudulent statement or rep-**
3 **resentation to any person; or**

4 **(ii) providing any document**
5 **or other information to any per-**
6 **son that the information broker**
7 **knows or should know to be**
8 **forged, counterfeit, lost, stolen, or**
9 **fraudulently obtained, or to con-**
10 **tain a false, fictitious, or fraudu-**
11 **lent statement or representation.**

12 **(B) PROHIBITION ON SOLICITATION**
13 **TO OBTAIN PERSONAL INFORMATION**
14 **UNDER FALSE PRETENSES.—It shall be**
15 **unlawful for an information broker to**
16 **request a person to obtain personal**
17 **information or any other information**
18 **relating to any other person, if the in-**
19 **formation broker knew or should**
20 **have known that the person to whom**
21 **such a request is made will obtain or**
22 **attempt to obtain such information in**
23 **the manner described in subsection**
24 **(a).**

1 **(d) EXEMPTION FOR TELECOMMUNICATIONS**
2 **CARRIER, CABLE OPERATOR, INFORMATION SERV-**
3 **ICE, OR INTERACTIVE COMPUTER SERVICE.—**
4 **Nothing in this section shall apply to any elec-**
5 **tronic communication by a third party stored**
6 **by a telecommunications carrier, cable oper-**
7 **ator, or information service, as those terms**
8 **are defined in section 3 of the Communica-**
9 **tions Act of 1934 (47 U.S.C. 153), or an inter-**
10 **active computer service, as such term is de-**
11 **finied in section 230(f)(2) of such Act (47 U.S.C.**
12 **230(f)(2)).**

13 **SEC. 3. NOTIFICATION OF INFORMATION SECURITY**
14 **BREACH.**

15 **(a) NATIONWIDE NOTIFICATION.—Any per-**
16 **son engaged in interstate commerce that**
17 **owns or possesses data in electronic form con-**
18 **taining personal information shall, following**
19 **the discovery of a breach of security of the**
20 **system maintained by such person that con-**
21 **tains such data—**

22 **(1) notify each individual who is a cit-**
23 **izen or resident of the United States**
24 **whose personal information was acquired**

1 by an unauthorized person as a result of
2 such a breach of security; and

3 (2) notify the Commission.

4 (b) SPECIAL NOTIFICATION REQUIREMENT
5 FOR CERTAIN ENTITIES.—

6 (1) THIRD PARTY AGENTS.—In the event
7 of a breach of security by any third party
8 entity that has been contracted to main-
9 tain or process data in electronic form
10 containing personal information on be-
11 half of any other person who owns or
12 possesses such data, such third party en-
13 tity shall be required only to notify such
14 person of the breach of security. Upon re-
15 ceiving such notification from such third
16 party, such person shall provide the noti-
17 fication required under subsection (a).

18 (2) TELECOMMUNICATIONS CARRIERS,
19 CABLE OPERATORS, INFORMATION SERVICES,
20 AND INTERACTIVE COMPUTER SERVICES.—If a
21 telecommunications carrier, cable oper-
22 ator, or information service (as such
23 terms are defined in section 3 of the Com-
24 munications Act of 1934 (47 U.S.C. 153)),
25 or an interactive computer service (as

1 **such term is defined in section 230(f)(2)**
2 **of such Act (47 U.S.C. 230(f)(2))), becomes**
3 **aware of a breach of security during the**
4 **transmission of data in electronic form**
5 **containing personal information that is**
6 **owned or possessed by another person**
7 **utilizing the means of transmission of**
8 **such telecommunications carrier, cable**
9 **operator, information service, or inter-**
10 **active computer service, such tele-**
11 **communications carrier, cable operator,**
12 **information service, or interactive com-**
13 **puter service shall be required only to**
14 **notify the person who initiated such**
15 **transmission of such a breach of security**
16 **if such person can be reasonably identi-**
17 **fied. Upon receiving such notification**
18 **from a telecommunications carrier, cable**
19 **operator, information service, or inter-**
20 **active computer service, such person**
21 **shall provide the notification required**
22 **under subsection (a).**

23 **(3) BREACH OF HEALTH INFORMATION.—**
24 **If the Commission receives a notification**
25 **of a breach of security and determines**

1 that information included in such breach
2 is individually identifiable health infor-
3 mation (as such term is defined in section
4 1171(6) of the Social Security Act (42
5 U.S.C. 1320d(6)), the Commission shall
6 send a copy of such notification to the
7 Secretary of Health and Human Services.

8 (c) **TIMELINESS OF NOTIFICATION.**—All noti-
9 fications required under subsection (a) shall
10 be made as promptly as possible and without
11 unreasonable delay following the discovery of
12 a breach of security of the system and con-
13 sistent with any measures necessary to deter-
14 mine the scope of the breach, prevent further
15 breach or unauthorized disclosures, and rea-
16 sonably restore the integrity of the data sys-
17 tem.

18 (d) **METHOD AND CONTENT OF NOTIFICA-**
19 **TION.**—

20 (1) **DIRECT NOTIFICATION.**—

21 (A) **METHOD OF NOTIFICATION.**—A
22 person required to provide notifica-
23 tion to individuals under subsection
24 (a)(1) shall be in compliance with
25 such requirement if the person pro-

1 **vides conspicuous and clearly identi-**
2 **fied notification by one of the fol-**
3 **lowing methods (provided the se-**
4 **lected method can reasonably be ex-**
5 **pected to reach the intended indi-**
6 **vidual):**

7 **(i) Written notification.**

8 **(ii) Email notification, if—**

9 **(I) the person’s primary**
10 **method of communication**
11 **with the individual is by**
12 **email; or**

13 **(II) the individual has**
14 **consented to receive such no-**
15 **tification and the notification**
16 **is provided in a manner that**
17 **is consistent with the provi-**
18 **sions permitting electronic**
19 **transmission of notices under**
20 **section 101 of the Electronic**
21 **Signatures in Global Com-**
22 **merce Act (15 U.S.C. 7001).**

23 **(B) CONTENT OF NOTIFICATION.—**

24 **Regardless of the method by which**
25 **notification is provided to an indi-**

1 **vidual under subparagraph (A), such**
2 **notification shall include—**

3 **(i) a description of the per-**
4 **sonal information that was ac-**
5 **quired by an unauthorized per-**
6 **son;**

7 **(ii) a telephone number that**
8 **the individual may use, at no cost**
9 **to such individual, to contact the**
10 **person to inquire about the**
11 **breach of security or the informa-**
12 **tion the person maintained about**
13 **that individual;**

14 **(iii) notice that the individual**
15 **is entitled to receive, at no cost to**
16 **such individual, consumer credit**
17 **reports on a quarterly basis for a**
18 **period of 2 years, and instruc-**
19 **tions to the individual on request-**
20 **ing such reports from the person;**

21 **(iv) the toll-free contact tele-**
22 **phone numbers and addresses for**
23 **the major credit reporting agen-**
24 **cies; and**

1 (v) a toll-free telephone num-
2 ber and Internet website address
3 for the Commission whereby the
4 individual may obtain informa-
5 tion regarding identity theft.

6 **(2) SUBSTITUTE NOTIFICATION.—**

7 **(A) CIRCUMSTANCES GIVING RISE TO**
8 **SUBSTITUTE NOTIFICATION.—A person**
9 **required to provide notification to in-**
10 **dividuals under subsection (a)(1) may**
11 **provide substitute notification in lieu**
12 **of the direct notification required by**
13 **paragraph (1) if—**

14 (i) the person owns or pos-
15 sesses data in electronic form
16 containing personal information
17 of fewer than 1,000 individuals;
18 and

19 (ii) such direct notification is
20 not feasible due to—

21 (I) excessive cost to the
22 person required to provide
23 such notification relative to
24 the resources of such person,
25 as determined in accordance

1 **with the regulations issued by**
2 **the Commission under para-**
3 **graph (3)(A); or**

4 **(II) lack of sufficient con-**
5 **tact information for the indi-**
6 **vidual required to be notified.**

7 **(B) FORM OF SUBSTITUTE NOTICE.—**

8 **Such substitute notification shall in-**
9 **clude—**

10 **(i) email notification to the**
11 **extent that the person has email**
12 **addresses of individuals to whom**
13 **it is required to provide notifica-**
14 **tion under subsection (a)(1);**

15 **(ii) a conspicuous notice on**
16 **the Internet website of the person**
17 **(if such person maintains such a**
18 **website); and**

19 **(iii) notification in print and**
20 **to broadcast media, including**
21 **major media in metropolitan and**
22 **rural areas where the individuals**
23 **whose personal information was**
24 **acquired reside.**

1 **(C) CONTENT OF SUBSTITUTE NO-**
2 **TICE.—Each form of substitute notice**
3 **under this paragraph shall include—**

4 **(i) notice that individuals**
5 **whose personal information is in-**
6 **cluded in the breach of security**
7 **are entitled to receive, at no cost**
8 **to the individuals, consumer cred-**
9 **it reports on a quarterly basis for**
10 **a period of 2 years, and instruc-**
11 **tions on requesting such reports**
12 **from the person; and**

13 **(ii) a telephone number by**
14 **which an individual can, at no**
15 **cost to such individual, learn**
16 **whether that individual’s per-**
17 **sonal information is included in**
18 **the breach of security.**

19 **(3) FEDERAL TRADE COMMISSION REGU-**
20 **LATIONS AND GUIDANCE.—**

21 **(A) REGULATIONS.—Not later than**
22 **1 year after the date of enactment of**
23 **this Act, the Commission shall, by**
24 **regulations under section 553 of title**
25 **5, United States Code, establish cri-**

1 **teria for determining the cir-**
2 **cumstances under which substitute**
3 **notification may be provided under**
4 **paragraph (2), including criteria for**
5 **determining if notification under**
6 **paragraph (1) is not feasible due to**
7 **excessive cost to the person required**
8 **to provide such notification relative**
9 **to the resources of such person.**

10 **(B) GUIDANCE.—In addition, the**
11 **Commission shall provide and pub-**
12 **lish general guidance with respect to**
13 **compliance with this section. Such**
14 **guidance shall include—**

15 **(i) a description of written or**
16 **email notification that complies**
17 **with the requirements of para-**
18 **graph (1); and**

19 **(ii) guidance on the content of**
20 **substitute notification under**
21 **paragraph (2)(B), including the**
22 **extent of notification to print and**
23 **broadcast media that complies**
24 **with the requirements of such**
25 **paragraph.**

1 **(e) OTHER OBLIGATIONS FOLLOWING**
2 **BREACH.—**A person required to provide notifi-
3 **cation under subsection (a) shall, upon re-**
4 **quest of an individual whose personal infor-**
5 **mation was included in the breach of security,**
6 **provide or arrange for the provision of, to**
7 **each such individual and at no cost to such**
8 **individual, consumer credit reports from at**
9 **least one of the major credit reporting agen-**
10 **cies beginning not later than 2 months fol-**
11 **lowing the discovery of a breach of security**
12 **and continuing on a quarterly basis for a pe-**
13 **riod of 2 years thereafter.**

14 **(f) EXEMPTION.—**

15 **(1) GENERAL EXEMPTION.—**A person
16 **shall be exempt from the requirements**
17 **under this section if, following a breach**
18 **of security, such person determines that**
19 **there is no reasonable risk of identity**
20 **theft, fraud, or other unlawful conduct.**

21 **(2) PRESUMPTIONS.—**

22 **(A) ENCRYPTION.—**The encryption
23 **of data in electronic form shall estab-**
24 **lish a presumption that no reasonable**
25 **risk of identity theft, fraud, or other**

1 unlawful conduct exists following a
2 breach of security of such data. Any
3 such presumption may be rebutted by
4 facts demonstrating that the
5 encryption has been or is reasonably
6 likely to be compromised.

7 (B) ADDITIONAL METHODOLOGIES OR
8 TECHNOLOGIES.—Not later than 270
9 days after the date of the enactment
10 of this Act, the Commission shall, by
11 rule pursuant to section 553 of title 5,
12 United States Code, identify any addi-
13 tional security methodology or tech-
14 nology, other than encryption, which
15 renders data in electronic form
16 unreadable or indecipherable, that
17 shall, if applied to such data, estab-
18 lish a presumption that no reasonable
19 risk of identity theft, fraud, or other
20 unlawful conduct exists following a
21 breach of security of such data. Any
22 such presumption may be rebutted by
23 facts demonstrating that any such
24 methodology or technology has been
25 or is reasonably likely to be com-

1 **promised. In promulgating such a**
2 **rule, the Commission shall consult**
3 **with relevant industries, consumer**
4 **organizations, and data security and**
5 **identity theft prevention experts and**
6 **established standards setting bodies.**

7 **(3) FTC GUIDANCE.—Not later than 1**
8 **year after the date of the enactment of**
9 **this Act, the Commission shall issue guid-**
10 **ance regarding the application of the ex-**
11 **emption in paragraph (1).**

12 **(g) WEBSITE NOTICE OF FEDERAL TRADE**
13 **COMMISSION.—If the Commission, upon receiv-**
14 **ing notification of any breach of security that**
15 **is reported to the Commission under sub-**
16 **section (a)(2), finds that notification of such a**
17 **breach of security via the Commission’s Inter-**
18 **net website would be in the public interest or**
19 **for the protection of consumers, the Commis-**
20 **sion shall place such a notice in a clear and**
21 **conspicuous location on its Internet website.**

22 **(h) FTC STUDY ON NOTIFICATION IN LAN-**
23 **GUAGES IN ADDITION TO ENGLISH.—Not later**
24 **than 1 year after the date of enactment of this**
25 **Act, the Commission shall conduct a study on**

1 **the practicality and cost effectiveness of re-**
2 **quiring the notification required by sub-**
3 **section (d)(1) to be provided in a language in**
4 **addition to English to individuals known to**
5 **speak only such other language.**

6 **SEC. 4. ENFORCEMENT.**

7 **(a) ENFORCEMENT BY THE FEDERAL TRADE**
8 **COMMISSION.—**

9 **(1) UNFAIR OR DECEPTIVE ACTS OR**
10 **PRACTICES.—A violation of section 2 or 3**
11 **shall be treated as an unfair and decep-**
12 **tive act or practice in violation of a regu-**
13 **lation under section 18(a)(1)(B) of the**
14 **Federal Trade Commission Act (15 U.S.C.**
15 **57a(a)(1)(B)) regarding unfair or decep-**
16 **tive acts or practices.**

17 **(2) POWERS OF COMMISSION.—The Com-**
18 **mission shall enforce this Act in the same**
19 **manner, by the same means, and with the**
20 **same jurisdiction, powers, and duties as**
21 **though all applicable terms and provi-**
22 **sions of the Federal Trade Commission**
23 **Act (15 U.S.C. 41 et seq.) were incor-**
24 **porated into and made a part of this Act.**
25 **Any person who violates such regulations**

1 shall be subject to the penalties and enti-
2 tled to the privileges and immunities pro-
3 vided in that Act.

4 (3) **LIMITATION.**—In promulgating
5 rules under this Act, the Commission
6 shall not require the deployment or use
7 of any specific products or technologies,
8 including any specific computer software
9 or hardware.

10 (b) **ENFORCEMENT BY STATE ATTORNEYS**
11 **GENERAL.**—

12 (1) **CIVIL ACTION.**—In any case in
13 which the attorney general of a State, or
14 an official or agency of a State, has rea-
15 son to believe that an interest of the resi-
16 dents of that State has been or is threat-
17 ened or adversely affected by any person
18 who violates section 2 or 3 of this Act, the
19 attorney general, official, or agency of
20 the State, as *parens patriae*, may bring a
21 civil action on behalf of the residents of
22 the State in a district court of the United
23 States of appropriate jurisdiction—

24 (A) to enjoin further violation of
25 such section by the defendant;

1 **(B) to compel compliance with**
2 **such section; or**

3 **(C) to obtain civil penalties in the**
4 **amount determined under paragraph**
5 **(2).**

6 **(2) CIVIL PENALTIES.—**

7 **(A) CALCULATION.—**

8 **(i) TREATMENT OF VIOLATIONS**
9 **OF SECTION 2.—For purposes of**
10 **paragraph (1)(C) with regard to a**
11 **violation of section 2, the amount**
12 **determined under this paragraph**
13 **is the amount calculated by multi-**
14 **plying the number of violations of**
15 **such section by an amount not**
16 **greater than \$11,000. Each day**
17 **that a person is not in compliance**
18 **with the requirements of such**
19 **section shall be treated as a sepa-**
20 **rate violation. The maximum civil**
21 **penalty calculated under this**
22 **clause shall not exceed \$5,000,000.**

23 **(ii) TREATMENT OF VIOLATIONS**
24 **OF SECTION 3.—For purposes of**
25 **paragraph (1)(C) with regard to a**

1 violation of section 3, the amount
2 determined under this paragraph
3 is the amount calculated by multi-
4 plying the number of violations of
5 such section by an amount not
6 greater than \$11,000. Each failure
7 to send notification as required
8 under section 3 to a resident of
9 the State shall be treated as a
10 separate violation. The maximum
11 civil penalty calculated under
12 this clause shall not exceed
13 \$5,000,000.

14 (B) ADJUSTMENT FOR INFLATION.—

15 Beginning on the date that the Con-
16 sumer Price Index is first published
17 by the Bureau of Labor Statistics that
18 is after 1 year after the date of enact-
19 ment of this Act, and each year there-
20 after, the amounts specified in
21 clauses (i) and (ii) of subparagraph
22 (A) shall be increased by the percent-
23 age increase in the Consumer Price
24 Index published on that date from the

1 **Consumer Price Index published the**
2 **previous year.**

3 **(3) INTERVENTION BY THE FTC.—**

4 **(A) NOTICE AND INTERVENTION.—**

5 **The State shall provide prior written**
6 **notice of any action under paragraph**
7 **(1) to the Commission and provide**
8 **the Commission with a copy of its**
9 **complaint, except in any case in**
10 **which such prior notice is not fea-**
11 **sible, in which case the State shall**
12 **serve such notice immediately upon**
13 **instituting such action. The Commis-**
14 **sion shall have the right—**

15 **(i) to intervene in the action;**

16 **(ii) upon so intervening, to be**
17 **heard on all matters arising**
18 **therein; and**

19 **(iii) to file petitions for ap-**
20 **peal.**

21 **(B) LIMITATION ON STATE ACTION**

22 **WHILE FEDERAL ACTION IS PENDING.—If**
23 **the Commission has instituted a civil**
24 **action for violation of this Act, no**
25 **State attorney general, or official or**

1 **agency of a State, may bring an ac-**
2 **tion under this subsection during the**
3 **pendency of that action against any**
4 **defendant named in the complaint of**
5 **the Commission for any violation of**
6 **this Act alleged in the complaint.**

7 **(4) CONSTRUCTION.—For purposes of**
8 **bringing any civil action under para-**
9 **graph (1), nothing in this Act shall be**
10 **construed to prevent an attorney general**
11 **of a State from exercising the powers**
12 **conferred on the attorney general by the**
13 **laws of that State to—**

14 **(A) conduct investigations;**

15 **(B) administer oaths or affirma-**
16 **tions; or**

17 **(C) compel the attendance of wit-**
18 **nesses or the production of documen-**
19 **tary and other evidence.**

20 **(c) AFFIRMATIVE DEFENSE FOR A VIOLATION**
21 **OF SECTION 3.—It shall be an affirmative de-**
22 **fense to an enforcement action brought under**
23 **subsection (a), or a civil action brought under**
24 **subsection (b), based on a violation of section**
25 **3, that all of the personal information con-**

1 tained in the data in electronic form that was
2 acquired as a result of a breach of security of
3 the defendant is public record information
4 that is lawfully made available to the general
5 public from Federal, State, or local govern-
6 ment records and was acquired by the defend-
7 ant from such records.

8 **SEC. 5. DEFINITIONS.**

9 **In this Act the following definitions apply:**

10 (1) **BREACH OF SECURITY.**—The term
11 “breach of security” means the unauthor-
12 ized acquisition of data in electronic
13 form containing personal information.

14 (2) **COMMISSION.**—The term “Commis-
15 sion” means the Federal Trade Commis-
16 sion.

17 (3) **DATA IN ELECTRONIC FORM.**—The
18 term “data in electronic form” means any
19 data stored electronically or digitally on
20 any computer system or other database
21 and includes recordable tapes and other
22 mass storage devices.

23 (4) **ENCRYPTION.**—The term
24 “encryption” means the protection of
25 data in electronic form in storage or in

1 transit using an encryption technology
2 that has been adopted by an established
3 standards setting body which renders
4 such data indecipherable in the absence
5 of associated cryptographic keys nec-
6 essary to enable decryption of such data.
7 Such encryption must include appro-
8 priate management and safeguards of
9 such keys to protect the integrity of the
10 encryption.

11 (5) **IDENTITY THEFT.**—The term “iden-
12 tity theft” means the unauthorized use of
13 another person’s personal information
14 for the purpose of engaging in commer-
15 cial transactions under the name of such
16 other person.

17 (6) **INFORMATION BROKER.**—The term
18 “information broker” means a commer-
19 cial entity whose business is to collect,
20 assemble, or maintain personal informa-
21 tion concerning individuals who are not
22 current or former customers of such enti-
23 ty in order to sell such information or
24 provide access to such information to any
25 nonaffiliated third party in exchange for

1 **consideration, whether such collection,**
2 **assembly, or maintenance of personal in-**
3 **formation is performed by the informa-**
4 **tion broker directly, or by contract or**
5 **subcontract with any other entity.**

6 **(7) PERSONAL INFORMATION.—**

7 **(A) DEFINITION.—The term “per-**
8 **sonal information” means an individ-**
9 **ual’s first name or initial and last**
10 **name, or address, or phone number,**
11 **in combination with any 1 or more of**
12 **the following data elements for that**
13 **individual:**

14 **(i) Social Security number.**

15 **(ii) Driver’s license number or**
16 **other State identification number.**

17 **(iii) Financial account num-**
18 **ber, or credit or debit card num-**
19 **ber, and any required security**
20 **code, access code, or password**
21 **that is necessary to permit access**
22 **to an individual’s financial ac-**
23 **count.**

24 **(B) MODIFIED DEFINITION BY RULE-**
25 **MAKING.—The Commission may, by**

1 rule, modify the definition of “per-
2 sonal information” under subpara-
3 graph (A) to the extent that such
4 modification is necessary to accom-
5 modate changes in technology or
6 practices, will not unreasonably im-
7 pede interstate commerce, and will
8 accomplish the purposes of this Act.

9 (8) PUBLIC RECORD INFORMATION.—The
10 term “public record information” means
11 information about an individual which
12 has been obtained originally from
13 records of a Federal, State, or local gov-
14 ernment entity that are available for pub-
15 lic inspection.

16 (9) NON-PUBLIC INFORMATION.—The
17 term “non-public information” means in-
18 formation about an individual that is of a
19 private nature and neither available to
20 the general public nor obtained from a
21 public record.

22 SEC. 6. EFFECT ON OTHER LAWS.

23 (a) PREEMPTION OF STATE INFORMATION SE-
24 CURITY LAWS.—This Act supersedes any provi-
25 sion of a statute, regulation, or rule of a State

1 or political subdivision of a State, with re-
2 spect to those entities covered by the regula-
3 tions issued pursuant to this Act, that ex-
4 pressly—

5 (1) requires information security
6 practices and treatment of data in elec-
7 tronic form containing personal informa-
8 tion similar to any of those required
9 under section 2; and

10 (2) requires notification to individ-
11 uals of a breach of security resulting in
12 unauthorized acquisition of data in elec-
13 tronic form containing personal informa-
14 tion.

15 (b) ADDITIONAL PREEMPTION.—

16 (1) IN GENERAL.—No person other than
17 the Attorney General of a State may
18 bring a civil action under the laws of any
19 State if such action is premised in whole
20 or in part upon the defendant violating
21 any provision of this Act.

22 (2) PROTECTION OF CONSUMER PROTEC-
23 TION LAWS.—This subsection shall not be
24 construed to limit the enforcement of any

1 **State consumer protection law by an At-**
2 **torney General of a State.**

3 **(c) PROTECTION OF CERTAIN STATE LAWS.—**

4 **This Act shall not be construed to preempt the**
5 **applicability of—**

6 **(1) State trespass, contract, or tort**
7 **law; or**

8 **(2) other State laws to the extent that**
9 **those laws relate to acts of fraud.**

10 **(d) PRESERVATION OF FTC AUTHORITY.—**

11 **Nothing in this Act may be construed in any**
12 **way to limit or affect the Commission’s au-**
13 **thority under any other provision of law, in-**
14 **cluding the authority to issue advisory opin-**
15 **ions (under part 1 of volume 16 of the Code**
16 **of Federal Regulations), policy statements, or**
17 **guidance regarding this Act.**

18 **SEC. 7. EFFECTIVE DATE AND SUNSET.**

19 **(a) EFFECTIVE DATE.—This Act shall take**
20 **effect 1 year after the date of enactment of**
21 **this Act.**

22 **(b) SUNSET.—This Act shall cease to be in**
23 **effect on the date that is 10 years from the**
24 **date of enactment of this Act.**

1 SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

2 **There is authorized to be appropriated to**
3 **the Commission \$1,000,000 for each of fiscal**
4 **years 2006 through 2010 to carry out this Act.**

Amend the title so as to read: “A bill to protect consumers by requiring reasonable security policies and procedures to protect computerized data containing personal information, and to provide for nationwide notice in the event of a security breach.”.

Union Calendar No. 269

109TH CONGRESS
2^D SESSION

H. R. 3997

[Report No. 109-454, Parts I and II]

A BILL

To amend the Fair Credit Reporting Act to provide for secure financial data, and for other purposes.

JUNE 2, 2006

Reported from the Committee on Energy and Commerce with amendments; committed to the Committee of the Whole House on the State of the Union and ordered to be printed