

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

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

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

11 (b) **FINANCIAL INSTITUTIONS SAFEGUARDS.**—In fur-
12 therance of the policy in subsection (a), each agency or
13 authority described in section 505(a) shall establish appro-
14 priate standards for the financial institutions subject to
15 their jurisdiction relating to administrative, technical, and
16 physical safeguards—

17 (1) to insure the security and confidentiality of
18 customer records and information;

19 (2) to protect against any anticipated threats or
20 hazards to the security or integrity of such records;
21 and

22 (3) to protect against unauthorized access to or
23 use of such records or information which could re-

1 sult in substantial harm or inconvenience to any cus-
2 tomer.

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

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

11 (b) OPT OUT.—

12 (1) IN GENERAL.—A financial institution may
13 not disclose nonpublic personal information to a
14 nonaffiliated third party unless—

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

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

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

4 (2) EXCEPTION.—This subsection shall not pre-
5 vent a financial institution from providing nonpublic
6 personal information to a nonaffiliated third party to
7 perform services for or functions on behalf of the fi-
8 nancial institution, including marketing of the finan-
9 cial institution's own products or services, or finan-
10 cial products or services offered pursuant to joint
11 agreements between two or more financial institu-
12 tions that comply with the requirements imposed by
13 the regulations prescribed under section 504, if the
14 financial institution fully discloses the providing of
15 such information and enters into a contractual
16 agreement with the third party that requires the
17 third party to maintain the confidentiality of such
18 information.

19 (c) LIMITS ON REUSE OF INFORMATION.—Except as
20 otherwise provided in this subtitle, a nonaffiliated third
21 party that receives from a financial institution nonpublic
22 personal information under this section shall not, directly
23 or through an affiliate of such receiving third party, dis-
24 close such information to any other person that is a non-
25 affiliated third party of both the financial institution and

1 such receiving third party, unless such disclosure would
2 be lawful if made directly to such other person by the fi-
3 nancial institution.

4 (d) LIMITATIONS ON THE SHARING OF ACCOUNT
5 NUMBER INFORMATION FOR MARKETING PURPOSES.—A
6 financial institution shall not disclose, other than to a con-
7 sumer reporting agency, an account number or similar
8 form of access number or access code for a credit card
9 account, deposit account, or transaction account of a con-
10 sumer to any nonaffiliated third party for use in tele-
11 marketing, direct mail marketing, or other marketing
12 through electronic mail to the consumer.

13 (e) GENERAL EXCEPTIONS.—Subsections (a) and (b)
14 shall not prohibit the disclosure of nonpublic personal
15 information—

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

19 (A) servicing or processing a financial
20 product or service requested or authorized by
21 the consumer;

22 (B) maintaining or servicing the con-
23 sumer's account with the financial institution,
24 or with another entity as part of a private label

1 credit card program or other extension of credit
2 on behalf of such entity; or

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

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

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

20 (4) to provide information to insurance rate ad-
21 visory organizations, guaranty funds or agencies, ap-
22 plicable rating agencies of the financial institution,
23 persons assessing the institution's compliance with
24 industry standards, and the institution's attorneys,
25 accountants, and auditors;

1 (5) to the extent specifically permitted or re-
2 quired under other provisions of law and in accord-
3 ance with the Right to Financial Privacy Act of
4 1978, to law enforcement agencies (including a Fed-
5 eral functional regulator, the Secretary of the Treas-
6 ury with respect to subchapter II of chapter 53 of
7 title 31, United States Code, and chapter 2 of title
8 I of Public Law 91-508 (12 U.S.C. 1951-1959), a
9 State insurance authority, or the Federal Trade
10 Commission), self-regulatory organizations, or for an
11 investigation on a matter related to public safety;

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

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

21 (8) to comply with Federal, State, or local laws,
22 rules, and other applicable legal requirements; to
23 comply with a properly authorized civil, criminal, or
24 regulatory investigation or subpoena or summons by
25 Federal, State, or local authorities; or to respond to

1 judicial process or government regulatory authorities
2 having jurisdiction over the financial institution for
3 examination, compliance, or other purposes as au-
4 thorized by law.

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

6 (a) DISCLOSURE REQUIRED.—At the time of estab-
7 lishing a customer relationship with a consumer and not
8 less than annually during the continuation of such rela-
9 tionship, a financial institution shall provide a clear and
10 conspicuous disclosure to such consumer, in writing or in
11 electronic form or other form permitted by the regulations
12 prescribed under section 504, of such financial institu-
13 tion's policies and practices with respect to—

14 (1) disclosing nonpublic personal information to
15 affiliates and nonaffiliated third parties, consistent
16 with section 502, including the categories of infor-
17 mation that may be disclosed;

18 (2) disclosing nonpublic personal information of
19 persons who have ceased to be customers of the fi-
20 nancial institution; and

21 (3) protecting the nonpublic personal informa-
22 tion of consumers.

23 Such disclosures shall be made in accordance with the reg-
24 ulations prescribed under section 504.

1 (b) INFORMATION TO BE INCLUDED.—The disclo-
2 sure required by subsection (a) shall include—

3 (1) the policies and practices of the institution
4 with respect to disclosing nonpublic personal infor-
5 mation to nonaffiliated third parties, other than
6 agents of the institution, consistent with section 502
7 of this subtitle, and including—

8 (A) the categories of persons to whom the
9 information is or may be disclosed, other than
10 the persons to whom the information may be
11 provided pursuant to section 502(e); and

12 (B) the policies and practices of the insti-
13 tution with respect to disclosing of nonpublic
14 personal information of persons who have
15 ceased to be customers of the financial institu-
16 tion;

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

19 (3) the policies that the institution maintains to
20 protect the confidentiality and security of nonpublic
21 personal information in accordance with section 501;
22 and

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

1 **SEC. 504. RULEMAKING.**

2 (a) REGULATORY AUTHORITY.—

3 (1) RULEMAKING.—The Federal banking agen-
4 cies, the National Credit Union Administration, the
5 Secretary of the Treasury, the Securities and Ex-
6 change Commission, and the Federal Trade Com-
7 mission shall each prescribe, after consultation as
8 appropriate with representatives of State insurance
9 authorities designated by the National Association of
10 Insurance Commissioners, such regulations as may
11 be necessary to carry out the purposes of this sub-
12 title with respect to the financial institutions subject
13 to their jurisdiction under section 505.

14 (2) COORDINATION, CONSISTENCY, AND COM-
15 PARABILITY.—Each of the agencies and authorities
16 required under paragraph (1) to prescribe regula-
17 tions shall consult and coordinate with the other
18 such agencies and authorities for the purposes of as-
19 suring, to the extent possible, that the regulations
20 prescribed by each such agency and authority are
21 consistent and comparable with the regulations pre-
22 scribed by the other such agencies and authorities.

23 (3) PROCEDURES AND DEADLINE.—Such regu-
24 lations shall be prescribed in accordance with appli-
25 cable requirements of title 5, United States Code,

1 and shall be issued in final form not later than 6
2 months after the date of the enactment of this Act.

3 (b) **AUTHORITY TO GRANT EXCEPTIONS.**—The regu-
4 lations prescribed under subsection (a) may include such
5 additional exceptions to subsections (a) through (d) of sec-
6 tion 502 as are deemed consistent with the purposes of
7 this subtitle.

8 **SEC. 505. ENFORCEMENT.**

9 (a) **IN GENERAL.**—This subtitle and the regulations
10 prescribed thereunder shall be enforced by the Federal
11 functional regulators, the State insurance authorities, and
12 the Federal Trade Commission with respect to financial
13 institutions and other persons subject to their jurisdiction
14 under applicable law, as follows:

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

17 (A) national banks, Federal branches and
18 Federal agencies of foreign banks, and any sub-
19 sidiaries of such entities (except brokers, deal-
20 ers, persons providing insurance, investment
21 companies, and investment advisers), by the Of-
22 fice of the Comptroller of the Currency;

23 (B) member banks of the Federal Reserve
24 System (other than national banks), branches
25 and agencies of foreign banks (other than Fed-

1 eral branches, Federal agencies, and insured
2 State branches of foreign banks), commercial
3 lending companies owned or controlled by for-
4 eign banks, organizations operating under sec-
5 tion 25 or 25A of the Federal Reserve Act, and
6 bank holding companies and their nonbank sub-
7 sidiaries or affiliates (except brokers, dealers,
8 persons providing insurance, investment compa-
9 nies, and investment advisers), by the Board of
10 Governors of the Federal Reserve System;

11 (C) banks insured by the Federal Deposit
12 Insurance Corporation (other than members of
13 the Federal Reserve System), insured State
14 branches of foreign banks, and any subsidiaries
15 of such entities (except brokers, dealers, per-
16 sons providing insurance, investment compa-
17 nies, and investment advisers), by the Board of
18 Directors of the Federal Deposit Insurance Cor-
19 poration; and

20 (D) savings associations the deposits of
21 which are insured by the Federal Deposit In-
22 surance Corporation, and any subsidiaries of
23 such savings associations (except brokers, deal-
24 ers, persons providing insurance, investment

1 companies, and investment advisers), by the Di-
2 rector of the Office of Thrift Supervision.

3 (2) Under the Federal Credit Union Act, by the
4 Board of the National Credit Union Administration
5 with respect to any federally insured credit union,
6 and any subsidiaries of such an entity.

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

10 (4) Under the Investment Company Act of
11 1940, by the Securities and Exchange Commission
12 with respect to investment companies.

13 (5) Under the Investment Advisers Act of 1940,
14 by the Securities and Exchange Commission with re-
15 spect to investment advisers registered with the
16 Commission under such Act.

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

22 (7) Under the Federal Trade Commission Act,
23 by the Federal Trade Commission for any other fi-
24 nancial institution or other person that is not sub-

1 ject to the jurisdiction of any agency or authority
2 under paragraphs (1) through (6) of this subsection.

3 (b) ENFORCEMENT OF SECTION 501.—

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

11 (2) EXCEPTION.—The agencies and authorities
12 described in paragraphs (3), (4), (5), (6), and (7) of
13 subsection (a) shall implement the standards pre-
14 scribed under section 501(b) by rule with respect to
15 the financial institutions and other persons subject
16 to their respective jurisdictions under subsection (a).

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

24 (d) DEFINITIONS.—The terms used in subsection
25 (a)(1) that are not defined in this subtitle or otherwise

1 defined in section 3(s) of the Federal Deposit Insurance
2 Act shall have the same meaning as given in section 1(b)
3 of the International Banking Act of 1978.

4 **SEC. 506. PROTECTION OF FAIR CREDIT REPORTING ACT.**

5 (a) AMENDMENT.—Section 621 of the Fair Credit
6 Reporting Act (15 U.S.C. 1681s) is amended—

7 (1) in subsection (d), by striking everything fol-
8 lowing the end of the second sentence; and

9 (2) by striking subsection (e) and inserting the
10 following:

11 “(e) REGULATORY AUTHORITY.—

12 “(1) The Federal banking agencies referred to
13 in paragraphs (1) and (2) of subsection (b) shall
14 jointly prescribe such regulations as necessary to
15 carry out the purposes of this Act with respect to
16 any persons identified under paragraphs (1) and (2)
17 of subsection (b), and the Board of Governors of the
18 Federal Reserve System shall have authority to pre-
19 scribe regulations consistent with such joint regula-
20 tions with respect to bank holding companies and af-
21 filiates (other than depository institutions and con-
22 sumer reporting agencies) of such holding compa-
23 nies.

24 “(2) The Board of the National Credit Union
25 Administration shall prescribe such regulations as

1 necessary to carry out the purposes of this Act with
2 respect to any persons identified under paragraph
3 (3) of subsection (b).”.

4 (b) CONFORMING AMENDMENT.—Section 621(a) of
5 the Fair Credit Reporting Act (15 U.S.C. 1681s(a)) is
6 amended by striking paragraph (4).

7 (c) RELATION TO OTHER PROVISIONS.—Except for
8 the amendments made by subsections (a) and (b), nothing
9 in this title shall be construed to modify, limit, or super-
10 sede the operation of the Fair Credit Reporting Act, and
11 no inference shall be drawn on the basis of the provisions
12 of this title regarding whether information is transaction
13 or experience information under section 603 of such Act.

14 **SEC. 507. RELATION TO STATE LAWS.**

15 (a) IN GENERAL.—This subtitle and the amendments
16 made by this subtitle shall not be construed as super-
17 seding, altering, or affecting any statute, regulation,
18 order, or interpretation in effect in any State, except to
19 the extent that such statute, regulation, order, or interpre-
20 tation is inconsistent with the provisions of this subtitle,
21 and then only to the extent of the inconsistency.

22 (b) GREATER PROTECTION UNDER STATE LAW.—
23 For purposes of this section, a State statute, regulation,
24 order, or interpretation is not inconsistent with the provi-
25 sions of this subtitle if the protection such statute, regula-

1 tion, order, or interpretation affords any person is greater
2 than the protection provided under this subtitle and the
3 amendments made by this subtitle, as determined by the
4 Federal Trade Commission, after consultation with the
5 agency or authority with jurisdiction under section 505(a)
6 of either the person that initiated the complaint or that
7 is the subject of the complaint, on its own motion or upon
8 the petition of any interested party.

9 **SEC. 508. STUDY OF INFORMATION SHARING AMONG FI-**
10 **NANCIAL AFFILIATES.**

11 (a) IN GENERAL.—The Secretary of the Treasury, in
12 conjunction with the Federal functional regulators and the
13 Federal Trade Commission, shall conduct a study of infor-
14 mation sharing practices among financial institutions and
15 their affiliates. Such study shall include—

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

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

21 (3) the potential risks for customer privacy of
22 such sharing of information;

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

1 (5) the potential benefits for customers of such
2 sharing of information;

3 (6) the adequacy of existing laws to protect cus-
4 tomer privacy;

5 (7) the adequacy of financial institution privacy
6 policy and privacy rights disclosure under existing
7 law;

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

12 (9) the feasibility of restricting sharing of infor-
13 mation for specific uses or of permitting customers
14 to direct the uses for which information may be
15 shared.

16 (b) CONSULTATION.—The Secretary shall consult
17 with representatives of State insurance authorities des-
18 ignated by the National Association of Insurance Commis-
19 sioners, and also with financial services industry, con-
20 sumer organizations and privacy groups, and other rep-
21 resentatives of the general public, in formulating and con-
22 ducting the study required by subsection (a).

23 (c) REPORT.—On or before January 1, 2002, the
24 Secretary shall submit a report to the Congress containing
25 the findings and conclusions of the study required under

1 subsection (a), together with such recommendations for
2 legislative or administrative action as may be appropriate.

3 **SEC. 509. DEFINITIONS.**

4 As used in this subtitle:

5 (1) FEDERAL BANKING AGENCY.—The term
6 “Federal banking agency” has the same meaning as
7 given in section 3 of the Federal Deposit Insurance
8 Act.

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

11 (A) the Board of Governors of the Federal
12 Reserve System;

13 (B) the Office of the Comptroller of the
14 Currency;

15 (C) the Board of Directors of the Federal
16 Deposit Insurance Corporation;

17 (D) the Director of the Office of Thrift
18 Supervision;

19 (E) the National Credit Union Administra-
20 tion Board; and

21 (F) the Securities and Exchange Commis-
22 sion.

23 (3) FINANCIAL INSTITUTION.—

24 (A) IN GENERAL.—The term “financial in-
25 stitution” means any institution the business of

1 which is engaging in financial activities as de-
2 scribed in section 4(k) of the Bank Holding
3 Company Act of 1956.

4 (B) PERSONS SUBJECT TO CFTC REGULA-
5 TION.—Notwithstanding subparagraph (A), the
6 term “financial institution” does not include
7 any person or entity with respect to any finan-
8 cial activity that is subject to the jurisdiction of
9 the Commodity Futures Trading Commission
10 under the Commodity Exchange Act.

11 (C) FARM CREDIT INSTITUTIONS.—Not-
12 withstanding subparagraph (A), the term “fi-
13 nancial institution” does not include the Fed-
14 eral Agricultural Mortgage Corporation or any
15 entity chartered and operating under the Farm
16 Credit Act of 1971.

17 (D) OTHER SECONDARY MARKET INSTITU-
18 TIONS.—Notwithstanding subparagraph (A),
19 the term “financial institution” does not include
20 institutions chartered by Congress specifically
21 to engage in transactions described in section
22 502(e)(1)(C), as long as such institutions do
23 not sell or transfer nonpublic personal informa-
24 tion to a nonaffiliated third party.

25 (4) NONPUBLIC PERSONAL INFORMATION.—

1 (A) The term “nonpublic personal informa-
2 tion” means personally identifiable financial
3 information—

4 (i) provided by a consumer to a finan-
5 cial institution;

6 (ii) resulting from any transaction
7 with the consumer or any service per-
8 formed for the consumer; or

9 (iii) otherwise obtained by the finan-
10 cial institution.

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

14 (C) Notwithstanding subparagraph (B),
15 such term—

16 (i) shall include any list, description,
17 or other grouping of consumers (and pub-
18 licly available information pertaining to
19 them) that is derived using any nonpublic
20 personal information other than publicly
21 available information; but

22 (ii) shall not include any list, descrip-
23 tion, or other grouping of consumers (and
24 publicly available information pertaining to

1 them) that is derived without using any
2 nonpublic personal information.

3 (5) NONAFFILIATED THIRD PARTY.—The term
4 “nonaffiliated third party” means any entity that is
5 not an affiliate of, or related by common ownership
6 or affiliated by corporate control with, the financial
7 institution, but does not include a joint employee of
8 such institution.

9 (6) AFFILIATE.—The term “affiliate” means
10 any company that controls, is controlled by, or is
11 under common control with another company.

12 (7) NECESSARY TO EFFECT, ADMINISTER, OR
13 ENFORCE.—The term “as necessary to effect, ad-
14 minister, or enforce the transaction” means—

15 (A) the disclosure is required, or is a
16 usual, appropriate, or acceptable method, to
17 carry out the transaction or the product or
18 service business of which the transaction is a
19 part, and record or service or maintain the con-
20 sumer’s account in the ordinary course of pro-
21 viding the financial service or financial product,
22 or to administer or service benefits or claims re-
23 lating to the transaction or the product or serv-
24 ice business of which it is a part, and
25 includes—

1 (i) providing the consumer or the con-
2 sumer's agent or broker with a confirma-
3 tion, statement, or other record of the
4 transaction, or information on the status
5 or value of the financial service or financial
6 product; and

7 (ii) the accrual or recognition of in-
8 centives or bonuses associated with the
9 transaction that are provided by the finan-
10 cial institution or any other party;

11 (B) the disclosure is required, or is one of
12 the lawful or appropriate methods, to enforce
13 the rights of the financial institution or of other
14 persons engaged in carrying out the financial
15 transaction, or providing the product or service;

16 (C) the disclosure is required, or is a
17 usual, appropriate, or acceptable method, for
18 insurance underwriting at the consumer's re-
19 quest or for reinsurance purposes, or for any of
20 the following purposes as they relate to a con-
21 sumer's insurance: account administration, re-
22 porting, investigating, or preventing fraud or
23 material misrepresentation, processing premium
24 payments, processing insurance claims, admin-
25 istering insurance benefits (including utilization

1 review activities), participating in research
2 projects, or as otherwise required or specifically
3 permitted by Federal or State law; or

4 (D) the disclosure is required, or is a
5 usual, appropriate or acceptable method, in con-
6 nection with—

7 (i) the authorization, settlement, bill-
8 ing, processing, clearing, transferring, rec-
9 onciling, or collection of amounts charged,
10 debited, or otherwise paid using a debit,
11 credit or other payment card, check, or ac-
12 count number, or by other payment means;

13 (ii) the transfer of receivables, ac-
14 counts or interests therein; or

15 (iii) the audit of debit, credit or other
16 payment information.

17 (8) STATE INSURANCE AUTHORITY.—The term
18 “State insurance authority” means, in the case of
19 any person engaged in providing insurance, the
20 State insurance authority of the State in which the
21 person is domiciled.

22 (9) CONSUMER.—The term “consumer” means
23 an individual who obtains, from a financial institu-
24 tion, financial products or services which are to be
25 used primarily for personal, family, or household

1 purposes, and also means the legal representative of
2 such an individual.

3 (10) JOINT AGREEMENT.—The term “joint
4 agreement” means a formal written contract pursu-
5 ant to which two or more financial institutions joint-
6 ly offer, endorse, or sponsor a financial product or
7 service, and as may be further defined in the regula-
8 tions prescribed under section 504.

9 (11) CUSTOMER RELATIONSHIP.—The term
10 “time of establishing a customer relationship” shall
11 be defined by the regulations prescribed under sec-
12 tion 504, and shall, in the case of a financial institu-
13 tion engaged in extending credit directly to con-
14 sumers to finance purchases of goods or services,
15 mean the time of establishing the credit relationship
16 with the consumer.

17 **SEC. 510. EFFECTIVE DATE.**

18 This subtitle shall take effect 6 months after the date
19 on which rules are required to be prescribed under section
20 504(a)(3), except—

21 (1) to the extent that a later date is specified
22 in the rules prescribed under section 504; and

23 (2) that sections 504 and 506 shall be effective
24 upon enactment.

1 **Subtitle B—Fraudulent Access to**
2 **Financial Information**

3 **SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMA-**
4 **TION OF FINANCIAL INSTITUTIONS.**

5 (a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
6 MATION BY FALSE PRETENSES.—It shall be a violation
7 of this subtitle for any person to obtain or attempt to ob-
8 tain, or cause to be disclosed or attempt to cause to be
9 disclosed to any person, customer information of a finan-
10 cial institution relating to another person—

11 (1) by making a false, fictitious, or fraudulent
12 statement or representation to an officer, employee,
13 or agent of a financial institution;

14 (2) by making a false, fictitious, or fraudulent
15 statement or representation to a customer of a fi-
16 nancial institution; or

17 (3) by providing any document to an officer,
18 employee, or agent of a financial institution, know-
19 ing that the document is forged, counterfeit, lost, or
20 stolen, was fraudulently obtained, or contains a
21 false, fictitious, or fraudulent statement or represen-
22 tation.

23 (b) PROHIBITION ON SOLICITATION OF A PERSON TO
24 OBTAIN CUSTOMER INFORMATION FROM FINANCIAL IN-
25 STITUTION UNDER FALSE PRETENSES.—It shall be a vio-

1 lation of this subtitle to request a person to obtain cus-
2 tomer information of a financial institution, knowing that
3 the person will obtain, or attempt to obtain, the informa-
4 tion from the institution in any manner described in sub-
5 section (a).

6 (c) NONAPPLICABILITY TO LAW ENFORCEMENT
7 AGENCIES.—No provision of this section shall be con-
8 strued so as to prevent any action by a law enforcement
9 agency, or any officer, employee, or agent of such agency,
10 to obtain customer information of a financial institution
11 in connection with the performance of the official duties
12 of the agency.

13 (d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS
14 IN CERTAIN CASES.—No provision of this section shall be
15 construed so as to prevent any financial institution, or any
16 officer, employee, or agent of a financial institution, from
17 obtaining customer information of such financial institu-
18 tion in the course of—

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

22 (2) investigating allegations of misconduct or
23 negligence on the part of any officer, employee, or
24 agent of the financial institution; or

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

5 (e) NONAPPLICABILITY TO INSURANCE INSTITU-
6 TIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No
7 provision of this section shall be construed so as to prevent
8 any insurance institution, or any officer, employee, or
9 agency of an insurance institution, from obtaining infor-
10 mation as part of an insurance investigation into criminal
11 activity, fraud, material misrepresentation, or material
12 nondisclosure that is authorized for such institution under
13 State law, regulation, interpretation, or order.

14 (f) NONAPPLICABILITY TO CERTAIN TYPES OF CUS-
15 TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No
16 provision of this section shall be construed so as to prevent
17 any person from obtaining customer information of a fi-
18 nancial institution that otherwise is available as a public
19 record filed pursuant to the securities laws (as defined in
20 section 3(a)(47) of the Securities Exchange Act of 1934).

21 (g) NONAPPLICABILITY TO COLLECTION OF CHILD
22 SUPPORT JUDGMENTS.—No provision of this section shall
23 be construed to prevent any State-licensed private investi-
24 gator, or any officer, employee, or agent of such private
25 investigator, from obtaining customer information of a fi-

1 nancial institution, to the extent reasonably necessary to
2 collect child support from a person adjudged to have been
3 delinquent in his or her obligations by a Federal or State
4 court, and to the extent that such action by a State-li-
5 censed private investigator is not unlawful under any other
6 Federal or State law or regulation, and has been author-
7 ized by an order or judgment of a court of competent juris-
8 diction.

9 **SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

10 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
11 SION.—Except as provided in subsection (b), compliance
12 with this subtitle shall be enforced by the Federal Trade
13 Commission in the same manner and with the same power
14 and authority as the Commission has under the Fair Debt
15 Collection Practices Act to enforce compliance with such
16 Act.

17 (b) ENFORCEMENT BY OTHER AGENCIES IN CER-
18 TAIN CASES.—

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

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

23 (i) national banks, and Federal
24 branches and Federal agencies of foreign

1 banks, by the Office of the Comptroller of
2 the Currency;

3 (ii) member banks of the Federal Re-
4 serve System (other than national banks),
5 branches and agencies of foreign banks
6 (other than Federal branches, Federal
7 agencies, and insured State branches of
8 foreign banks), commercial lending compa-
9 nies owned or controlled by foreign banks,
10 and organizations operating under section
11 25 or 25A of the Federal Reserve Act, by
12 the Board;

13 (iii) banks insured by the Federal De-
14 posit Insurance Corporation (other than
15 members of the Federal Reserve System
16 and national nonmember banks) and in-
17 sured State branches of foreign banks, by
18 the Board of Directors of the Federal De-
19 posit Insurance Corporation; and

20 (iv) savings associations the deposits
21 of which are insured by the Federal De-
22 posit Insurance Corporation, by the Direc-
23 tor of the Office of Thrift Supervision; and

24 (B) the Federal Credit Union Act, by the
25 Administrator of the National Credit Union Ad-

1 ministration with respect to any Federal credit
2 union.

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

15 **SEC. 523. CRIMINAL PENALTY.**

16 (a) IN GENERAL.—Whoever knowingly and inten-
17 tionally violates, or knowingly and intentionally attempts
18 to violate, section 521 shall be fined in accordance with
19 title 18, United States Code, or imprisoned for not more
20 than 5 years, or both.

21 (b) ENHANCED PENALTY FOR AGGRAVATED
22 CASES.—Whoever violates, or attempts to violate, section
23 521 while violating another law of the United States or
24 as part of a pattern of any illegal activity involving more
25 than \$100,000 in a 12-month period shall be fined twice

1 the amount provided in subsection (b)(3) or (c)(3) (as the
2 case may be) of section 3571 of title 18, United States
3 Code, imprisoned for not more than 10 years, or both.

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

5 (a) IN GENERAL.—This subtitle shall not be con-
6 strued as superseding, altering, or affecting the statutes,
7 regulations, orders, or interpretations in effect in any
8 State, except to the extent that such statutes, regulations,
9 orders, or interpretations are inconsistent with the provi-
10 sions of this subtitle, and then only to the extent of the
11 inconsistency.

12 (b) GREATER PROTECTION UNDER STATE LAW.—
13 For purposes of this section, a State statute, regulation,
14 order, or interpretation is not inconsistent with the provi-
15 sions of this subtitle if the protection such statute, regula-
16 tion, order, or interpretation affords any person is greater
17 than the protection provided under this subtitle as deter-
18 mined by the Federal Trade Commission, after consulta-
19 tion with the agency or authority with jurisdiction under
20 section 522 of either the person that initiated the com-
21 plaint or that is the subject of the complaint, on its own
22 motion or upon the petition of any interested party.

23 **SEC. 525. AGENCY GUIDANCE.**

24 In furtherance of the objectives of this subtitle, each
25 Federal banking agency (as defined in section 3(z) of the

1 Federal Deposit Insurance Act), the National Credit
2 Union Administration, and the Securities and Exchange
3 Commission or self-regulatory organizations, as appro-
4 priate, shall review regulations and guidelines applicable
5 to financial institutions under their respective jurisdictions
6 and shall prescribe such revisions to such regulations and
7 guidelines as may be necessary to ensure that such finan-
8 cial institutions have policies, procedures, and controls in
9 place to prevent the unauthorized disclosure of customer
10 financial information and to deter and detect activities
11 proscribed under section 521.

12 **SEC. 526. REPORTS.**

13 (a) REPORT TO THE CONGRESS.—Before the end of
14 the 18-month period beginning on the date of the enact-
15 ment of this Act, the Comptroller General, in consultation
16 with the Federal Trade Commission, Federal banking
17 agencies, the National Credit Union Administration, the
18 Securities and Exchange Commission, appropriate Federal
19 law enforcement agencies, and appropriate State insur-
20 ance regulators, shall submit to the Congress a report on
21 the following:

22 (1) The efficacy and adequacy of the remedies
23 provided in this subtitle in addressing attempts to
24 obtain financial information by fraudulent means or
25 by false pretenses.

1 (2) Any recommendations for additional legisla-
2 tive or regulatory action to address threats to the
3 privacy of financial information created by attempts
4 to obtain information by fraudulent means or false
5 pretenses.

6 (b) ANNUAL REPORT BY ADMINISTERING AGEN-
7 CIES.—The Federal Trade Commission and the Attorney
8 General shall submit to Congress an annual report on
9 number and disposition of all enforcement actions taken
10 pursuant to this subtitle.

11 **SEC. 527. DEFINITIONS.**

12 For purposes of this subtitle, the following definitions
13 shall apply:

14 (1) CUSTOMER.—The term “customer” means,
15 with respect to a financial institution, any person (or
16 authorized representative of a person) to whom the
17 financial institution provides a product or service,
18 including that of acting as a fiduciary.

19 (2) CUSTOMER INFORMATION OF A FINANCIAL
20 INSTITUTION.—The term “customer information of
21 a financial institution” means any information main-
22 tained by or for a financial institution which is de-
23 rived from the relationship between the financial in-
24 stitution and a customer of the financial institution
25 and is identified with the customer.

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

3 (4) FINANCIAL INSTITUTION.—

4 (A) IN GENERAL.—The term “financial in-
5 stitution” means any institution engaged in the
6 business of providing financial services to cus-
7 tomers who maintain a credit, deposit, trust, or
8 other financial account or relationship with the
9 institution.

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

23 (C) SECURITIES INSTITUTIONS.—For pur-
24 poses of subparagraph (B)—

1 (i) the terms “broker” and “dealer”
2 have the same meanings as given in section
3 3 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78c);

5 (ii) the term “investment adviser” has
6 the same meaning as given in section
7 202(a)(11) of the Investment Advisers Act
8 of 1940 (15 U.S.C. 80b-2(a)); and

9 (iii) the term “investment company”
10 has the same meaning as given in section
11 3 of the Investment Company Act of 1940
12 (15 U.S.C. 80a-3).

13 (D) CERTAIN PERSONS AND ENTITIES SPE-
14 CIFICALLY EXCLUDED.—The term “financial
15 institution” does not include any person or enti-
16 ty with respect to any financial activity that is
17 subject to the jurisdiction of the Commodity
18 Futures Trading Commission under the Com-
19 modity Exchange Act and does not include the
20 Federal Agricultural Mortgage Corporation or
21 any entity chartered and operating under the
22 Farm Credit Act of 1971.

23 (E) FURTHER DEFINITION BY REGULA-
24 TION.—The Federal Trade Commission, after
25 consultation with Federal banking agencies and

1 the Securities and Exchange Commission, may
2 prescribe regulations clarifying or describing
3 the types of institutions which shall be treated
4 as financial institutions for purposes of this
5 subtitle.