

# Union Calendar No. 270

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4127

**[Report No. 109–453, Parts I, II, and III]**

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.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 25, 2005

Mr. STEARNS (for himself, Ms. PRYCE of Ohio, Mr. UPTON, Mr. RADANOVICH, Mr. BASS, Mrs. BONO, Mr. FERGUSON, and Mrs. BLACKBURN) introduced the following bill; which was referred to the Committee on Energy and Commerce

MAY 4, 2006

Reported with an amendment and referred to the Committee on Financial Services 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(g), rule X. Referred to the Committee on the Judiciary 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(l), rule X

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

MAY 26, 2006

Reported from the Committee on the Judiciary with an amendment

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

JUNE 2, 2006

Additional sponsors: Mr. GILLMOR, Mr. SHADEGG, Mr. DINGELL, Ms. SCHAKOWSKY, Ms. ESHOO, Mr. INSLEE, Ms. BALDWIN, and Mr. ROSS

JUNE 2, 2006

Reported from the Committee on Financial Services with amendments; com-

mitted 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 italic]

[For text of introduced bill, see copy of bill as introduced on October 25, 2005]

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## 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.

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.**

4       *This Act may be cited as the “Data Accountability and*  
 5 *Trust Act (DATA)”.*

6 **SEC. 2. REQUIREMENTS FOR INFORMATION SECURITY.**

7       (a) *GENERAL SECURITY POLICIES AND PROCE-*  
 8 *DURES.—*

9           (1) *REGULATIONS.—Not later than 1 year after*  
 10 *the date of enactment of this Act, the Commission*  
 11 *shall promulgate regulations under section 553 of title*  
 12 *5, United States Code, to require each person engaged*  
 13 *in interstate commerce that owns or possesses data in*  
 14 *electronic form containing personal information, or*  
 15 *contracts to have any third party entity maintain*  
 16 *such data for such person, to establish and implement*

1 *policies and procedures regarding information secu-*  
2 *rity practices for the treatment and protection of per-*  
3 *sonal informtion taking into consideration—*

4 *(A) the size of, and the nature, scope, and*  
5 *complexity of the activities engaged in by, such*  
6 *person;*

7 *(B) the current state of the art in adminis-*  
8 *trative, technical, and physical safeguards for*  
9 *protecting such information; and*

10 *(C) the cost of implementing such safe-*  
11 *guards.*

12 *(2) REQUIREMENTS.—Such regulations shall re-*  
13 *quire the policies and procedures to include the fol-*  
14 *lowing:*

15 *(A) A security policy with respect to the col-*  
16 *lection, use, sale, other dissemination, and main-*  
17 *tenance of such personal information.*

18 *(B) The identification of an officer or other*  
19 *individual as the point of contact with responsi-*  
20 *bility for the management of information secu-*  
21 *rity.*

22 *(C) A process for identifying and assessing*  
23 *any reasonably foreseeable vulnerabilities in the*  
24 *system maintained by such person that contains*  
25 *such electronic data, which shall include regular*

1           *monitoring for a breach of security of such sys-*  
2           *tem.*

3           *(D) A process for taking preventive and cor-*  
4           *rective action to mitigate against any*  
5           *vulnerabilities identified in the process required*  
6           *by subparagraph (C), which may include imple-*  
7           *menting any changes to security practices and*  
8           *the architecture, installation, or implementation*  
9           *of network or operating software.*

10           *(E) A process for disposing of obsolete data*  
11           *in electronic form containing personal informa-*  
12           *tion by shredding, permanently erasing, or oth-*  
13           *erwise modifying the personal information con-*  
14           *tained in such data to make such personal infor-*  
15           *mation permanently unreadable or*  
16           *undecipherable.*

17           *(3) TREATMENT OF ENTITIES GOVERNED BY*  
18           *OTHER LAW.—In promulgating the regulations under*  
19           *this subsection, the Commission may determine to be*  
20           *in compliance with this subsection any person who is*  
21           *required under any other Federal law to maintain*  
22           *standards and safeguards for information security*  
23           *and protection of personal information that provide*  
24           *equal or greater protection than those required under*  
25           *this subsection.*

1       **(b) DESTRUCTION OF OBSOLETE PAPER RECORDS**  
2 **CONTAINING PERSONAL INFORMATION.—**

3           **(1) STUDY.—***Not later than 1 year after the date*  
4 *of enactment of this Act, the Commission shall con-*  
5 *duct a study on the practicality of requiring a stand-*  
6 *ard method or methods for the destruction of obsolete*  
7 *paper documents and other non-electronic data con-*  
8 *taining personal information by persons engaged in*  
9 *interstate commerce who own or possess such paper*  
10 *documents and non-electronic data. The study shall*  
11 *consider the cost, benefit, feasibility, and effect of a*  
12 *requirement of shredding or other permanent destruc-*  
13 *tion of such paper documents and non-electronic data.*

14           **(2) REGULATIONS.—***The Commission may pro-*  
15 *mulgate regulations under section 553 of title 5,*  
16 *United States Code, requiring a standard method or*  
17 *methods for the destruction of obsolete paper docu-*  
18 *ments and other non-electronic data containing per-*  
19 *sonal information by persons engaged in interstate*  
20 *commerce who own or possess such paper documents*  
21 *and non-electronic data if the Commission finds*  
22 *that—*

23                   **(A)** *the improper disposal of obsolete paper*  
24 *documents and other non-electronic data creates*

1           *a reasonable risk of identity theft, fraud, or other*  
2           *unlawful conduct;*

3                   *(B) such a requirement would be effective in*  
4           *preventing identity theft, fraud, or other unlaw-*  
5           *ful conduct;*

6                   *(C) the benefit in preventing identity theft,*  
7           *fraud, or other unlawful conduct would outweigh*  
8           *the cost to persons subject to such a requirement;*  
9           *and*

10                   *(D) compliance with such a requirement*  
11           *would be practicable.*

12           *In enforcing any such regulations, the Commission*  
13           *may determine to be in compliance with such regula-*  
14           *tions any person who is required under any other*  
15           *Federal law to dispose of obsolete paper documents*  
16           *and other non-electronic data containing personal in-*  
17           *formation if such other Federal law provides equal or*  
18           *greater protection or personal information than the*  
19           *regulations promulgated under this subsection.*

20           *(c) SPECIAL REQUIREMENTS FOR INFORMATION BRO-*  
21           *KERS.—*

22                   *(1) SUBMISSION OF POLICIES TO THE FTC.—The*  
23           *regulations promulgated under subsection (a) shall re-*  
24           *quire information brokers to submit their security*  
25           *policies to the Commission in conjunction with a no-*

1        *tification of a breach of security under section 3 or*  
2        *upon request of the Commission.*

3                (2) *POST-BREACH AUDIT.—For any information*  
4        *broker required to provide notification under section*  
5        *3, the Commission shall conduct an audit of the infor-*  
6        *mation security practices of such information broker,*  
7        *or require the information broker to conduct an inde-*  
8        *pendent audit of such practices (by an independent*  
9        *auditor who has not audited such information bro-*  
10       *ker’s security practices during the preceding 5 years).*

11       *The Commission may conduct or require additional*  
12       *audits for a period of 5 years following the breach of*  
13       *security or until the Commission determines that the*  
14       *security practices of the information broker are in*  
15       *compliance with the requirements of this section and*  
16       *are adequate to prevent further breaches of security.*

17                (3) *VERIFICATION OF AND INDIVIDUAL ACCESS*  
18       *TO PERSONAL INFORMATION.—*

19                (A) *VERIFICATION.—Each information*  
20       *broker shall establish reasonable procedures to*  
21       *verify the accuracy of the personal information*  
22       *it collects, assembles, or maintains, and any*  
23       *other information it collects, assembles, or main-*  
24       *tains that specifically identifies an individual,*

1           *other than information which merely identifies*  
2           *an individual's name or address.*

3           *(B) CONSUMER ACCESS TO INFORMATION.—*

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

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

21                   *(II) place a conspicuous notice on*  
22                   *its Internet website (if the information*  
23                   *broker maintains such a website) in-*  
24                   *structing individuals how to request*



1                    *access to the information required to be*  
2                    *provided under subclause (I).*

3                    *(ii) DISPUTED INFORMATION.—When-*  
4                    *ever an individual whose information the*  
5                    *information broker maintains makes a*  
6                    *written request disputing the accuracy of*  
7                    *any such information, the information*  
8                    *broker, after verifying the identity of the in-*  
9                    *dividual making such request and unless*  
10                   *there are reasonable grounds to believe such*  
11                   *request is frivolous or irrelevant, shall—*

12                                *(I) correct any inaccuracy; or*

13                                *(II)(aa) in the case of information*  
14                    *that is public record information, in-*  
15                    *form the individual of the source of the*  
16                    *information, and, if reasonably avail-*  
17                    *able, where a request for correction*  
18                    *may be directed; or*

19                                *(bb) in the case of information*  
20                    *that is non-public information, note*  
21                    *the information that is disputed, in-*  
22                    *cluding the individual's statement dis-*  
23                    *puting such information, and take rea-*  
24                    *sonable steps to independently verify*  
25                    *such information under the procedures*

1                    *outlined in subparagraph (A) if such*  
2                    *information can be independently*  
3                    *verified.*

4                    *(iii) LIMITATIONS.—An information*  
5                    *broker may limit the access to information*  
6                    *required under subparagraph (B) in the fol-*  
7                    *lowing circumstances:*

8                                 *(I) If access of the individual to*  
9                                 *the information is limited by law or le-*  
10                                 *gally recognized privilege.*

11                                 *(II) If the information is used for*  
12                                 *a legitimate governmental or fraud*  
13                                 *prevention purpose that would be com-*  
14                                 *promised by such access.*

15                                 *(iv) RULEMAKING.—The Commission*  
16                                 *shall issue regulations, as necessary, under*  
17                                 *section 553 of title 5, United States Code,*  
18                                 *on the application of the limitations in*  
19                                 *clause (iii).*

20                                 *(C) TREATMENT OF ENTITIES GOVERNED BY*  
21                                 *OTHER LAW.—The Commission may promulgate*  
22                                 *rules (under section 553 of title 5, United States*  
23                                 *Code) to determine to be in compliance with this*  
24                                 *paragraph any person who is a consumer report-*  
25                                 *ing agency, as defined in section 603(f) of the*

1           *Fair Credit Reporting Act, with respect to those*  
2           *products and services that are subject to and in*  
3           *compliance with the requirements of that Act.*

4           (4) *REQUIREMENT OF AUDIT LOG OF ACCESSED*  
5           *AND TRANSMITTED INFORMATION.—Not later than 1*  
6           *year after the date of the enactment of this Act, the*  
7           *Commission shall promulgate regulations under sec-*  
8           *tion 553 of title 5, United States Code, to require in-*  
9           *formation brokers to establish measures which facili-*  
10           *tate the auditing or retracing of any internal or ex-*  
11           *ternal access to, or transmissions of, any data in elec-*  
12           *tronic form containing personal information collected,*  
13           *assembled, or maintained by such information broker.*

14           (5) *PROHIBITION ON PRETEXTING BY INFORMA-*  
15           *TION BROKERS.—*

16           (A) *PROHIBITION ON OBTAINING PERSONAL*  
17           *INFORMATION BY FALSE PRETENSES.—It shall be*  
18           *unlawful for an information broker to obtain or*  
19           *attempt to obtain, or cause to be disclosed or at-*  
20           *tempt to cause to be disclosed to any person, per-*  
21           *sonal information or any other information re-*  
22           *lating to any person by—*

23                   (i) *making a false, fictitious, or fraud-*  
24                   *ulent statement or representation to any*  
25                   *person; or*

1                   (ii) providing any document or other  
2                   information to any person that the informa-  
3                   tion broker knows or should know to be  
4                   forged, counterfeit, lost, stolen, or fraudu-  
5                   lently obtained, or to contain a false, ficti-  
6                   tious, or fraudulent statement or representa-  
7                   tion.

8                   (B) *PROHIBITION ON SOLICITATION TO OB-*  
9                   *TAIN PERSONAL INFORMATION UNDER FALSE*  
10                   *PRETENSES.—It shall be unlawful for an infor-*  
11                   *mation broker to request a person to obtain per-*  
12                   *sonal information or any other information re-*  
13                   *lating to any other person, if the information*  
14                   *broker knew or should have known that the per-*  
15                   *son to whom such a request is made will obtain*  
16                   *or attempt to obtain such information in the*  
17                   *manner described in subsection (a).*

18                   (d) *EXEMPTION FOR TELECOMMUNICATIONS CARRIER,*  
19                   *CABLE OPERATOR, INFORMATION SERVICE, OR INTER-*  
20                   *ACTIVE COMPUTER SERVICE.—Nothing in this section shall*  
21                   *apply to any electronic communication by a third party*  
22                   *stored by a telecommunications carrier, cable operator, or*  
23                   *information service, as those terms are defined in section*  
24                   *3 of the Communications Act of 1934 (47 U.S.C. 153), or*

1 *an interactive computer service, as such term is defined in*  
2 *section 230(f)(2) of such Act (47 U.S.C. 230(f)(2)).*

3 **SEC. 3. NOTIFICATION OF INFORMATION SECURITY**

4 **BREACH.**

5 *(a) NATIONWIDE NOTIFICATION.—Any person engaged*  
6 *in interstate commerce that owns or possesses data in elec-*  
7 *tronic form containing personal information shall, fol-*  
8 *lowing the discovery of a breach of security of the system*  
9 *maintained by such person that contains such data—*

10 *(1) notify each individual who is a citizen or*  
11 *resident of the United States whose personal informa-*  
12 *tion was acquired by an unauthorized person as a re-*  
13 *sult of such a breach of security; and*

14 *(2) notify the Commission.*

15 *(b) SPECIAL NOTIFICATION REQUIREMENT FOR CER-*  
16 *TAIN ENTITIES.—*

17 *(1) THIRD PARTY AGENTS.—In the event of a*  
18 *breach of security by any third party entity that has*  
19 *been contracted to maintain or process data in elec-*  
20 *tronic form containing personal information on be-*  
21 *half of any other person who owns or possesses such*  
22 *data, such third party entity shall be required only*  
23 *to notify such person of the breach of security. Upon*  
24 *receiving such notification from such third party,*

1 *such person shall provide the notification required*  
2 *under subsection (a).*

3 (2) *TELECOMMUNICATIONS CARRIERS, CABLE OP-*  
4 *ERATORS, INFORMATION SERVICES, AND INTERACTIVE*  
5 *COMPUTER SERVICES.—If a telecommunications car-*  
6 *rier, cable operator, or information service (as such*  
7 *terms are defined in section 3 of the Communications*  
8 *Act of 1934 (47 U.S.C. 153)), or an interactive com-*  
9 *puter service (as such term is defined in section*  
10 *230(f)(2) of such Act (47 U.S.C. 230(f)(2))), becomes*  
11 *aware of a breach of security during the transmission*  
12 *of data in electronic form containing personal infor-*  
13 *mation that is owned or possessed by another person*  
14 *utilizing the means of transmission of such tele-*  
15 *communications carrier, cable operator, information*  
16 *service, or interactive computer service, such tele-*  
17 *communications carrier, cable operator, information*  
18 *service, or interactive computer service shall be re-*  
19 *quired only to notify the person who initiated such*  
20 *transmission of such a breach of security if such per-*  
21 *son can be reasonably identified. Upon receiving such*  
22 *notification from a telecommunications carrier, cable*  
23 *operator, information service, or interactive computer*  
24 *service, such person shall provide the notification re-*  
25 *quired under subsection (a).*

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

9           (c) *TIMELINESS OF NOTIFICATION.*—All notifications  
10          required under subsection (a) shall be made as promptly  
11          as possible and without unreasonable delay following the  
12          discovery of a breach of security of the system and consistent  
13          with any measures necessary to determine the scope of the  
14          breach, prevent further breach or unauthorized disclosures,  
15          and reasonably restore the integrity of the data system.

16          (d) *METHOD AND CONTENT OF NOTIFICATION.*—

17                  (1) *DIRECT NOTIFICATION.*—

18                          (A) *METHOD OF NOTIFICATION.*—A person  
19                          required to provide notification to individuals  
20                          under subsection (a)(1) shall be in compliance  
21                          with such requirement if the person provides  
22                          conspicuous and clearly identified notification  
23                          by one of the following methods (provided the se-  
24                          lected method can reasonably be expected to  
25                          reach the intended individual):

1           (i) *Written notification.*

2           (ii) *Email notification, if—*

3                 (I) *the person’s primary method*  
4                 *of communication with the individual*  
5                 *is by email; or*

6                 (II) *the individual has consented*  
7                 *to receive such notification and the no-*  
8                 *tification is provided in a manner that*  
9                 *is consistent with the provisions per-*  
10                 *mitting electronic transmission of no-*  
11                 *tices under section 101 of the Elec-*  
12                 *tronic Signatures in Global Commerce*  
13                 *Act (15 U.S.C. 7001).*

14           (B) *CONTENT OF NOTIFICATION.—Regard-*  
15           *less of the method by which notification is pro-*  
16           *vided to an individual under subparagraph (A),*  
17           *such notification shall include—*

18                 (i) *a description of the personal infor-*  
19                 *mation that was acquired by an unauthor-*  
20                 *ized person;*

21                 (ii) *a telephone number that the indi-*  
22                 *vidual may use, at no cost to such indi-*  
23                 *vidual, to contact the person to inquire*  
24                 *about the breach of security or the informa-*



1            *tion the person maintained about that indi-*  
2            *vidual;*

3            *(iii) notice that the individual is enti-*  
4            *tled to receive, at no cost to such individual,*  
5            *consumer credit reports on a quarterly basis*  
6            *for a period of 2 years, and instructions to*  
7            *the individual on requesting such reports*  
8            *from the person;*

9            *(iv) the toll-free contact telephone num-*  
10           *bers and addresses for the major credit re-*  
11           *porting agencies; and*

12           *(v) a toll-free telephone number and*  
13           *Internet website address for the Commission*  
14           *whereby the individual may obtain infor-*  
15           *mation regarding identity theft.*

16           (2) *SUBSTITUTE NOTIFICATION.—*

17           *(A) CIRCUMSTANCES GIVING RISE TO SUB-*  
18           *STITUTE NOTIFICATION.—A person required to*  
19           *provide notification to individuals under sub-*  
20           *section (a)(1) may provide substitute notification*  
21           *in lieu of the direct notification required by*  
22           *paragraph (1) if—*

23           *(i) the person owns or possesses data in*  
24           *electronic form containing personal infor-*  
25           *mation of fewer than 1,000 individuals; and*

1           (ii) such direct notification is not fea-  
2           sible due to—

3                   (I) excessive cost to the person re-  
4                   quired to provide such notification rel-  
5                   ative to the resources of such person, as  
6                   determined in accordance with the reg-  
7                   ulations issued by the Commission  
8                   under paragraph (3)(A); or

9                   (II) lack of sufficient contact in-  
10                  formation for the individual required  
11                  to be notified.

12           (B) *FORM OF SUBSTITUTE NOTICE.*—Such  
13           substitute notification shall include—

14                   (i) email notification to the extent that  
15                   the person has email addresses of individ-  
16                   uals to whom it is required to provide noti-  
17                   fication under subsection (a)(1);

18                   (ii) a conspicuous notice on the Inter-  
19                   net website of the person (if such person  
20                   maintains such a website); and

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

1 (C) *CONTENT OF SUBSTITUTE NOTICE.*—

2 *Each form of substitute notice under this para-*  
3 *graph shall include—*

4 (i) *notice that individuals whose per-*  
5 *sonal information is included in the breach*  
6 *of security are entitled to receive, at no cost*  
7 *to the individuals, consumer credit reports*  
8 *on a quarterly basis for a period of 2 years,*  
9 *and instructions on requesting such reports*  
10 *from the person; and*

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

16 (3) *FEDERAL TRADE COMMISSION REGULATIONS*  
17 *AND GUIDANCE.*—

18 (A) *REGULATIONS.*—*Not later than 1 year*  
19 *after the date of enactment of this Act, the Com-*  
20 *mission shall, by regulations under section 553*  
21 *of title 5, United States Code, establish criteria*  
22 *for determining the circumstances under which*  
23 *substitute notification may be provided under*  
24 *paragraph (2), including criteria for deter-*  
25 *mining if notification under paragraph (1) is*

1           *not feasible due to excessive cost to the person re-*  
2           *quired to provide such notification relative to the*  
3           *resources of such person.*

4           *(B) GUIDANCE.—In addition, the Commis-*  
5           *sion shall provide and publish general guidance*  
6           *with respect to compliance with this section.*  
7           *Such guidance shall include—*

8                   *(i) a description of written or email*  
9                   *notification that complies with the require-*  
10                  *ments of paragraph (1); and*

11                  *(ii) guidance on the content of sub-*  
12                  *stitute notification under paragraph (2)(B),*  
13                  *including the extent of notification to print*  
14                  *and broadcast media that complies with the*  
15                  *requirements of such paragraph.*

16           *(e) OTHER OBLIGATIONS FOLLOWING BREACH.—A*  
17           *person required to provide notification under subsection (a)*  
18           *shall, upon request of an individual whose personal infor-*  
19           *mation was included in the breach of security, provide or*  
20           *arrange for the provision of, to each such individual and*  
21           *at no cost to such individual, consumer credit reports from*  
22           *at least one of the major credit reporting agencies beginning*  
23           *not later than 2 months following the discovery of a breach*  
24           *of security and continuing on a quarterly basis for a period*  
25           *of 2 years thereafter.*

1 (f) *EXEMPTION.*—

2 (1) *GENERAL EXEMPTION.*—*A person shall be ex-*  
3 *empt from the requirements under this section if, fol-*  
4 *lowing a breach of security, such person determines*  
5 *that there is no reasonable risk of identity theft,*  
6 *fraud, or other unlawful conduct.*

7 (2) *PRESUMPTIONS.*—

8 (A) *ENCRYPTION.*—*The encryption of data*  
9 *in electronic form shall establish a presumption*  
10 *that no reasonable risk of identity theft, fraud,*  
11 *or other unlawful conduct exists following a*  
12 *breach of security of such data. Any such pre-*  
13 *sumption may be rebutted by facts dem-*  
14 *onstrating that the encryption has been or is rea-*  
15 *sonably likely to be compromised.*

16 (B) *ADDITIONAL METHODOLOGIES OR*  
17 *TECHNOLOGIES.*—*Not later than 270 days after*  
18 *the date of the enactment of this Act, the Com-*  
19 *mission shall, by rule pursuant to section 553 of*  
20 *title 5, United States Code, identify any addi-*  
21 *tional security methodology or technology, other*  
22 *than encryption, which renders data in elec-*  
23 *tronic form unreadable or indecipherable, that*  
24 *shall, if applied to such data, establish a pre-*  
25 *sumption that no reasonable risk of identity*

1           *theft, fraud, or other unlawful conduct exists fol-*  
2           *lowing a breach of security of such data. Any*  
3           *such presumption may be rebutted by facts dem-*  
4           *onstrating that any such methodology or tech-*  
5           *nology has been or is reasonably likely to be com-*  
6           *promised. In promulgating such a rule, the Com-*  
7           *mission shall consult with relevant industries,*  
8           *consumer organizations, and data security and*  
9           *identity theft prevention experts and established*  
10          *standards setting bodies.*

11           *(3) FTC GUIDANCE.—Not later than 1 year after*  
12          *the date of the enactment of this Act, the Commission*  
13          *shall issue guidance regarding the application of the*  
14          *exemption in paragraph (1).*

15           *(g) WEBSITE NOTICE OF FEDERAL TRADE COMMIS-*  
16          *SION.—If the Commission, upon receiving notification of*  
17          *any breach of security that is reported to the Commission*  
18          *under subsection (a)(2), finds that notification of such a*  
19          *breach of security via the Commission’s Internet website*  
20          *would be in the public interest or for the protection of con-*  
21          *sumers, the Commission shall place such a notice in a clear*  
22          *and conspicuous location on its Internet website.*

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

1 *a study on the practicality and cost effectiveness of requir-*  
2 *ing the notification required by subsection (d)(1) to be pro-*  
3 *vided in a language in addition to English to individuals*  
4 *known to speak only such other language.*

5 **SEC. 4. ENFORCEMENT.**

6 (a) *ENFORCEMENT BY THE FEDERAL TRADE COMMIS-*  
7 *SION.—*

8 (1) *UNFAIR OR DECEPTIVE ACTS OR PRAC-*  
9 *TICES.—A violation of section 2 or 3 shall be treated*  
10 *as an unfair and deceptive act or practice in viola-*  
11 *tion of a regulation under section 18(a)(1)(B) of the*  
12 *Federal Trade Commission Act (15 U.S.C.*  
13 *57a(a)(1)(B)) regarding unfair or deceptive acts or*  
14 *practices.*

15 (2) *POWERS OF COMMISSION.—The Commission*  
16 *shall enforce this Act in the same manner, by the*  
17 *same means, and with the same jurisdiction, powers,*  
18 *and duties as though all applicable terms and provi-*  
19 *sions of the Federal Trade Commission Act (15*  
20 *U.S.C. 41 et seq.) were incorporated into and made*  
21 *a part of this Act. Any person who violates such regu-*  
22 *lations shall be subject to the penalties and entitled to*  
23 *the privileges and immunities provided in that Act.*

24 (3) *LIMITATION.—In promulgating rules under*  
25 *this Act, the Commission shall not require the deploy-*

1 *ment or use of any specific products or technologies,*  
2 *including any specific computer software or hard-*  
3 *ware.*

4 *(b) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—*

5 *(1) CIVIL ACTION.—In any case in which the at-*  
6 *torney general of a State, or an official or agency of*  
7 *a State, has reason to believe that an interest of the*  
8 *residents of that State has been or is threatened or*  
9 *adversely affected by any person who violates section*  
10 *2 or 3 of this Act, the attorney general, official, or*  
11 *agency of the State, as parens patriae, may bring a*  
12 *civil action on behalf of the residents of the State in*  
13 *a district court of the United States of appropriate*  
14 *jurisdiction—*

15 *(A) to enjoin further violation of such sec-*  
16 *tion by the defendant;*

17 *(B) to compel compliance with such section;*

18 *or*

19 *(C) to obtain civil penalties in the amount*  
20 *determined under paragraph (2).*

21 *(2) CIVIL PENALTIES.—*

22 *(A) CALCULATION.—*

23 *(i) TREATMENT OF VIOLATIONS OF*  
24 *SECTION 2.—For purposes of paragraph*  
25 *(1)(C) with regard to a violation of section*



1           2, the amount determined under this para-  
2           graph is the amount calculated by multi-  
3           plying the number of violations of such sec-  
4           tion by an amount not greater than  
5           \$11,000. Each day that a person is not in  
6           compliance with the requirements of such  
7           section shall be treated as a separate viola-  
8           tion. The maximum civil penalty calculated  
9           under this clause shall not exceed  
10          \$5,000,000.

11           (ii) *TREATMENT OF VIOLATIONS OF*  
12          *SECTION 3.—For purposes of paragraph*  
13          *(1)(C) with regard to a violation of section*  
14          *3, the amount determined under this para-*  
15          *graph is the amount calculated by multi-*  
16          *plying the number of violations of such sec-*  
17          *tion by an amount not greater than*  
18          *\$11,000. Each failure to send notification*  
19          *as required under section 3 to a resident of*  
20          *the State shall be treated as a separate vio-*  
21          *lation. The maximum civil penalty cal-*  
22          *culated under this clause shall not exceed*  
23          *\$5,000,000.*

24           (B) *ADJUSTMENT FOR INFLATION.—Begin-*  
25          *ning on the date that the Consumer Price Index*

1           *is first published by the Bureau of Labor Statis-*  
2           *tics that is after 1 year after the date of enact-*  
3           *ment of this Act, and each year thereafter, the*  
4           *amounts specified in clauses (i) and (ii) of sub-*  
5           *paragraph (A) shall be increased by the percent-*  
6           *age increase in the Consumer Price Index pub-*  
7           *lished on that date from the Consumer Price*  
8           *Index published the previous year.*

9           (3) *INTERVENTION BY THE FTC.—*

10           (A) *NOTICE AND INTERVENTION.—The State*  
11           *shall provide prior written notice of any action*  
12           *under paragraph (1) to the Commission and*  
13           *provide the Commission with a copy of its com-*  
14           *plaint, except in any case in which such prior*  
15           *notice is not feasible, in which case the State*  
16           *shall serve such notice immediately upon insti-*  
17           *tuting such action. The Commission shall have*  
18           *the right—*

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

20                   (ii) *upon so intervening, to be heard*  
21                   *on all matters arising therein; and*

22                   (iii) *to file petitions for appeal.*

23           (B) *LIMITATION ON STATE ACTION WHILE*  
24           *FEDERAL ACTION IS PENDING.—If the Commis-*  
25           *sion has instituted a civil action for violation of*

1           *this Act, no State attorney general, or official or*  
2           *agency of a State, may bring an action under*  
3           *this subsection during the pendency of that ac-*  
4           *tion against any defendant named in the com-*  
5           *plaint of the Commission for any violation of*  
6           *this Act alleged in the complaint.*

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

12                     (A) *conduct investigations;*

13                     (B) *administer oaths or affirmations; or*

14                     (C) *compel the attendance of witnesses or*  
15                     *the production of documentary and other evi-*  
16                     *dence.*

17          (c) *AFFIRMATIVE DEFENSE FOR A VIOLATION OF SEC-*  
18          *TION 3.*—*It shall be an affirmative defense to an enforce-*  
19          *ment action brought under subsection (a), or a civil action*  
20          *brought under subsection (b), based on a violation of section*  
21          *3, that all of the personal information contained in the data*  
22          *in electronic form that was acquired as a result of a breach*  
23          *of security of the defendant is public record information*  
24          *that is lawfully made available to the general public from*

1 *Federal, State, or local government records and was ac-*  
2 *quired by the defendant from such records.*

3 **SEC. 5. DEFINITIONS.**

4 *In this Act the following definitions apply:*

5 (1) *BREACH OF SECURITY.*—*The term “breach of*  
6 *security” means the unauthorized acquisition of data*  
7 *in electronic form containing personal information.*

8 (2) *COMMISSION.*—*The term “Commission”*  
9 *means the Federal Trade Commission.*

10 (3) *DATA IN ELECTRONIC FORM.*—*The term*  
11 *“data in electronic form” means any data stored elec-*  
12 *tronically or digitally on any computer system or*  
13 *other database and includes recordable tapes and*  
14 *other mass storage devices.*

15 (4) *ENCRYPTION.*—*The term “encryption” means*  
16 *the protection of data in electronic form in storage or*  
17 *in transit using an encryption technology that has*  
18 *been adopted by an established standards setting body*  
19 *which renders such data indecipherable in the absence*  
20 *of associated cryptographic keys necessary to enable*  
21 *decryption of such data. Such encryption must in-*  
22 *clude appropriate management and safeguards of*  
23 *such keys to protect the integrity of the encryption.*

24 (5) *IDENTITY THEFT.*—*The term “identity theft”*  
25 *means the unauthorized use of another person’s per-*

1       sonal information for the purpose of engaging in com-  
2       mercial transactions under the name of such other  
3       person.

4               (6) *INFORMATION BROKER.*—The term “informa-  
5       tion broker” means a commercial entity whose busi-  
6       ness is to collect, assemble, or maintain personal in-  
7       formation concerning individuals who are not current  
8       or former customers of such entity in order to sell  
9       such information or provide access to such informa-  
10      tion to any nonaffiliated third party in exchange for  
11      consideration, whether such collection, assembly, or  
12      maintenance of personal information is performed by  
13      the information broker directly, or by contract or sub-  
14      contract with any other entity.

15              (7) *PERSONAL INFORMATION.*—

16              (A) *DEFINITION.*—The term “personal in-  
17      formation” means an individual’s first name or  
18      initial and last name, or address, or phone num-  
19      ber, in combination with any 1 or more of the  
20      following data elements for that individual:

21                      (i) Social Security number.

22                      (ii) Driver’s license number or other  
23                      State identification number.

24                      (iii) Financial account number, or  
25                      credit or debit card number, and any re-

1            *quired security code, access code, or pass-*  
2            *word that is necessary to permit access to*  
3            *an individual’s financial account.*

4            (B) *MODIFIED DEFINITION BY RULE-*  
5            *MAKING.—The Commission may, by rule, modify*  
6            *the definition of “personal information” under*  
7            *subparagraph (A) to the extent that such modi-*  
8            *fication is necessary to accommodate changes in*  
9            *technology or practices, will not unreasonably*  
10           *impede interstate commerce, and will accomplish*  
11           *the purposes of this Act.*

12           (8) *PUBLIC RECORD INFORMATION.—The term*  
13           *“public record information” means information about*  
14           *an individual which has been obtained originally*  
15           *from records of a Federal, State, or local government*  
16           *entity that are available for public inspection.*

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

22 **SEC. 6. EFFECT ON OTHER LAWS.**

23           (a) *PREEMPTION OF STATE INFORMATION SECURITY*  
24           *LAWS.—This Act supersedes any provision of a statute, reg-*  
25           *ulation, or rule of a State or political subdivision of a*

1 *State, with respect to those entities covered by the regula-*  
2 *tions issued pursuant to this Act, that expressly—*

3           (1) *requires information security practices and*  
4 *treatment of data in electronic form containing per-*  
5 *sonal information similar to any of those required*  
6 *under section 2; and*

7           (2) *requires notification to individuals of a*  
8 *breach of security resulting in unauthorized acquisi-*  
9 *tion of data in electronic form containing personal*  
10 *information.*

11 *(b) ADDITIONAL PREEMPTION.—*

12           (1) *IN GENERAL.—No person other than the At-*  
13 *torney General of a State may bring a civil action*  
14 *under the laws of any State if such action is premised*  
15 *in whole or in part upon the defendant violating any*  
16 *provision of this Act.*

17           (2) *PROTECTION OF CONSUMER PROTECTION*  
18 *LAWS.—This subsection shall not be construed to limit*  
19 *the enforcement of any State consumer protection law*  
20 *by an Attorney General of a State.*

21 *(c) PROTECTION OF CERTAIN STATE LAWS.—This Act*  
22 *shall not be construed to preempt the applicability of—*

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

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

1       (d) *PRESERVATION OF FTC AUTHORITY.*—Nothing in  
2 this Act may be construed in any way to limit or affect  
3 the Commission’s authority under any other provision of  
4 law, including the authority to issue advisory opinions  
5 (under part 1 of volume 16 of the Code of Federal Regula-  
6 tions), policy statements, or guidance regarding this Act.

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

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

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

13 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

14       There is authorized to be appropriated to the Commis-  
15 sion \$1,000,000 for each of fiscal years 2006 through 2010  
16 to carry out this Act.

17 **SECTION 1. SHORT TITLE.**

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

20 **SEC. 2. REQUIREMENTS FOR INFORMATION SECURITY.**

21       **(a) GENERAL SECURITY POLICIES AND PRO-  
22 CEDURES.—**

23               **(1) REGULATIONS.—Not later than 1  
24 year after the date of enactment of this  
25 Act, the Commission shall promulgate**



1 regulations under section 553 of title 5,  
2 United States Code, to require each per-  
3 son engaged in interstate commerce that  
4 owns or possesses data in electronic form  
5 containing personal information, or con-  
6 tracts to have any third party entity  
7 maintain such data for such person, to es-  
8 tablish and implement policies and proce-  
9 dures regarding information security  
10 practices for the treatment and protec-  
11 tion of personal informtion taking into  
12 consideration—

13 (A) the size of, and the nature,  
14 scope, and complexity of the activi-  
15 ties engaged in by, such person;

16 (B) the current state of the art in  
17 administrative, technical, and phys-  
18 ical safeguards for protecting such in-  
19 formation; and

20 (C) the cost of implementing such  
21 safeguards.

22 (2) REQUIREMENTS.—Such regulations  
23 shall require the policies and procedures  
24 to include the following:

1           **(A) A security policy with respect**  
2 **to the collection, use, sale, other dis-**  
3 **semination, and maintenance of such**  
4 **personal information.**

5           **(B) The identification of an officer**  
6 **or other individual as the point of**  
7 **contact with responsibility for the**  
8 **management of information security.**

9           **(C) A process for identifying and**  
10 **assessing any reasonably foreseeable**  
11 **vulnerabilities in the system main-**  
12 **tained by such person that contains**  
13 **such electronic data, which shall in-**  
14 **clude regular monitoring for a breach**  
15 **of security of such system.**

16           **(D) A process for taking preven-**  
17 **tive and corrective action to mitigate**  
18 **against any vulnerabilities identified**  
19 **in the process required by subpara-**  
20 **graph (C), which may include imple-**  
21 **menting any changes to security**  
22 **practices and the architecture, instal-**  
23 **lation, or implementation of network**  
24 **or operating software.**

1           **(E) A process for disposing of ob-**  
2           **solete data in electronic form con-**  
3           **taining personal information by**  
4           **shredding, permanently erasing, or**  
5           **otherwise modifying the personal in-**  
6           **formation contained in such data to**  
7           **make such personal information per-**  
8           **manently unreadable or**  
9           **undecipherable.**

10           **(3) TREATMENT OF ENTITIES GOVERNED**  
11           **BY OTHER LAW.—In promulgating the regu-**  
12           **lations under this subsection, the Com-**  
13           **mission may determine to be in compli-**  
14           **ance with this subsection any person who**  
15           **is required under any other Federal law**  
16           **to maintain standards and safeguards for**  
17           **information security and protection of**  
18           **personal information that provide equal**  
19           **or greater protection than those required**  
20           **under this subsection.**

21           **(b) DESTRUCTION OF OBSOLETE PAPER**  
22           **RECORDS CONTAINING PERSONAL INFORMA-**  
23           **TION.—**

24           **(1) STUDY.—Not later than 1 year after**  
25           **the date of enactment of this Act, the**

1       **Commission shall conduct a study on the**  
2       **practicality of requiring a standard meth-**  
3       **od or methods for the destruction of ob-**  
4       **solete paper documents and other non-**  
5       **electronic data containing personal infor-**  
6       **mation by persons engaged in interstate**  
7       **commerce who own or possess such**  
8       **paper documents and non-electronic**  
9       **data. The study shall consider the cost,**  
10      **benefit, feasibility, and effect of a re-**  
11      **quirement of shredding or other perma-**  
12      **nent destruction of such paper docu-**  
13      **ments and non-electronic data.**

14           **(2) REGULATIONS.—The Commission**  
15      **may promulgate regulations under sec-**  
16      **tion 553 of title 5, United States Code, re-**  
17      **quiring a standard method or methods**  
18      **for the destruction of obsolete paper doc-**  
19      **uments and other non-electronic data**  
20      **containing personal information by per-**  
21      **sons engaged in interstate commerce who**  
22      **own or possess such paper documents**  
23      **and non-electronic data if the Commis-**  
24      **sion finds that—**

1           **(A) the improper disposal of obso-**  
2           **lete paper documents and other non-**  
3           **electronic data creates a reasonable**  
4           **risk of identity theft, fraud, or other**  
5           **unlawful conduct;**

6           **(B) such a requirement would be**  
7           **effective in preventing identity theft,**  
8           **fraud, or other unlawful conduct;**

9           **(C) the benefit in preventing iden-**  
10          **tity theft, fraud, or other unlawful**  
11          **conduct would outweigh the cost to**  
12          **persons subject to such a require-**  
13          **ment; and**

14          **(D) compliance with such a re-**  
15          **quirement would be practicable.**

16          **In enforcing any such regulations, the**  
17          **Commission may determine to be in com-**  
18          **pliance with such regulations any person**  
19          **who is required under any other Federal**  
20          **law to dispose of obsolete paper docu-**  
21          **ments and other non-electronic data con-**  
22          **taining personal information if such**  
23          **other Federal law provides equal or**  
24          **greater protection or personal informa-**

1        **tion than the regulations promulgated**  
2        **under this subsection.**

3        **(c) SPECIAL REQUIREMENTS FOR INFORMA-**  
4        **TION BROKERS.—**

5            **(1) SUBMISSION OF POLICIES TO THE**  
6        **FTC.—The regulations promulgated under**  
7        **subsection (a) shall require information**  
8        **brokers to submit their security policies**  
9        **to the Commission in conjunction with a**  
10       **notification of a breach of security under**  
11       **section 3 or upon request of the Commis-**  
12       **sion.**

13           **(2) POST-BREACH AUDIT.—For any in-**  
14       **formation broker required to provide no-**  
15       **tification under section 3, the Commis-**  
16       **sion shall conduct an audit of the infor-**  
17       **mation security practices of such infor-**  
18       **mation broker, or require the informa-**  
19       **tion broker to conduct an independent**  
20       **audit of such practices (by an inde-**  
21       **pendent auditor who has not audited**  
22       **such information broker’s security prac-**  
23       **tices during the preceding 5 years). The**  
24       **Commission may conduct or require ad-**  
25       **ditional audits for a period of 5 years fol-**

1        **lowing the breach of security or until the**  
2        **Commission determines that the security**  
3        **practices of the information broker are in**  
4        **compliance with the requirements of this**  
5        **section and are adequate to prevent fur-**  
6        **ther breaches of security.**

7            **(3) VERIFICATION OF AND INDIVIDUAL**  
8        **ACCESS TO PERSONAL INFORMATION.—**

9            **(A) VERIFICATION.—Each informa-**  
10        **tion broker shall establish reasonable**  
11        **procedures to verify the accuracy of**  
12        **the personal information it collects,**  
13        **assembles, or maintains, and any**  
14        **other information it collects, assem-**  
15        **bles, or maintains that specifically**  
16        **identifies an individual, other than**  
17        **information which merely identifies**  
18        **an individual's name or address.**

19            **(B) CONSUMER ACCESS TO INFORMA-**  
20        **TION.—**

21            **(i) ACCESS.—Each information**  
22        **broker shall—**

23            **(I) provide to each indi-**  
24        **vidual whose personal infor-**  
25        **mation it maintains, at the in-**

1            **dividual’s request at least 1**  
2            **time per year and at no cost**  
3            **to the individual, and after**  
4            **verifying the identity of such**  
5            **individual, a means for the in-**  
6            **dividual to review any per-**  
7            **sonal information regarding**  
8            **such individual maintained**  
9            **by the information broker**  
10           **and any other information**  
11           **maintained by the informa-**  
12           **tion broker that specifically**  
13           **identifies such individual,**  
14           **other than information which**  
15           **merely identifies an individ-**  
16           **ual’s name or address; and**

17                    **(II) place a conspicuous**  
18                    **notice on its Internet website**  
19                    **(if the information broker**  
20                    **maintains such a website) in-**  
21                    **structing individuals how to**  
22                    **request access to the informa-**  
23                    **tion required to be provided**  
24                    **under subclause (I).**



1           **(ii) DISPUTED INFORMATION.—**

2           **Whenever an individual whose in-**  
3           **formation the information broker**  
4           **maintains makes a written re-**  
5           **quest disputing the accuracy of**  
6           **any such information, the infor-**  
7           **mation broker, after verifying the**  
8           **identity of the individual making**  
9           **such request and unless there are**  
10          **reasonable grounds to believe**  
11          **such request is frivolous or irrele-**  
12          **vant, shall—**

13                   **(I) correct any inaccuracy;**

14                   **or**

15                   **(II)(aa) in the case of in-**  
16                   **formation that is public**  
17                   **record information, inform**  
18                   **the individual of the source of**  
19                   **the information, and, if rea-**  
20                   **sonably available, where a re-**  
21                   **quest for correction may be**  
22                   **directed; or**

23                   **(bb) in the case of infor-**  
24                   **mation that is non-public in-**  
25                   **formation, note the informa-**

1           tion that is disputed, includ-  
2           ing the individual's statement  
3           disputing such information,  
4           and take reasonable steps to  
5           independently verify such in-  
6           formation under the proce-  
7           dures outlined in subpara-  
8           graph (A) if such information  
9           can be independently verified.

10           (iii) **LIMITATIONS.**—An informa-  
11           tion broker may limit the access  
12           to information required under  
13           subparagraph (B) in the following  
14           circumstances:

15                   (I) If access of the indi-  
16                   vidual to the information is  
17                   limited by law or legally rec-  
18                   ognized privilege.

19                   (II) If the information is  
20                   used for a legitimate govern-  
21                   mental or fraud prevention  
22                   purpose that would be com-  
23                   promised by such access.

24           (iv) **RULEMAKING.**—The Com-  
25           mission shall issue regulations, as

1           **necessary, under section 553 of**  
2           **title 5, United States Code, on the**  
3           **application of the limitations in**  
4           **clause (iii).**

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

17          **(4) REQUIREMENT OF AUDIT LOG OF**  
18          **ACCESSED AND TRANSMITTED INFORMA-**  
19          **TION.—Not later than 1 year after the date**  
20          **of the enactment of this Act, the Commis-**  
21          **sion shall promulgate regulations under**  
22          **section 553 of title 5, United States Code,**  
23          **to require information brokers to estab-**  
24          **lish measures which facilitate the audit-**  
25          **ing or retracing of any internal or exter-**

1        **nal access to, or transmissions of, any**  
2        **data in electronic form containing per-**  
3        **sonal information collected, assembled,**  
4        **or maintained by such information**  
5        **broker.**

6            **(5) PROHIBITION ON PRETEXTING BY IN-**  
7        **FORMATION BROKERS.—**

8            **(A) PROHIBITION ON OBTAINING PER-**  
9        **SONAL INFORMATION BY FALSE PRE-**

10        **TENSES.—It shall be unlawful for an**  
11        **information broker to obtain or at-**  
12        **tempt to obtain, or cause to be dis-**  
13        **closed or attempt to cause to be dis-**  
14        **closed to any person, personal infor-**  
15        **mation or any other information re-**  
16        **lating to any person by—**

17            **(i) making a false, fictitious,**  
18        **or fraudulent statement or rep-**  
19        **resentation to any person; or**

20            **(ii) providing any document**  
21        **or other information to any per-**  
22        **son that the information broker**  
23        **knows or should know to be**  
24        **forged, counterfeit, lost, stolen, or**  
25        **fraudulently obtained, or to con-**

1           **tain a false, fictitious, or fraudu-**  
2           **lent statement or representation.**

3           **(B) PROHIBITION ON SOLICITATION**  
4           **TO OBTAIN PERSONAL INFORMATION**  
5           **UNDER FALSE PRETENSES.—It shall be**  
6           **unlawful for an information broker to**  
7           **request a person to obtain personal**  
8           **information or any other information**  
9           **relating to any other person, if the in-**  
10          **formation broker knew or should**  
11          **have known that the person to whom**  
12          **such a request is made will obtain or**  
13          **attempt to obtain such information in**  
14          **the manner described in subsection**  
15          **(a).**

16          **(d) EXEMPTION FOR TELECOMMUNICATIONS**  
17          **CARRIER, CABLE OPERATOR, INFORMATION SERV-**  
18          **ICE, OR INTERACTIVE COMPUTER SERVICE.—**  
19          **Nothing in this section shall apply to any elec-**  
20          **tronic communication by a third party stored**  
21          **by a telecommunications carrier, cable oper-**  
22          **ator, or information service, as those terms**  
23          **are defined in section 3 of the Communica-**  
24          **tions Act of 1934 (47 U.S.C. 153), or an inter-**  
25          **active computer service, as such term is de-**

1 **fined in section 230(f)(2) of such Act (47 U.S.C.**  
2 **230(f)(2)).**

3 **SEC. 3. NOTIFICATION OF INFORMATION SECURITY**  
4 **BREACH.**

5 **(a) NATIONWIDE NOTIFICATION.—Any per-**  
6 **son engaged in interstate commerce that**  
7 **owns or possesses data in electronic form con-**  
8 **taining personal information shall, following**  
9 **the discovery of a breach of security of the**  
10 **system maintained by such person that con-**  
11 **tains such data—**

12 **(1) notify each individual who is a cit-**  
13 **izen or resident of the United States**  
14 **whose personal information was acquired**  
15 **by an unauthorized person as a result of**  
16 **such a breach of security; and**

17 **(2) notify the Commission.**

18 **(b) SPECIAL NOTIFICATION REQUIREMENT**  
19 **FOR CERTAIN ENTITIES.—**

20 **(1) THIRD PARTY AGENTS.—In the event**  
21 **of a breach of security by any third party**  
22 **entity that has been contracted to main-**  
23 **tain or process data in electronic form**  
24 **containing personal information on be-**  
25 **half of any other person who owns or**

1 possesses such data, such third party en-  
2 tity shall be required only to notify such  
3 person of the breach of security. Upon re-  
4 ceiving such notification from such third  
5 party, such person shall provide the noti-  
6 fication required under subsection (a).

7 (2) TELECOMMUNICATIONS CARRIERS,  
8 CABLE OPERATORS, INFORMATION SERVICES,  
9 AND INTERACTIVE COMPUTER SERVICES.—If a  
10 telecommunications carrier, cable oper-  
11 ator, or information service (as such  
12 terms are defined in section 3 of the Com-  
13 munications Act of 1934 (47 U.S.C. 153)),  
14 or an interactive computer service (as  
15 such term is defined in section 230(f)(2)  
16 of such Act (47 U.S.C. 230(f)(2))), becomes  
17 aware of a breach of security during the  
18 transmission of data in electronic form  
19 containing personal information that is  
20 owned or possessed by another person  
21 utilizing the means of transmission of  
22 such telecommunications carrier, cable  
23 operator, information service, or inter-  
24 active computer service, such tele-  
25 communications carrier, cable operator,

1 information service, or interactive com-  
2 puter service shall be required only to  
3 notify the person who initiated such  
4 transmission of such a breach of security  
5 if such person can be reasonably identi-  
6 fied. Upon receiving such notification  
7 from a telecommunications carrier, cable  
8 operator, information service, or inter-  
9 active computer service, such person  
10 shall provide the notification required  
11 under subsection (a).

12 (3) BREACH OF HEALTH INFORMATION.—  
13 If the Commission receives a notification  
14 of a breach of security and determines  
15 that information included in such breach  
16 is individually identifiable health infor-  
17 mation (as such term is defined in section  
18 1171(6) of the Social Security Act (42  
19 U.S.C. 1320d(6)), the Commission shall  
20 send a copy of such notification to the  
21 Secretary of Health and Human Services.

22 (c) TIMELINESS OF NOTIFICATION.—All noti-  
23 fications required under subsection (a) shall  
24 be made as promptly as possible and without  
25 unreasonable delay following the discovery of



1 a breach of security of the system and con-  
2 sistent with any measures necessary to deter-  
3 mine the scope of the breach, prevent further  
4 breach or unauthorized disclosures, and rea-  
5 sonably restore the integrity of the data sys-  
6 tem.

7 (d) METHOD AND CONTENT OF NOTIFICA-  
8 TION.—

9 (1) DIRECT NOTIFICATION.—

10 (A) METHOD OF NOTIFICATION.—A  
11 person required to provide notifica-  
12 tion to individuals under subsection  
13 (a)(1) shall be in compliance with  
14 such requirement if the person pro-  
15 vides conspicuous and clearly identi-  
16 fied notification by one of the fol-  
17 lowing methods (provided the se-  
18 lected method can reasonably be ex-  
19 pected to reach the intended indi-  
20 vidual):

21 (i) Written notification.

22 (ii) Email notification, if—

23 (I) the person's primary  
24 method of communication

1 with the individual is by  
2 email; or

3 (II) the individual has  
4 consented to receive such no-  
5 tification and the notification  
6 is provided in a manner that  
7 is consistent with the provi-  
8 sions permitting electronic  
9 transmission of notices under  
10 section 101 of the Electronic  
11 Signatures in Global Com-  
12 merce Act (15 U.S.C. 7001).

13 (B) CONTENT OF NOTIFICATION.—

14 Regardless of the method by which  
15 notification is provided to an indi-  
16 vidual under subparagraph (A), such  
17 notification shall include—

18 (i) a description of the per-  
19 sonal information that was ac-  
20 quired by an unauthorized per-  
21 son;

22 (ii) a telephone number that  
23 the individual may use, at no cost  
24 to such individual, to contact the  
25 person to inquire about the

1           **breach of security or the informa-**  
2           **tion the person maintained about**  
3           **that individual;**

4           (biii) **notice that the individual**  
5           **is entitled to receive, at no cost to**  
6           **such individual, consumer credit**  
7           **reports on a quarterly basis for a**  
8           **period of 2 years, and instruc-**  
9           **tions to the individual on request-**  
10          **ing such reports from the person;**

11          (biv) **the toll-free contact tele-**  
12          **phone numbers and addresses for**  
13          **the major credit reporting agen-**  
14          **cies; and**

15          (bv) **a toll-free telephone num-**  
16          **ber and Internet website address**  
17          **for the Commission whereby the**  
18          **individual may obtain informa-**  
19          **tion regarding identity theft.**

20          **(2) SUBSTITUTE NOTIFICATION.—**

21           **(A) CIRCUMSTANCES GIVING RISE TO**  
22           **SUBSTITUTE NOTIFICATION.—A person**  
23           **required to provide notification to in-**  
24           **dividuals under subsection (a)(1) may**  
25           **provide substitute notification in lieu**

1           **of the direct notification required by**  
2           **paragraph (1) if—**

3                   **(i) the person owns or pos-**  
4                   **sesses data in electronic form**  
5                   **containing personal information**  
6                   **of fewer than 1,000 individuals;**  
7                   **and**

8                   **(ii) such direct notification is**  
9                   **not feasible due to—**

10                   **(I) excessive cost to the**  
11                   **person required to provide**  
12                   **such notification relative to**  
13                   **the resources of such person,**  
14                   **as determined in accordance**  
15                   **with the regulations issued by**  
16                   **the Commission under para-**  
17                   **graph (3)(A); or**

18                   **(II) lack of sufficient con-**  
19                   **tact information for the indi-**  
20                   **vidual required to be notified.**

21                   **(B) FORM OF SUBSTITUTE NOTICE.—**

22           **Such substitute notification shall in-**  
23           **clude—**

24                   **(i) email notification to the**  
25                   **extent that the person has email**

1 addresses of individuals to whom  
2 it is required to provide notifica-  
3 tion under subsection (a)(1);

4 (ii) a conspicuous notice on  
5 the Internet website of the person  
6 (if such person maintains such a  
7 website); and

8 (iii) notification in print and  
9 to broadcast media, including  
10 major media in metropolitan and  
11 rural areas where the individuals  
12 whose personal information was  
13 acquired reside.

14 (C) CONTENT OF SUBSTITUTE NO-  
15 TICE.—Each form of substitute notice  
16 under this paragraph shall include—

17 (i) notice that individuals  
18 whose personal information is in-  
19 cluded in the breach of security  
20 are entitled to receive, at no cost  
21 to the individuals, consumer cred-  
22 it reports on a quarterly basis for  
23 a period of 2 years, and instruc-  
24 tions on requesting such reports  
25 from the person; and

1           (ii) a telephone number by  
2           which an individual can, at no  
3           cost to such individual, learn  
4           whether that individual's per-  
5           sonal information is included in  
6           the breach of security.

7           **(3) FEDERAL TRADE COMMISSION REGU-**  
8           **LATIONS AND GUIDANCE.—**

9           **(A) REGULATIONS.—**Not later than  
10          1 year after the date of enactment of  
11          this Act, the Commission shall, by  
12          regulations under section 553 of title  
13          5, United States Code, establish cri-  
14          teria for determining the cir-  
15          cumstances under which substitute  
16          notification may be provided under  
17          paragraph (2), including criteria for  
18          determining if notification under  
19          paragraph (1) is not feasible due to  
20          excessive cost to the person required  
21          to provide such notification relative  
22          to the resources of such person.

23          **(B) GUIDANCE.—**In addition, the  
24          Commission shall provide and pub-  
25          lish general guidance with respect to

1 compliance with this section. Such  
2 guidance shall include—

3 (i) a description of written or  
4 email notification that complies  
5 with the requirements of para-  
6 graph (1); and

7 (ii) guidance on the content of  
8 substitute notification under  
9 paragraph (2)(B), including the  
10 extent of notification to print and  
11 broadcast media that complies  
12 with the requirements of such  
13 paragraph.

14 (e) OTHER OBLIGATIONS FOLLOWING  
15 BREACH.—A person required to provide notifi-  
16 cation under subsection (a) shall, upon re-  
17 quest of an individual whose personal infor-  
18 mation was included in the breach of security,  
19 provide or arrange for the provision of, to  
20 each such individual and at no cost to such  
21 individual, consumer credit reports from at  
22 least one of the major credit reporting agen-  
23 cies beginning not later than 2 months fol-  
24 lowing the discovery of a breach of security

1 and continuing on a quarterly basis for a pe-  
2 riod of 2 years thereafter.

3 (f) EXEMPTION.—

4 (1) GENERAL EXEMPTION.—A person  
5 shall be exempt from the requirements  
6 under this section if, following a breach  
7 of security, such person determines that  
8 there is no reasonable risk of identity  
9 theft, fraud, or other unlawful conduct.

10 (2) PRESUMPTIONS.—

11 (A) ENCRYPTION.—The encryption  
12 of data in electronic form shall estab-  
13 lish a presumption that no reasonable  
14 risk of identity theft, fraud, or other  
15 unlawful conduct exists following a  
16 breach of security of such data. Any  
17 such presumption may be rebutted by  
18 facts demonstrating that the  
19 encryption has been or is reasonably  
20 likely to be compromised.

21 (B) ADDITIONAL METHODOLOGIES OR  
22 TECHNOLOGIES.—Not later than 270  
23 days after the date of the enactment  
24 of this Act, the Commission shall, by  
25 rule pursuant to section 553 of title 5,



1           **United States Code, identify any addi-**  
2           **tional security methodology or tech-**  
3           **nology, other than encryption, which**  
4           **renders data in electronic form**  
5           **unreadable or indecipherable, that**  
6           **shall, if applied to such data, estab-**  
7           **lish a presumption that no reasonable**  
8           **risk of identity theft, fraud, or other**  
9           **unlawful conduct exists following a**  
10          **breach of security of such data. Any**  
11          **such presumption may be rebutted by**  
12          **facts demonstrating that any such**  
13          **methodology or technology has been**  
14          **or is reasonably likely to be com-**  
15          **promised. In promulgating such a**  
16          **rule, the Commission shall consult**  
17          **with relevant industries, consumer**  
18          **organizations, and data security and**  
19          **identity theft prevention experts and**  
20          **established standards setting bodies.**

21           **(3) FTC GUIDANCE.—Not later than 1**  
22          **year after the date of the enactment of**  
23          **this Act, the Commission shall issue guid-**  
24          **ance regarding the application of the ex-**  
25          **emption in paragraph (1).**

1       **(g) WEBSITE NOTICE OF FEDERAL TRADE**  
2 **COMMISSION.—**If the Commission, upon receiv-  
3 **ing notification of any breach of security that**  
4 **is reported to the Commission under sub-**  
5 **section (a)(2), finds that notification of such a**  
6 **breach of security via the Commission’s Inter-**  
7 **net website would be in the public interest or**  
8 **for the protection of consumers, the Commis-**  
9 **sion shall place such a notice in a clear and**  
10 **conspicuous location on its Internet website.**

11       **(h) FTC STUDY ON NOTIFICATION IN LAN-**  
12 **GUAGES IN ADDITION TO ENGLISH.—**Not later  
13 **than 1 year after the date of enactment of this**  
14 **Act, the Commission shall conduct a study on**  
15 **the practicality and cost effectiveness of re-**  
16 **quiring the notification required by sub-**  
17 **section (d)(1) to be provided in a language in**  
18 **addition to English to individuals known to**  
19 **speak only such other language.**

20       **(i) SPECIAL NOTIFICATION REQUIREMENT**  
21 **FOR FEDERAL AGENCIES.—**

22               **(1) NATIONWIDE NOTIFICATION.—**Any  
23 **Federal agency that owns or possesses**  
24 **data in electronic form containing per-**  
25 **sonal information shall, following the dis-**

1       covery of a breach of security of the sys-  
2       tem maintained by such agency that con-  
3       tains such data, notify each individual  
4       who is a citizen or resident of the United  
5       States whose personal information was  
6       acquired by an unauthorized person as a  
7       result of such a breach of security

8               (2) METHOD AND CONTENT OF NOTIFICA-  
9       TION.—

10              (A) METHOD OF NOTIFICATION.—A  
11       Federal agency required to provide  
12       written notification to individuals  
13       under paragraph (1) shall be in com-  
14       pliance with such requirement if the  
15       agency provides conspicuous and  
16       clearly identified written notification  
17       that includes the content required  
18       under subparagraph (B).

19              (B) CONTENT OF NOTIFICATION.—  
20       Notification required under this sub-  
21       section shall include—

22              (i) a description of the per-  
23       sonal information that was ac-  
24       quired by an unauthorized per-  
25       son;

1           (ii) a telephone number that  
2           the individual may use, at no cost  
3           to such individual, to contact the  
4           Federal agency to inquire about  
5           the breach of security or the in-  
6           formation the Federal agency  
7           maintained about that individual;

8           (iii) the toll-free contact tele-  
9           phone number and addresses for  
10          the major credit reporting agen-  
11          cies; and

12          (iv) a toll-free telephone num-  
13          ber and Internet website address  
14          whereby the individual may ob-  
15          tain information regarding iden-  
16          tity theft.

17          (3) EXEMPTION.—A Federal agency  
18          shall be exempt from the requirements of  
19          this subsection if, following a breach of  
20          security, such agency determines that  
21          there is no reasonable risk of identity  
22          theft, fraud, or other unlawful conduct.

23          SEC. 4. ENFORCEMENT.

24          (a) ENFORCEMENT BY THE FEDERAL TRADE  
25          COMMISSION.—

1           **(1) UNFAIR OR DECEPTIVE ACTS OR**  
2           **PRACTICES.—A violation of section 2 or 3**  
3           **shall be treated as an unfair and decep-**  
4           **tive act or practice in violation of a regu-**  
5           **lation under section 18(a)(1)(B) of the**  
6           **Federal Trade Commission Act (15 U.S.C.**  
7           **57a(a)(1)(B)) regarding unfair or decep-**  
8           **tive acts or practices.**

9           **(2) POWERS OF COMMISSION.—The Com-**  
10          **mission shall enforce this Act in the same**  
11          **manner, by the same means, and with the**  
12          **same jurisdiction, powers, and duties as**  
13          **though all applicable terms and provi-**  
14          **sions of the Federal Trade Commission**  
15          **Act (15 U.S.C. 41 et seq.) were incor-**  
16          **porated into and made a part of this Act.**  
17          **Any person who violates such regulations**  
18          **shall be subject to the penalties and enti-**  
19          **tled to the privileges and immunities pro-**  
20          **vided in that Act.**

21          **(3) LIMITATION.—In promulgating**  
22          **rules under this Act, the Commission**  
23          **shall not require the deployment or use**  
24          **of any specific products or technologies,**

1 including any specific computer software  
2 or hardware.

3 (b) ENFORCEMENT BY STATE ATTORNEYS  
4 GENERAL.—

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

17 (A) to enjoin further violation of  
18 such section by the defendant;

19 (B) to compel compliance with  
20 such section; or

21 (C) to obtain civil penalties in the  
22 amount determined under paragraph  
23 (2).

24 (2) CIVIL PENALTIES.—

25 (A) CALCULATION.—

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

16           **(ii) TREATMENT OF VIOLATIONS**  
17           **OF SECTION 3.—For purposes of**  
18           **paragraph (1)(C) with regard to a**  
19           **violation of section 3, the amount**  
20           **determined under this paragraph**  
21           **is the amount calculated by multi-**  
22           **plying the number of violations of**  
23           **such section by an amount not**  
24           **greater than \$11,000. Each failure**  
25           **to send notification as required**

1           under section 3 to a resident of  
2           the State shall be treated as a  
3           separate violation. The maximum  
4           civil penalty calculated under  
5           this clause shall not exceed  
6           \$5,000,000.

7           **(B) ADJUSTMENT FOR INFLATION.—**

8           Beginning on the date that the Con-  
9           sumer Price Index is first published  
10          by the Bureau of Labor Statistics that  
11          is after 1 year after the date of enact-  
12          ment of this Act, and each year there-  
13          after, the amounts specified in  
14          clauses (i) and (ii) of subparagraph  
15          (A) shall be increased by the percent-  
16          age increase in the Consumer Price  
17          Index published on that date from the  
18          Consumer Price Index published the  
19          previous year.

20          **(3) INTERVENTION BY THE FTC.—**

21                 **(A) NOTICE AND INTERVENTION.—**

22          The State shall provide prior written  
23          notice of any action under paragraph  
24          (1) to the Commission and provide  
25          the Commission with a copy of its



1            **complaint, except in any case in**  
2            **which such prior notice is not fea-**  
3            **sible, in which case the State shall**  
4            **serve such notice immediately upon**  
5            **instituting such action. The Commis-**  
6            **sion shall have the right—**

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

8                    **(ii) upon so intervening, to be**  
9            **heard on all matters arising**  
10           **therein; and**

11                   **(iii) to file petitions for ap-**  
12           **peal.**

13            **(B) LIMITATION ON STATE ACTION**  
14            **WHILE FEDERAL ACTION IS PENDING.—If**  
15            **the Commission has instituted a civil**  
16            **action for violation of this Act, no**  
17            **State attorney general, or official or**  
18            **agency of a State, may bring an ac-**  
19            **tion under this subsection during the**  
20            **pendency of that action against any**  
21            **defendant named in the complaint of**  
22            **the Commission for any violation of**  
23            **this Act alleged in the complaint.**

24            **(4) CONSTRUCTION.—For purposes of**  
25            **bringing any civil action under para-**

1 **graph (1), nothing in this Act shall be**  
2 **construed to prevent an attorney general**  
3 **of a State from exercising the powers**  
4 **conferred on the attorney general by the**  
5 **laws of that State to—**

6 **(A) conduct investigations;**

7 **(B) administer oaths or affirma-**  
8 **tions; or**

9 **(C) compel the attendance of wit-**  
10 **nesses or the production of documen-**  
11 **tary and other evidence.**

12 **(c) AFFIRMATIVE DEFENSE FOR A VIOLATION**  
13 **OF SECTION 3.—It shall be an affirmative de-**  
14 **fense to an enforcement action brought under**  
15 **subsection (a), or a civil action brought under**  
16 **subsection (b), based on a violation of section**  
17 **3, that all of the personal information con-**  
18 **tained in the data in electronic form that was**  
19 **acquired as a result of a breach of security of**  
20 **the defendant is public record information**  
21 **that is lawfully made available to the general**  
22 **public from Federal, State, or local govern-**  
23 **ment records and was acquired by the defend-**  
24 **ant from such records.**

1 SEC. 5. DEFINITIONS.

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

3 (1) **BREACH OF SECURITY.**—The term  
4 “breach of security” means the unauthor-  
5 ized acquisition of data in electronic  
6 form containing personal information.

7 (2) **COMMISSION.**—The term “Commis-  
8 sion” means the Federal Trade Commis-  
9 sion.

10 (3) **DATA IN ELECTRONIC FORM.**—The  
11 term “data in electronic form” means any  
12 data stored electronically or digitally on  
13 any computer system or other database  
14 and includes recordable tapes and other  
15 mass storage devices.

16 (4) **ENCRYPTION.**—The term  
17 “encryption” means the protection of  
18 data in electronic form in storage or in  
19 transit using an encryption technology  
20 that has been adopted by an established  
21 standards setting body which renders  
22 such data indecipherable in the absence  
23 of associated cryptographic keys nec-  
24 essary to enable decryption of such data.  
25 Such encryption must include appro-  
26 priate management and safeguards of

1       such keys to protect the integrity of the  
2       encryption.

3           (5) **IDENTITY THEFT.**—The term “iden-  
4       tity theft” means the unauthorized use of  
5       another person’s personal information  
6       for the purpose of engaging in commer-  
7       cial transactions under the name of such  
8       other person.

9           (6) **INFORMATION BROKER.**—The term  
10       “information broker” means a commer-  
11       cial entity whose business is to collect,  
12       assemble, or maintain personal informa-  
13       tion concerning individuals who are not  
14       current or former customers of such enti-  
15       ty in order to sell such information or  
16       provide access to such information to any  
17       nonaffiliated third party in exchange for  
18       consideration, whether such collection,  
19       assembly, or maintenance of personal in-  
20       formation is performed by the informa-  
21       tion broker directly, or by contract or  
22       subcontract with any other entity.

23           (7) **PERSONAL INFORMATION.**—

24           (A) **DEFINITION.**—The term “per-  
25       sonal information” means an individ-

1           ual’s first name or initial and last  
2           name, or address, or phone number,  
3           in combination with any 1 or more of  
4           the following data elements for that  
5           individual:

6                   (i) Social Security number.

7                   (ii) Driver’s license number or  
8                   other State identification number.

9                   (iii) Financial account num-  
10                  ber, or credit or debit card num-  
11                  ber, and any required security  
12                  code, access code, or password  
13                  that is necessary to permit access  
14                  to an individual’s financial ac-  
15                  count.

16           (B) MODIFIED DEFINITION BY RULE-  
17           MAKING.—The Commission may, by  
18           rule, modify the definition of “per-  
19           sonal information” under subpara-  
20           graph (A) to the extent that such  
21           modification is necessary to accom-  
22           modate changes in technology or  
23           practices, will not unreasonably im-  
24           pede interstate commerce, and will  
25           accomplish the purposes of this Act.

1           **(8) PUBLIC RECORD INFORMATION.—**The  
2           **term “public record information” means**  
3           **information about an individual which**  
4           **has been obtained originally from**  
5           **records of a Federal, State, or local gov-**  
6           **ernment entity that are available for pub-**  
7           **lic inspection.**

8           **(9) NON-PUBLIC INFORMATION.—**The  
9           **term “non-public information” means in-**  
10          **formation about an individual that is of a**  
11          **private nature and neither available to**  
12          **the general public nor obtained from a**  
13          **public record.**

14 **SEC. 6. EFFECT ON OTHER LAWS.**

15          **(a) PREEMPTION OF STATE INFORMATION SE-**  
16          **CURITY LAWS.—**This Act supersedes any provi-  
17          **sion of a statute, regulation, or rule of a State**  
18          **or political subdivision of a State, with re-**  
19          **spect to those entities covered by the regula-**  
20          **tions issued pursuant to this Act, that ex-**  
21          **pressly—**

22               **(1) requires information security**  
23               **practices and treatment of data in elec-**  
24               **tronic form containing personal informa-**

1       **tion similar to any of those required**  
2       **under section 2; and**

3               **(2) requires notification to individ-**  
4       **uals of a breach of security resulting in**  
5       **unauthorized acquisition of data in elec-**  
6       **tronic form containing personal informa-**  
7       **tion.**

8       **(b) ADDITIONAL PREEMPTION.—**

9               **(1) IN GENERAL.—No person other than**  
10       **the Attorney General of a State may**  
11       **bring a civil action under the laws of any**  
12       **State if such action is premised in whole**  
13       **or in part upon the defendant violating**  
14       **any provision of this Act.**

15               **(2) PROTECTION OF CONSUMER PROTEC-**  
16       **TION LAWS.—This subsection shall not be**  
17       **construed to limit the enforcement of any**  
18       **State consumer protection law by an At-**  
19       **torney General of a State.**

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

21       **This Act shall not be construed to preempt the**  
22       **applicability of—**

23               **(1) State trespass, contract, or tort**  
24       **law; or**

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

3           **(d) PRESERVATION OF FTC AUTHORITY.—**  
4           **Nothing in this Act may be construed in any**  
5           **way to limit or affect the Commission’s au-**  
6           **thority under any other provision of law, in-**  
7           **cluding the authority to issue advisory opin-**  
8           **ions (under part 1 of volume 16 of the Code**  
9           **of Federal Regulations), policy statements, or**  
10           **guidance regarding this Act.**

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

12           **(a) EFFECTIVE DATE.—This Act shall take**  
13           **effect 1 year after the date of enactment of**  
14           **this Act.**

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

18           **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

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

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

23           ***(a) SHORT TITLE.—This Act may be cited as***  
24           ***the “Financial Data Protection Act of 2006”.***



1       ***(b) FINDINGS.—The Congress finds as fol-***  
2 ***lows:***

3           ***(1) Protecting the security of sensitive***  
4 ***information relating to consumers is im-***  
5 ***portant to limiting account fraud and***  
6 ***identity theft.***

7           ***(2) While the Gramm-Leach-Bliley Act***  
8 ***requires financial institutions to protect***  
9 ***the security and confidentiality of the***  
10 ***nonpublic personal information of the***  
11 ***customers of financial institutions, the***  
12 ***scope of covered entities and type of infor-***  
13 ***mation needs to be broadened to fully pro-***  
14 ***tect consumers.***

15           ***(3) Some Federal agencies have issued***  
16 ***model guidance under the Gramm-Leach-***  
17 ***Bliley Act requiring banks to investigate***  
18 ***and provide notice to customers of***  
19 ***breaches of data security involving cus-***  
20 ***tomers information that could lead to ac-***  
21 ***count fraud or identity theft, but these***  
22 ***standards need to be broadened to apply to***  
23 ***other entities acting as consumer report-***  
24 ***ers, in order to create a single, uniform***  
25 ***data security standard that applies to all***

1 *parties to transactions involving such fi-*  
2 *nancial information.*

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

11 *(5) Therefore, all consumer reporters*  
12 *should—*

13 *(A) protect sensitive financial per-*  
14 *sonal information;*

15 *(B) investigate potential data se-*  
16 *curity breaches;*

17 *(C) provide breach notices as ap-*  
18 *propriate to the United States Secret*  
19 *Service, functional regulators, in-*  
20 *volved third parties, and consumers;*

21 *(D) restore the security of the in-*  
22 *formation and improve safeguards*  
23 *after a breach; and*

1           ***(E) provide consumers free file***  
2           ***monitoring where appropriate to re-***  
3           ***duce the risk of identity theft.***

4 **SEC. 2. DATA SECURITY SAFEGUARDS.**

5           ***(a) IN GENERAL.—As set forth in section 630***  
6 ***of the Fair Credit Reporting Act, as amended***  
7 ***by the Act, in the event a consumer reporter be-***  
8 ***comes aware of information suggesting a***  
9 ***breach of data security, such consumer re-***  
10 ***porter shall immediately conduct an inves-***  
11 ***tigation, and notify authorities and consumers***  
12 ***as appropriate.***

13           ***(b) FCRA DATA SECURITY AMENDMENT.—***  
14 ***The Fair Credit Reporting Act (15 U.S.C. 1681)***  
15 ***is amended by adding at the end the following***  
16 ***new section:***

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

18           ***“(a) PROTECTION OF SENSITIVE FINANCIAL***  
19 ***PERSONAL INFORMATION.—***

20           ***“(1) DATA SECURITY OBLIGATION POL-***  
21 ***ICY.—It is the policy of the Congress that***  
22 ***each consumer reporter has an affirma-***  
23 ***tive and continuing obligation to protect***  
24 ***the security and confidentiality of sen-***  
25 ***sitive financial personal information.***

1           **“(2) SECURITY POLICIES AND PROCE-**  
2           **DURES.—Each consumer reporter shall**  
3           **have an affirmative obligation to imple-**  
4           **ment, and a continuing obligation to**  
5           **maintain, reasonable policies and proce-**  
6           **dures to protect the security and confiden-**  
7           **tiality of sensitive financial personal in-**  
8           **formation relating to any consumer that**  
9           **is handled by such consumer reporter**  
10           **against any loss, unauthorized access, or**  
11           **misuse that is reasonably likely to result**  
12           **in harm or inconvenience to such con-**  
13           **sumer.**

14           **“(3) DATA DESTRUCTION AND DATA DIS-**  
15           **POSAL POLICIES AND PROCEDURES.—The**  
16           **policies and procedures described in**  
17           **paragraph (2) shall include providing for**  
18           **the proper disposal of sensitive financial**  
19           **personal information in accordance with**  
20           **the standards, guidelines, or regulations**  
21           **issued pursuant to this title.**

22           **“(b) INVESTIGATION REQUIREMENTS.—**

23           **“(1) INVESTIGATION TRIGGER.—A con-**  
24           **sumer reporter shall immediately conduct**  
25           **a data security breach investigation if it—**

1           “(A) becomes aware of any infor-  
2           mation indicating a reasonable likeli-  
3           hood that a data security breach has  
4           occurred or is unavoidable;

5           “(B) becomes aware of information  
6           indicating an unusual pattern of mis-  
7           use of sensitive financial personal in-  
8           formation handled by a consumer re-  
9           porter indicative of financial fraud;  
10          or

11          “(C) receives a notice under sub-  
12          section (e).

13          “(2) SCOPE OF INVESTIGATION.—Such  
14          investigation shall be conducted in a  
15          manner commensurate with the nature  
16          and the amount of the sensitive financial  
17          personal information that is subject to the  
18          breach of data security, including appro-  
19          priate actions to—

20                 “(A) assess the nature and scope of  
21                 the potential breach;

22                 “(B) identify the sensitive finan-  
23                 cial personal information potentially  
24                 involved;

1           “(C) *determine whether such in-*  
2 *formation is usable by the parties*  
3 *causing the breach; and*

4           “(D) *determine the likelihood that*  
5 *such information has been, or will be,*  
6 *misused in a manner that may cause*  
7 *harm or inconvenience to the related*  
8 *consumer.*

9           “(3) *ENCRYPTION AND OTHER SAFE-*  
10 *GUARDS.—*

11           “(A) *SUGGESTED SAFEGUARDS.—The*  
12 *regulators described in subsection*  
13 *(k)(1) shall jointly develop standards*  
14 *and guidelines to identify and regu-*  
15 *larly update appropriate technology*  
16 *safeguards for making consumer re-*  
17 *porter’s sensitive financial personal*  
18 *information unusable in a manner*  
19 *commensurate with the nature and*  
20 *the amount of such information, in-*  
21 *cluding—*

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

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

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

7            *“(B) SAFEGUARD FACTORS.—In de-*  
8            *termining the likelihood of a data se-*  
9            *curity breach, a consumer reporter*  
10           *may consider whether the information*  
11           *subject to the potential breach is un-*  
12           *usable because it is encrypted, re-*  
13           *dacted, requires technology to use that*  
14           *is not generally commercially avail-*  
15           *able, or has otherwise similarly been*  
16           *rendered unreadable.*

17           *“(C) SAFE HARBOR FOR PROTECTED*  
18           *DATA.—As set forth in the standards*  
19           *and guidelines issued pursuant to*  
20           *subparagraph (A), a consumer re-*  
21           *porter may reasonably conclude that*  
22           *a data security breach is not likely to*  
23           *have occurred where the sensitive per-*  
24           *sonal financial information involved*  
25           *has been encrypted, redacted, requires*

1           *technology to use that is not generally*  
2           *commercially available, or is other-*  
3           *wise unlikely to be usable*

4           “(D) *EXCEPTION.—Subparagraphs*  
5           *(B) and (C) shall not apply if the con-*  
6           *sumer reporter becomes aware of in-*  
7           *formation that would reasonably indi-*  
8           *cate that the information that was the*  
9           *subject of the potential breach is usa-*  
10          *ble by the entities causing the breach*  
11          *or potentially misusing the informa-*  
12          *tion, for example because—*

13                   “(i) *an encryption code is po-*  
14                   *tentially compromised,*

15                   “(ii) *the entities are believed*  
16                   *to have the technology to access*  
17                   *the information; or*

18                   “(iii) *there is an unusual pat-*  
19                   *tern of misuse of such information*  
20                   *indicative of financial fraud.*

21          “(c) *BREACH NOTICES.—If a consumer re-*  
22          *porter determines that a breach of data secu-*  
23          *rity has occurred, is likely to have occurred, or*  
24          *is unavoidable, the consumer reporter shall in*  
25          *the order listed—*



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

3           “(2) promptly notify the appropriate  
4       *functional regulatory agency for the con-*  
5       *sumer reporter;*

6           “(3) notify as appropriate and without  
7       *unreasonable delay—*

8           “(A) any third party entity that  
9       *owns or is obligated on an affected fi-*  
10       *nancial account as set forth in the*  
11       *standards or guidelines pursuant to*  
12       *subsection (k)(1)(G), including in such*  
13       *notification information reasonably*  
14       *identifying the nature and scope of*  
15       *the breach and the sensitive financial*  
16       *personal information involved; and*

17           “(B) any other appropriate crit-  
18       *ical third parties whose involvement*  
19       *is necessary to investigate the breach;*  
20       *and*

21           “(4) without unreasonable delay notify  
22       *any affected consumers to the extent re-*  
23       *quired in subsection (f), as well as—*

24           “(A) each nationwide consumer re-  
25       *porting agency, in the case of a*

1           *breach involving sensitive financial*  
2           *identity information relating to 1,000*  
3           *or more consumers; and*

4           “(B) *any other appropriate crit-*  
5           *ical third parties who will be required*  
6           *to undertake further action with re-*  
7           *spect to such information to protect*  
8           *such consumers from resulting fraud*  
9           *or identity theft.*

10          “(d) **SYSTEM RESTORATION REQUIREMENTS.**—  
11 *If a consumer reporter determines that a*  
12 *breach of data security has occurred, is likely*  
13 *to have occurred, or is unavoidable, the con-*  
14 *sumer reporter shall take prompt and reason-*  
15 *able measures to—*

16           “(1) *repair the breach and restore the*  
17           *security and confidentiality of the sen-*  
18           *sitive financial personal information in-*  
19           *volved to limit further unauthorized mis-*  
20           *use of such information; and*

21           “(2) *restore the integrity of the con-*  
22           *sumer reporter’s data security safeguards*  
23           *and make appropriate improvements to*  
24           *its data security policies and procedures.*

25          “(e) **THIRD PARTY DUTIES.**—

1           **“(1) COORDINATED INVESTIGATION.—**  
2           *Whenever any consumer reporter that*  
3           *handles sensitive financial personal in-*  
4           *formation for or on behalf of another*  
5           *party becomes aware that an investiga-*  
6           *tion is required under subsection (b) with*  
7           *respect to such information, the consumer*  
8           *reporter shall—*

9                   **“(A) promptly notify the other**  
10                  *party of the breach;*

11                   **“(B) conduct a coordinated inves-**  
12                  *tigation with the other party as de-*  
13                  *scribed in subsection (b); and*

14                   **“(C) ensure that the appropriate**  
15                  *notices are provided as required*  
16                  *under subsection (f).*

17           **“(2) CONTRACTUAL OBLIGATION RE-**  
18           **QUIRED.—***No consumer reporter may pro-*  
19           *vide sensitive financial personal informa-*  
20           *tion to a third party, unless such third*  
21           *party agrees to fulfill the obligations im-*  
22           *posed by subsections (a), (d), and (h), as*  
23           *well as that whenever the third party be-*  
24           *comes aware that a breach of data secu-*  
25           *rity has occurred, is reasonably likely to*

1 *have occurred, or is unavoidable, with re-*  
2 *spect to such information, the third party*  
3 *shall be obligated—*

4 *“(A) to provide notice of the poten-*  
5 *tial breach to the consumer reporter;*

6 *“(B) to conduct a coordinated in-*  
7 *vestigation with the consumer re-*  
8 *porter to identify the sensitive finan-*  
9 *cial personal information involved*  
10 *and determine if the potential breach*  
11 *is reasonably likely to result in harm*  
12 *or inconvenience to any consumer to*  
13 *whom the information relates; and*

14 *“(C) provide any notices required*  
15 *under this section, except to the extent*  
16 *that such notices are provided by the*  
17 *consumer reporter in a manner meet-*  
18 *ing the requirements of this section.*

19 *“(f) CONSUMER NOTICE.—*

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

1           “(A) *that a breach of data security*  
2 *is reasonably likely to have occurred*  
3 *or be unavoidable, with respect to sen-*  
4 *sitive financial personal information*  
5 *handled by the consumer reporter;*

6           “(B) *of information reasonably*  
7 *identifying the nature and scope of*  
8 *the breach; and*

9           “(C) *that such information is rea-*  
10 *sonably likely to have been or to be*  
11 *misused in a manner causing harm or*  
12 *inconvenience against the consumers*  
13 *to whom such information relates to—*

14           “(i) *commit identity theft if the*  
15 *information is sensitive financial*  
16 *identity information, or*

17           “(ii) *make fraudulent trans-*  
18 *actions on such consumers’ finan-*  
19 *cial accounts if the information is*  
20 *sensitive financial account infor-*  
21 *mation.*

22           “(2) **SECURITY PROGRAM SAFEGUARDS**  
23 **AND REGULATIONS.—**

24           “(A) **STANDARDS FOR SAFEGUARDS.—**

25           *The regulators described in subsection*

1           ***(k)(1) shall issue guidelines relating***  
2           ***to the types of sophisticated neural***  
3           ***networks and security programs that***  
4           ***are likely to detect fraudulent account***  
5           ***activity and at what point detection of***  
6           ***such activity is sufficient to avoid con-***  
7           ***sumer notice under this subsection.***

8           ***“(B) ALTERNATIVE SAFEGUARDS.—In***  
9           ***determining the likelihood of misuse***  
10           ***of sensitive financial account infor-***  
11           ***mation and whether a notice is re-***  
12           ***quired under paragraph (1), the con-***  
13           ***sumer reporter may additionally con-***  
14           ***sider—***

15           ***“(i) consistent with any stand-***  
16           ***ards promulgated under subpara-***  
17           ***graph (A), whether any neural***  
18           ***networks or security programs***  
19           ***used by, or on behalf of, the con-***  
20           ***sumer reporter have detected, or***  
21           ***are likely to detect on an ongoing***  
22           ***basis over a reasonable period of***  
23           ***time, fraudulent transactions re-***  
24           ***sulting from the breach of data se-***  
25           ***curity; or***

1           “(ii) *whether no harm or in-*  
2           *convenience is reasonably likely to*  
3           *have occurred, because for exam-*  
4           *ple the related consumer account*  
5           *has been closed or its number has*  
6           *been changed.*

7           “(3) *COORDINATION WITH THE FAIR DEBT*  
8           *COLLECTION PRACTICES ACT.—The provision*  
9           *of a notice to the extent such notice and*  
10           *its contents are required under this sec-*  
11           *tion shall not be considered a communica-*  
12           *tion under the Fair Debt Collection Prac-*  
13           *tices Act.*

14           “(4) *COORDINATION OF CONSUMER NO-*  
15           *TICE DATABASE.—*

16           “(A) *IN GENERAL.—The Commission*  
17           *shall coordinate with the other gov-*  
18           *ernment entities identified in this sec-*  
19           *tion to create a publicly available list*  
20           *of data security breaches that have*  
21           *triggered a notice to consumers under*  
22           *this subsection within the last 12*  
23           *months.*

24           “(B) *LISTED INFORMATION.—The*  
25           *publicly available list described in*

1           *subparagraph (A) shall include the*  
2           *following:*

3                   “(i) *The identity of the party*  
4                   *responsible that suffered the*  
5                   *breach.*

6                   “(ii) *A general description of*  
7                   *the nature and scope of the*  
8                   *breach.*

9                   “(iii) *Any financial fraud miti-*  
10                   *gation or other services provided*  
11                   *by such party to the affected con-*  
12                   *sumers, including the telephone*  
13                   *number and other appropriate*  
14                   *contact information for accessing*  
15                   *such services.*

16           “(g) *TIMING, CONTENT, AND MANNER OF NO-*  
17           *TICES.—*

18                   “(1) *DELAY OF NOTICE FOR LAW EN-*  
19                   *FORCEMENT PURPOSES.—If a consumer re-*  
20                   *porter receives a written request from an*  
21                   *appropriate law enforcement agency indi-*  
22                   *cating that the provision of a notice*  
23                   *under subsection (c)(3) or (f) would im-*  
24                   *pede a criminal or civil investigation by*  
25                   *that law enforcement agency, or an oral*



1 *request from an appropriate law enforce-*  
2 *ment agency indicating that such a writ-*  
3 *ten request will be provided within 2 busi-*  
4 *ness days—*

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

9 *“(i) the law enforcement agen-*  
10 *cy informs the consumer reporter*  
11 *that such notice will no longer im-*  
12 *pede the investigation; or*

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

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

20 *“(II) in the case of an oral*  
21 *request for a delay, provide a*  
22 *written request within 2 busi-*  
23 *ness days, and if such delay is*  
24 *requested for more than 10 ad-*  
25 *ditional days, such request*

1                    *must be approved by a court of*  
2                    *competent jurisdiction; and*

3                    *“(B) the consumer reporter may—*

4                    *“(i) conduct appropriate secu-*  
5                    *rity measures that are not incon-*  
6                    *sistent with such request; and*

7                    *“(ii) contact such law enforce-*  
8                    *ment agency to determine whether*  
9                    *any such inconsistency would be*  
10                   *created by such measures.*

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

19                   *“(A) nothing in this subparagraph*  
20                   *shall be construed as creating any in-*  
21                   *ference with respect to the establish-*  
22                   *ment or existence of any such liability;*  
23                   *and*

24                   *“(B) this subparagraph shall not*  
25                   *apply if the costs or losses would not*

1           *have occurred had the consumer re-*  
2           *porter undertaken reasonable system*  
3           *restoration requirements to the extent*  
4           *required under subsection (d), or*  
5           *other similar provision of law, except*  
6           *to the extent that such system restora-*  
7           *tion was delayed at the request of law*  
8           *enforcement.*

9           **“(3) CONTENT OF CONSUMER NOTICE.—**

10          *Any notice required to be provided by a*  
11          *consumer reporter to a consumer under*  
12          *subsection (f)(1), and any notice required*  
13          *in accordance with subsection (e)(2)(A),*  
14          *shall be provided in a standardized trans-*  
15          *mission or exclusively colored envelope,*  
16          *and shall include the following in a clear*  
17          *and conspicuous manner:*

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

20                 **“(B) A description of the nature**  
21                 *and types of information and ac-*  
22                 *counts as appropriate that were, or*  
23                 *are reasonably believed to have been,*  
24                 *subject to the breach of data security.*

1           “(C) A statement identifying the  
2 party responsible, if known, that suf-  
3 fered the breach, including an expla-  
4 nation of the relationship of such  
5 party to the consumer.

6           “(D) If known, the date, or the best  
7 reasonable approximation of the pe-  
8 riod of time, on or within which sen-  
9 sitive financial personal information  
10 related to the consumer was, or is rea-  
11 sonably believed to have been, subject  
12 to a breach.

13           “(E) A general description of the  
14 actions taken by the consumer re-  
15 porter to restore the security and con-  
16 fidentiality of the breached informa-  
17 tion.

18           “(F) A telephone number by which  
19 a consumer to whom the breached in-  
20 formation relates may call free of  
21 charge to obtain additional informa-  
22 tion about how to respond to the  
23 breach.

24           “(G) With respect to notices involv-  
25 ing sensitive financial identity infor-

1            *mation, a copy of the summary of*  
2            *rights of consumer victims of fraud or*  
3            *identity theft prepared by the Commis-*  
4            *sion under section 609(d), as well as*  
5            *any additional appropriate informa-*  
6            *tion on how the consumer may—*

7            *“(i) obtain a copy of a con-*  
8            *sumer report free of charge in ac-*  
9            *cordance with section 612;*

10           *“(ii) place a fraud alert in any*  
11           *file relating to the consumer at a*  
12           *consumer reporting agency under*  
13           *section 605A to discourage unau-*  
14           *thorized use; and*

15           *“(iii) contact the Commission*  
16           *for more detailed information.*

17           *“(H) With respect to notices involv-*  
18           *ing sensitive financial identity infor-*  
19           *mation, a prominent statement in ac-*  
20           *cordance with subsection (h) that file*  
21           *monitoring will be made available to*  
22           *the consumer free of charge for a pe-*  
23           *riod of not less than six months, to-*  
24           *gether with a telephone number for re-*  
25           *questing such services, and may also*

1           *include such additional contact infor-*  
2           *mation as a mailing address, e-mail,*  
3           *or Internet website address.*

4           “(I) *The approximate date the no-*  
5           *tice is being issued.*

6           “(4) *OTHER TRANSMISSION OF NOTICE.—*  
7           *The notice described in paragraph (3)*  
8           *may be made by other means of trans-*  
9           *mission (such as electronic or oral) to a*  
10          *consumer only if—*

11          “(A) *the consumer has affirma-*  
12          *tively consented to such use, has not*  
13          *withdrawn such consent, and with re-*  
14          *spect to electronic transmissions is*  
15          *provided with the appropriate state-*  
16          *ments related to such consent as de-*  
17          *scribed in section 101(c)(1) of the Elec-*  
18          *tronic Signatures in Global and Na-*  
19          *tional Commerce Act; and*

20          “(B) *all of the relevant informa-*  
21          *tion in paragraph (3) is commu-*  
22          *nicated to such consumer in such*  
23          *transmission.*

24          “(5) *DUPLICATIVE NOTICES.—*

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

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

11                   “(ii) shall not be required to  
12                   provide a notice with respect to  
13                   any consumer if a notice meeting  
14                   the applicable requirements of  
15                   this section has already been pro-  
16                   vided to such consumer by another  
17                   entity.

18           “(B) *UPDATING NOTICES.*—If a con-  
19           sumer notice is provided to consumers  
20           pursuant only to subsection  
21           (f)(1)(C)(ii) (relating to sensitive fi-  
22           nancial account information), and the  
23           consumer reporter subsequently be-  
24           comes aware of a reasonable likeli-  
25           hood that sensitive financial personal

1           *information involved in the breach is*  
2           *being misused in a manner causing*  
3           *harm or inconvenience against such*  
4           *consumer to commit identity theft, an*  
5           *additional notice shall be provided to*  
6           *such consumers as well any other ap-*  
7           *propriate parties under this section,*  
8           *including a copy of the Commission’s*  
9           *summary of rights and file monitoring*  
10           *mitigation instructions under sub-*  
11           *paragraphs (G) and (H) of paragraph*  
12           *(3).*

13           **“(6) RESPONSIBILITY AND COSTS.—**

14           **“(A) IN GENERAL.—***Except as other-*  
15           *wise established by written agreement*  
16           *between the consumer reporter and its*  
17           *agents or third party servicers, the en-*  
18           *tity that suffered a breach of data se-*  
19           *curity shall be—*

20                   **“(i) primarily responsible for**  
21                   **providing any consumer notices**  
22                   **and file monitoring required**  
23                   **under this section with respect to**  
24                   **such breach; and**



1           “(ii) *responsible for the rea-*  
2           *sonable actual costs of any notices*  
3           *provided under this section.*

4           “(B) *IDENTIFICATION TO CON-*  
5           *SUMERS.—No such agreement shall re-*  
6           *strict the ability of a consumer re-*  
7           *porter to identify the entity respon-*  
8           *sible for the breach to consumers*

9           “(C) *NO CHARGE TO CONSUMERS.—*  
10           *The cost for the notices and file moni-*  
11           *toring described in subparagraph (A)*  
12           *may not be charged to the related con-*  
13           *sumers.*

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

15           “(1) *FREE FILE MONITORING.—Any con-*  
16           *sumer reporter that is required to provide*  
17           *notice to a consumer under subsection*  
18           *(f)(1)(C)(i), or that is deemed to be in com-*  
19           *pliance with such requirement by oper-*  
20           *ation of subsection (j), if requested by the*  
21           *consumer before the end of the 90-day pe-*  
22           *riod beginning on the date of such notice,*  
23           *shall make available to the consumer, free*  
24           *of charge and for at least a 6-month pe-*  
25           *riod—*

1           “(A) a service that monitors na-  
2           tionwide credit activity regarding a  
3           consumer from a consumer reporting  
4           agency described in section 603(p); or

5           “(B) a service that provides iden-  
6           tity-monitoring to consumers on a na-  
7           tionwide basis that meets the guide-  
8           lines described in paragraph (2).

9           “(2) *IDENTITY MONITORING NETWORKS.*—

10          *The regulators described in subsection*  
11          *(k)(1) shall issue guidelines on the type of*  
12          *identity monitoring networks that are*  
13          *likely to detect fraudulent identity activ-*  
14          *ity regarding a consumer on a nationwide*  
15          *basis and would satisfy the requirements*  
16          *of paragraph (1).*

17          “(3) *JOINT RULEMAKING FOR SAFE HAR-*  
18          *BOR.*—*In accordance with subsection (j),*  
19          *the Secretary of the Treasury, the Board*  
20          *of Governors of the Federal Reserve Sys-*  
21          *tem, and the Commission shall jointly de-*  
22          *velop standards and guidelines, which*  
23          *shall be issued by all functional regu-*  
24          *latory agencies, that, in any case in*  
25          *which—*

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

3           “(B) *subsequent to the offer, an-*  
4           *other party misuses sensitive financial*  
5           *identity information on the consumer*  
6           *obtained through the breach of data*  
7           *security (that gave rise to such offer)*  
8           *to commit identity theft against the*  
9           *consumer; and*

10           “(C) *at the time of such breach the*  
11           *consumer reporter met the require-*  
12           *ments of subsections (a) and (d),*  
13           *exempts the consumer reporter from any*  
14           *liability for any harm to the consumer re-*  
15           *sulting from such misuse, other than any*  
16           *direct pecuniary loss or loss pursuant to*  
17           *agreement by the consumer reporter, ex-*  
18           *cept that nothing in this paragraph shall*  
19           *be construed as creating any inference*  
20           *with respect to the establishment or exist-*  
21           *ence of any such liability.*

22           “(i) *CREDIT SECURITY FREEZE.—*

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

1           “(A) **SECURITY FREEZE.**—*The term*  
2           *‘security freeze’ means a notice placed*  
3           *in a credit report on a consumer, at*  
4           *the request of the consumer who is a*  
5           *victim of identity theft, that prohibits*  
6           *the consumer reporting agency from*  
7           *releasing all or any part of the credit*  
8           *report, without the express authoriza-*  
9           *tion of the consumer, except as other-*  
10           *wise provided in this section.*

11           “(B) **REVIEWING THE ACCOUNT; AC-**  
12           **COUNT REVIEW.**—*The terms ‘reviewing*  
13           *the account’ and ‘account review’ in-*  
14           *clude activities related to account*  
15           *maintenance, monitoring, credit line*  
16           *increases, and account upgrades and*  
17           *enhancements.*

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

19           “(A) **IN GENERAL.**—*A consumer who*  
20           *has been the victim of identity theft*  
21           *may place a security freeze on the file*  
22           *of such consumer at any consumer re-*  
23           *porting agency by—*

1           “(i) *making a request in writ-*  
2           *ing by certified mail to the con-*  
3           *sumer reporting agency;*

4           “(ii) *submitting an identity*  
5           *theft report to the consumer re-*  
6           *porting agency; and*

7           “(iii) *providing such evidence*  
8           *of the identity of the consumer as*  
9           *such consumer reporting agency*  
10           *may require under paragraph (5).*

11           “(B) *PROMPT IMPOSITION OF*  
12           *FREEZE.—A consumer reporting agency*  
13           *shall place a security freeze on a cred-*  
14           *it report on a consumer no later than*  
15           *5 business days after receiving a writ-*  
16           *ten request from the consumer in ac-*  
17           *cordance with subparagraph (A).*

18           “(C) *EFFECT OF FREEZE.—*

19           “(i) *IN GENERAL.—Except as*  
20           *otherwise provided in this sub-*  
21           *section, if a security freeze is in*  
22           *place with respect to any con-*  
23           *sumer, information from the con-*  
24           *sumer’s credit report may not be*  
25           *released by the consumer report-*

1            *ing agency or reseller to any third*  
2            *party, including another con-*  
3            *sumer reporting agency or re-*  
4            *seller, without the prior express*  
5            *authorization from the consumer*  
6            *or as otherwise permitted in this*  
7            *section.*

8            *“(i) ADVISING OF EXISTENCE OF*  
9            *SECURITY FREEZE.—Clause (i) shall*  
10           *not be construed as preventing a*  
11           *consumer reporting agency or re-*  
12           *seller from advising a third party*  
13           *that a security freeze is in effect*  
14           *with respect to the credit report on*  
15           *the consumer.*

16           *“(D) CONFIRMATION OF FREEZE; AC-*  
17           *CESS CODE.—Any consumer reporting*  
18           *agency that receives a consumer re-*  
19           *quest for a security freeze in accord-*  
20           *ance with subparagraph (A) shall—*

21           *“(i) send a written confirma-*  
22           *tion of the security freeze to the*  
23           *consumer within 10 business days*  
24           *of placing the freeze; and*

1           “(ii) *at the same time, provide*  
2           *the consumer with a unique per-*  
3           *sonal identification number or*  
4           *password (other than the Social*  
5           *Security account number of any*  
6           *consumer) to be used by the con-*  
7           *sumer when providing authoriza-*  
8           *tion for the release of the credit*  
9           *report of the consumer to a spe-*  
10           *cific party or for a specific period*  
11           *of time.*

12           “(3) *ACCESS PURSUANT TO CONSUMER*  
13           *AUTHORIZATION DURING SECURITY FREEZE.—*

14           “(A) *NOTICE BY CONSUMER.—If the*  
15           *consumer wishes to allow the credit*  
16           *report on the consumer to be accessed*  
17           *by a specific party or for a specific pe-*  
18           *riod of time while a freeze is in place,*  
19           *the consumer shall—*

20                   “(i) *contact the consumer re-*  
21                   *porting agency in any manner the*  
22                   *agency may provide;*

23                   “(ii) *request that the security*  
24                   *freeze be temporarily lifted; and*

25                   “(iii) *provide—*

1           ***“(I) proper identification;***

2           ***“(II) the unique personal***  
3           ***identification number or pass-***  
4           ***word provided by the con-***  
5           ***sumer reporting agency pursu-***  
6           ***ant to paragraph (2)(D)(ii);***  
7           ***and***

8           ***“(III) the proper informa-***  
9           ***tion regarding the third party***  
10           ***who is to receive the credit re-***  
11           ***port or the time period for***  
12           ***which the report shall be***  
13           ***available to users of the credit***  
14           ***report.***

15           ***“(B) TIMELY RESPONSE REQUIRED.—***  
16           ***A consumer reporting agency that re-***  
17           ***ceives a request from a consumer to***  
18           ***temporarily lift a security freeze on a***  
19           ***credit report in accordance with sub-***  
20           ***paragraph (A) shall comply with the***  
21           ***request no later than 3 business days***  
22           ***after receiving the request.***

23           ***“(C) PROCEDURES FOR REQUESTS.—***  
24           ***A consumer reporting agency may de-***  
25           ***velop procedures involving the use of***



1           *telephone, fax, or, upon the consent of*  
2           *the consumer in the manner required*  
3           *by the Electronic Signatures in Global*  
4           *and National Commerce Act for no-*  
5           *tices legally required to be in writing,*  
6           *by the Internet, e-mail, or other elec-*  
7           *tronic medium to receive and process*  
8           *a request from a consumer to tempo-*  
9           *rarily lift a security freeze on a credit*  
10           *report pursuant to subparagraph (A)*  
11           *in an expedited manner.*

12           **“(4) LIFTING OR REMOVING SECURITY**  
13           **FREEZE.—**

14           **“(A) IN GENERAL.—***A consumer re-*  
15           *porting agency may remove or tempo-*  
16           *rarily lift a security freeze placed on a*  
17           *credit report on a consumer only in*  
18           *the following cases:*

19                   **“(i) Upon receiving a con-**  
20                   *sumer request for a temporary lift*  
21                   *of the security freeze in accord-*  
22                   *ance with paragraph (3)(A).*

23                   **“(ii) Upon receiving a con-**  
24                   *sumer request for the removal of*

1           *the security freeze in accordance*  
2           *with subparagraph (C).*

3           “(iii) *Upon a determination by*  
4           *the consumer reporting agency*  
5           *that the security freeze was im-*  
6           *posed on the credit report due to a*  
7           *material misrepresentation of fact*  
8           *by the consumer.*

9           “(B) *NOTICE TO CONSUMER OF DE-*  
10          *TERMINATION.—If a consumer report-*  
11          *ing agency makes a determination de-*  
12          *scribed in subparagraph (A)(iii) with*  
13          *a respect to a security freeze imposed*  
14          *on the credit report on any consumer,*  
15          *the consumer reporting agency shall*  
16          *notify the consumer of such deter-*  
17          *mination in writing prior to removing*  
18          *the security freeze on such credit re-*  
19          *port.*

20          “(C) *REMOVING SECURITY FREEZE.—*

21                 “(i) *IN GENERAL.—Except as*  
22                 *provided in this subsection, a se-*  
23                 *curity freeze shall remain in place*  
24                 *until the consumer requests that*  
25                 *the security freeze be removed.*

1           “(ii) **PROCEDURE FOR REMOVING**  
2           **SECURITY FREEZE.**—A consumer re-  
3           **porting agency shall remove a se-**  
4           **curity freeze within 3 business**  
5           **days of receiving a request for re-**  
6           **moval from the consumer who pro-**  
7           **vides—**

8                   “(I) **proper identification;**  
9                   **and**

10                   “(II) **the unique personal**  
11                   **identification number or pass-**  
12                   **word provided by the con-**  
13                   **sumer reporting agency pursu-**  
14                   **ant to paragraph (2)(D)(ii).**

15           “(5) **PROPER IDENTIFICATION RE-**  
16           **QUIRED.**—A consumer reporting agency  
17           **shall require proper identification of any**  
18           **person who makes a request to impose,**  
19           **temporarily lift, or permanently remove a**  
20           **security freeze on the credit report of any**  
21           **consumer under this section.**

22           “(6) **THIRD PARTY REQUESTS.**—If—

23                   “(A) **a third party requests access**  
24                   **to a consumer’s credit report on which**  
25                   **a security freeze is in effect under this**

1           *section in connection with an applica-*  
2           *tion by the consumer for credit or any*  
3           *other use; and*

4           “(B) *the consumer does not allow*  
5           *the consumer’s credit report to be*  
6           *accessed by that specific party or dur-*  
7           *ing the specific period such applica-*  
8           *tion is pending,*

9           *the third party may treat the application*  
10          *as incomplete.*

11          “(7) *CERTAIN ENTITY EXEMPTIONS.—*

12           “(A) *AGGREGATORS AND OTHER*  
13           *AGENCIES.—This subsection shall not*  
14           *apply to a consumer reporting agency*  
15           *that acts only as a reseller of credit*  
16           *information by assembling and merg-*  
17           *ing information contained in the*  
18           *database of another consumer report-*  
19           *ing agency or multiple consumer re-*  
20           *porting agencies, and does not main-*  
21           *tain a permanent database of credit*  
22           *information from which new credit re-*  
23           *ports are produced.*

24           “(B) *OTHER EXEMPTED ENTITIES.—*

25           *The following entities shall not be re-*

1           *quired to place a security freeze in a*  
2           *credit report:*

3                   “(i) *An entity which provides*  
4                   *check verification or fraud pre-*  
5                   *vention services, including but not*  
6                   *limited to, reports on incidents of*  
7                   *fraud, verification or authentica-*  
8                   *tion of a consumer’s identifica-*  
9                   *tion, or authorizations for the*  
10                  *purpose of approving or proc-*  
11                  *essing negotiable instruments,*  
12                  *electronic funds transfers, or simi-*  
13                  *lar methods of payments.*

14                  “(ii) *A deposit account infor-*  
15                  *mation service company, which*  
16                  *issues reports regarding account*  
17                  *closures due to fraud, substantial*  
18                  *overdrafts, automated teller ma-*  
19                  *chine abuse, or similar negative*  
20                  *information regarding a con-*  
21                  *sumer, to inquiring banks or other*  
22                  *financial institutions for use only*  
23                  *in reviewing a consumer request*  
24                  *for a deposit account at the in-*

1            *quiring bank or other financial*  
2            *institution.*

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

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

16           **“(B) An affiliate, agent, assignee,**  
17           *or prospective assignee of a person to*  
18           *whom access has been granted under*  
19           *paragraph (3) for purposes of facili-*  
20           *tating the extension of credit or other*  
21           *permissible use of the report in ac-*  
22           *cordance with the consumer’s request*  
23           *under such paragraph.*

24           **“(C) Any State or local agency,**  
25           *law enforcement agency, trial court,*

1           *or person acting pursuant to a court*  
2           *order, warrant, or subpoena.*

3           “(D) A Federal, State, or local  
4           agency that administers a program  
5           for establishing an enforcing child  
6           support obligations for the purpose of  
7           administering such program.

8           “(E) A Federal, State, or local  
9           health agency, or any agent or as-  
10          signee of such agency, acting to inves-  
11          tigate fraud within the jurisdiction of  
12          such agency.

13          “(F) A Federal, State, or local tax  
14          agency, or any agent or assignee of  
15          such agency, acting to investigate or  
16          collect delinquent taxes or unpaid  
17          court orders or to fulfill any of other  
18          statutory responsibility of such agen-  
19          cy.

20          “(G) Any person that intends to  
21          use the information in accordance  
22          with section 604(c).

23          “(H) Any person administering a  
24          credit file monitoring subscription or

1           *similar service to which the consumer*  
2           *has subscribed.*

3           “(I) *Any person for the purpose of*  
4           *providing a consumer with a copy of*  
5           *the credit report or credit score of the*  
6           *consumer upon the consumer’s re-*  
7           *quest.*

8           “(9) *PROHIBITION ON FEE.—A consumer*  
9           *reporting agency may not impose a fee for*  
10          *placing, removing, or removing for a spe-*  
11          *cific party or parties a security freeze on*  
12          *a credit report.*

13          “(10) *NOTICE OF RIGHTS.—At any time*  
14          *that a consumer is required to receive a*  
15          *summary of rights required under section*  
16          *609(c)(1) or 609(d)(1) the following notice*  
17          *shall be included:*

18                 “*Consumers Who Are Victims of*  
19                 *Identity Theft Have the Right to Ob-*  
20                 *tain a Security Freeze on Your Con-*  
21                 *sumer Report*

22                 “*You may obtain a security freeze*  
23                 *on your consumer credit report at no*  
24                 *charge if you are a victim of identity*  
25                 *theft and you submit a copy of an*



1           *identity theft report you have filed*  
2           *with a law enforcement agency about*  
3           *unlawful use of your personal infor-*  
4           *mation by another person.*

5           *“The security freeze will prohibit*  
6           *a credit reporting agency from releas-*  
7           *ing any information in your consumer*  
8           *credit report without your express au-*  
9           *thorization. A security freeze must be*  
10           *requested in writing by certified mail.*

11           *“The security freeze is designed to*  
12           *prevent credit, loans, and services*  
13           *from being approved in your name*  
14           *without your consent. However, you*  
15           *should be aware that using a security*  
16           *freeze to take control over who gains*  
17           *access to the personal and financial*  
18           *information in your consumer credit*  
19           *report may delay, interfere with, or*  
20           *prohibit the timely approval of any*  
21           *subsequent request or application you*  
22           *make regarding new loans, credit,*  
23           *mortgage, insurance, government*  
24           *services or payments, rental housing,*  
25           *employment, investment, license, cel-*

1        *lular phone, utilities, digital signa-*  
2        *ture, internet credit card transaction,*  
3        *or other services, including an exten-*  
4        *sion of credit at point of sale.*

5                *“When you place a security freeze*  
6        *on your consumer credit report, with-*  
7        *in 10 business days you will be pro-*  
8        *vided a personal identification num-*  
9        *ber or password to use if you choose to*  
10        *remove the freeze on your consumer*  
11        *credit report or authorize the release*  
12        *of your consumer credit report for a*  
13        *specific party, parties or period of*  
14        *time after the freeze is in place.*

15                *“To provide that authorization,*  
16        *you must contact the consumer report-*  
17        *ing agency and provide all of the fol-*  
18        *lowing: (1) The unique personal iden-*  
19        *tification number or password pro-*  
20        *vided by the consumer reporting agen-*  
21        *cy (2) Proper identification to verify*  
22        *your identity (3) The proper informa-*  
23        *tion regarding the third party or par-*  
24        *ties who are trying to receive the con-*  
25        *sumer credit report or the period of*

1           *time for which the report shall be*  
2           *available to users of the consumer re-*  
3           *port.*

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

10           *“A security freeze does not apply*  
11           *to a person or entity, or its affiliates,*  
12           *or collection agencies acting on behalf*  
13           *of the person or entity with which you*  
14           *have an existing account that requests*  
15           *information in your consumer credit*  
16           *report for the purposes of reviewing or*  
17           *collecting the account, if you have*  
18           *previously given your consent to this*  
19           *use of your consumer credit report.*  
20           *Reviewing the account includes activi-*  
21           *ties related to account maintenance,*  
22           *monitoring, credit line increases, and*  
23           *account up-grades and enhancements.*

24           *“If you are actively seeking cred-*  
25           *it, you should understand that the*

1        *procedures involved in lifting a secu-*  
2        *rity freeze may slow your own applica-*  
3        *tions for credit. You should plan*  
4        *ahead and lift a freeze, either com-*  
5        *pletely or temporarily if you are shop-*  
6        *ping around, or specifically for a cer-*  
7        *tain creditor, a few days before actu-*  
8        *ally applying for new credit.’.*

9        **“(j) EFFECT ON GLBA.—**

10        **“(1) DEPOSITORY INSTITUTIONS.—***The*  
11        *current and any future breach notice reg-*  
12        *ulations and guidelines under section*  
13        *501(b) of the Gramm-Leach-Bliley Act with*  
14        *respect to depository institutions shall be*  
15        *superseded, as of the effective date of the*  
16        *regulations required under subsection*  
17        *(k)(3)(A), relating to the specific require-*  
18        *ments of this section.*

19        **“(2) NONDEPOSITORY INSTITUTIONS.—**  
20        *The current and any future data security*  
21        *regulations and guidelines under section*  
22        *501(b) of the Gramm-Leach-Bliley Act with*  
23        *respect to nondepository institutions shall*  
24        *be superseded as of the effective date of*  
25        *the regulations required under subsection*

1       ***(k)(3)(A), relating to the responsibilities***  
2       ***under this section.***

3       ***“(k) UNIFORM DATA SECURITY SAFEGUARD***  
4       ***REGULATIONS.—***

5               ***“(1) UNIFORM STANDARDS.—The Sec-***  
6               ***retary of the Treasury, the Board of Gov-***  
7               ***ernors of the Federal Reserve System, and***  
8               ***the Commission shall jointly, and the Fed-***  
9               ***eral functional regulatory agencies that***  
10              ***have issued guidance on consumer breach***  
11              ***notification shall jointly with respect to***  
12              ***the entities under their jurisdiction, de-***  
13              ***velop standards and guidelines to imple-***  
14              ***ment this section, including—***

15                   ***“(A) prescribing specific stand-***  
16                   ***ards with respect to subsection (g)(3)***  
17                   ***setting forth a reasonably unique and,***  
18                   ***pursuant to paragraph (2)(B), exclu-***  
19                   ***sive color and titling of the notice,***  
20                   ***and standardized formatting of the***  
21                   ***notice contents described under such***  
22                   ***subsection to standardize such com-***  
23                   ***munications and make them more***  
24                   ***likely to be reviewed, and understood***  
25                   ***by, and helpful to consumers, includ-***

1           *ing to the extent possible placing the*  
2           *critical information for consumers in*  
3           *an easily understood and prominent*  
4           *text box at the top of each notice;*

5           “(B) *providing in such standards*  
6           *and guidelines that the responsibility*  
7           *of a consumer reporter to provide no-*  
8           *tice under this section—*

9                   “(i) *has been satisfied with re-*  
10                   *spect to any particular consumer,*  
11                   *even if the consumer reporter is*  
12                   *unable to contact the consumer, so*  
13                   *long as the consumer reporter has*  
14                   *made reasonable efforts to obtain*  
15                   *a current address or other current*  
16                   *contact information with respect*  
17                   *to such consumer;*

18                   “(ii) *may be made by public*  
19                   *notice in appropriate cases in*  
20                   *which—*

21                           “(I) *such reasonable ef-*  
22                           *forts described in clause (i)*  
23                           *have failed; or*

24                           “(II) *a breach of data secu-*  
25                           *urity involves a loss or unau-*

1 *thorized acquisition of sen-*  
2 *sitive financial personal infor-*  
3 *mation in paper documents or*  
4 *records that has been deter-*  
5 *mined to be usable, but the*  
6 *identities of specific con-*  
7 *sumers are not determinable;*  
8 *and*

9 *“(iii) with respect to para-*  
10 *graph (3) of subsection (c), may be*  
11 *communicated to entities in addi-*  
12 *tion to those specifically required*  
13 *under such paragraph through*  
14 *any reasonable means, such as*  
15 *through an electronic trans-*  
16 *mission normally received by all*  
17 *of the consumer reporter’s busi-*  
18 *ness customers; and*

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

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

6           *“(D) providing for a reasonable*  
7           *and fair manner of providing re-*  
8           *quired consumer notices where the en-*  
9           *tity that directly suffered the breach is*  
10           *unavailable to pay for such notices,*  
11           *because for example the entity is*  
12           *bankrupt, outside of the jurisdiction*  
13           *of the United States, or otherwise can*  
14           *not be compelled to provide such no-*  
15           *tice;*

16           *“(E) providing for periodic instead*  
17           *of individual notices to regulators*  
18           *and law enforcement under subsection*  
19           *(c)(1) and (2) where the consumer re-*  
20           *porter determines that only a de mini-*  
21           *mus number of consumers are reason-*  
22           *ably likely to be affected;*

23           *“(F) providing, to the extent ap-*  
24           *propriate, notice to the United States*  
25           *Secret Service, a consumer reporter’s*



1 *functional regulator, and the entities*  
2 *described in paragraphs (1) through*  
3 *(3) of subsection (c), whenever the con-*  
4 *sumer reporter’s sensitive financial*  
5 *personal information has been lost or*  
6 *illegally obtained but such loss or ac-*  
7 *quisition does not result in a breach,*  
8 *for example because the information*  
9 *was sufficiently encrypted or other-*  
10 *wise unusable; and*

11 *“(G) establishing what types of ac-*  
12 *counts might be subject to unauthor-*  
13 *ized transactions after a breach in-*  
14 *volving sensitive financial account in-*  
15 *formation, for example because such*  
16 *accounts are open-end credit plans or*  
17 *are described in section 903(2) of the*  
18 *Electronic Fund Transfer Act.*

19 *“(2) MODEL NOTICE FORMS.—*

20 *“(A) IN GENERAL.—The Secretary of*  
21 *the Treasury, Board of Governors of*  
22 *the Federal Reserve System, and the*  
23 *Commission shall jointly establish*  
24 *and publish model forms and disclo-*  
25 *sure statements to facilitate compli-*

1           *ance with the notice requirements of*  
2           *subsection (g) and to aid the con-*  
3           *sumer in understanding the informa-*  
4           *tion required to be disclosed relating*  
5           *to a breach of data security and the*  
6           *options and services available to the*  
7           *consumer for obtaining additional in-*  
8           *formation, consumer reports, and*  
9           *credit monitoring services.*

10           “(B) *USE OPTIONAL.—A consumer*  
11           *reporter may utilize a model notice or*  
12           *any model statement established*  
13           *under this paragraph for purposes of*  
14           *compliance with this section, at the*  
15           *discretion of the consumer reporter.*

16           “(C) *EFFECT OF USE.—A consumer*  
17           *reporter that uses a model notice form*  
18           *or disclosure statement established*  
19           *under this paragraph shall be deemed*  
20           *to be in compliance with the require-*  
21           *ment to provide the required disclo-*  
22           *sure to consumers to which the form*  
23           *or statement relates.*

24           “(3) *ENFORCEMENT.—*

1           “(A) **REGULATIONS.**—*Each of the*  
2           *functional regulatory agencies shall*  
3           *prescribe such regulations as may be*  
4           *necessary, consistent with the stand-*  
5           *ards in paragraph (1), to ensure com-*  
6           *pliance with this section with respect*  
7           *to the persons subject to the jurisdic-*  
8           *tion of such agency under subsection*  
9           *(l).*

10           “(B) **MISUSE OF UNIQUE COLOR AND**  
11           **TITLES OF NOTICES.**—*Any person who*  
12           *uses the unique color and titling*  
13           *adopted under paragraph (1)(A) for*  
14           *notices under subsection (f)(1) in a*  
15           *way that is likely to create a false be-*  
16           *lief in a consumer that a communica-*  
17           *tion is such a notice shall be liable in*  
18           *the same manner and to the same ex-*  
19           *tent as a debt collector is liable under*  
20           *section 813 for any failure to comply*  
21           *with any provision of the Fair Debt*  
22           *Collection Practices Act.*

23           “(4) **PROCEDURES AND DEADLINE.**—

24           “(A) **PROCEDURES.**—*Standards and*  
25           *guidelines issued under this sub-*

1 *section shall be issued in accordance*  
2 *with applicable requirements of title*  
3 *5, United States Code.*

4 *“(B) DEADLINE FOR INITIAL STAND-*  
5 *ARDS AND GUIDELINES.—The standards*  
6 *and guidelines required to be issued*  
7 *under paragraph (1) shall be pub-*  
8 *lished in final form before the end of*  
9 *the 9-month period beginning on the*  
10 *date of the enactment of the Financial*  
11 *Data Protection Act of 2006.*

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

21 *“(D) AUTHORITY TO GRANT EXCEP-*  
22 *TIONS.—The regulations prescribed*  
23 *under paragraph (2) may include*  
24 *such additional exceptions to this sec-*  
25 *tion as are deemed jointly by the func-*

1        *tional regulatory agencies to be con-*  
2        *sistent with the purposes of this sec-*  
3        *tion if such exceptions are necessary*  
4        *because of some unique aspect of the*  
5        *entities regulated or laws governing*  
6        *such entities; and such exemptions are*  
7        *narrowly tailored to protect the pur-*  
8        *poses of this Act.*

9                *“(E) CONSULTATION AND COORDINA-*  
10              *TION.—The Secretary of the Treasury,*  
11              *the Board of Governors of the Federal*  
12              *Reserve System, and the Commission*  
13              *shall consult and coordinate with the*  
14              *other functional regulatory agencies*  
15              *to the extent appropriate in pre-*  
16              *scribing regulations under this sub-*  
17              *section.*

18              *“(F) FAILURE TO MEET DEADLINE.—*  
19              *Any agency or authority required to*  
20              *publish standards and guidelines or*  
21              *regulations under this subsection that*  
22              *fails to meet the deadline for such*  
23              *publishing shall submit a report to*  
24              *the Congress within 30 days of such*  
25              *deadline describing—*

1           “(i) *the reasons for the failure*  
2           *to meet such deadline;*

3           “(ii) *when the agency or au-*  
4           *thority expects to complete the*  
5           *publication required; and*

6           “(iii) *the detriment such fail-*  
7           *ure to publish by the required*  
8           *deadline will have on consumers*  
9           *and other affected parties.*

10           “(G) *UNIFORM IMPLEMENTATION AND*  
11           *INTERPRETATION.—It is the intention of*  
12           *the Congress that the agencies and*  
13           *authorities described in subsection*  
14           *(l)(1)(G) will implement and interpret*  
15           *their enforcement regulations, includ-*  
16           *ing any exceptions provided under*  
17           *subparagraph (D), in a uniform man-*  
18           *ner.*

19           “(5) *APPROPRIATE EXEMPTIONS OR MODI-*  
20           *FICATIONS.—The Secretary of the Treasury,*  
21           *the Board of Governors of the Federal Re-*  
22           *serve System, and the Commission, in con-*  
23           *sultation with the Administrator of the*  
24           *Small Business Administration and the*  
25           *functional regulatory agencies, shall pro-*

1 *vide appropriate exemptions or modifica-*  
2 *tions from requirements of this section re-*  
3 *lating to sensitive financial personal in-*  
4 *formation for consumer reporters that do*  
5 *not maintain, service, or communicate a*  
6 *large quantity of such information, tak-*  
7 *ing into account the degree of sensitivity*  
8 *of such information, the likelihood of mis-*  
9 *use, and the degree of potential harm or*  
10 *inconvenience to the related consumer.*

11 **“(6) COORDINATION.—**

12 **“(A) IN GENERAL.—***Each functional*  
13 *regulatory agency shall consult and*  
14 *coordinate with each other functional*  
15 *regulatory agency so that, to the ex-*  
16 *tent possible, the regulations pre-*  
17 *scribed by each agency are consistent*  
18 *and comparable.*

19 **“(B) MODEL REGULATIONS.—***In pre-*  
20 *scribing implementing regulations*  
21 *under paragraph (1), the functional*  
22 *regulatory agencies agencies referred*  
23 *to in such paragraph shall use the*  
24 *Gramm-Leach-Bliley Act (including*  
25 *the guidance and regulations issued*

1           *thereunder) as a base, adding such*  
2           *other consumer protections as appro-*  
3           *priate under this section.*

4           **“(I) ADMINISTRATIVE ENFORCEMENT.—**

5           **“(1) IN GENERAL.—Notwithstanding**  
6           **section 616, 617, or 621, compliance with**  
7           **this section and the regulations pre-**  
8           **scribed under this section shall be en-**  
9           **forced by the functional regulatory agen-**  
10           **cies with respect to financial institutions**  
11           **and other persons subject to the jurisdic-**  
12           **tion of each such agency under applicable**  
13           **law, as follows:**

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

16           **“(i) national banks, Federal**  
17           **branches and Federal agencies of**  
18           **foreign banks, and any subsidi-**  
19           **aries of such entities (except bro-**  
20           **kers, dealers, persons providing**  
21           **insurance, investment companies,**  
22           **and investment advisers), by the**  
23           **Comptroller of the Currency;**

24           **“(ii) member banks of the Fed-**  
25           **eral Reserve System (other than**



1           *national banks), branches and*  
2           *agencies of foreign banks (other*  
3           *than Federal branches, Federal*  
4           *agencies, and insured State*  
5           *branches of foreign banks), com-*  
6           *mmercial lending companies owned*  
7           *or controlled by foreign banks, or-*  
8           *ganizations operating under sec-*  
9           *tion 25 or 25A of the Federal Re-*  
10           *serve Act, and bank holding com-*  
11           *panies and their nonbank subsidi-*  
12           *aries or affiliates (except brokers,*  
13           *dealers, persons providing insur-*  
14           *ance, investment companies, and*  
15           *investment advisers), by the Board*  
16           *of Governors of the Federal Re-*  
17           *serve System;*

18           *“(iii) banks insured by the*  
19           *Federal Deposit Insurance Cor-*  
20           *poration (other than members of*  
21           *the Federal Reserve System), in-*  
22           *sured State branches of foreign*  
23           *banks, and any subsidiaries of*  
24           *such entities (except brokers, deal-*  
25           *ers, persons providing insurance,*

1           *investment companies, and invest-*  
2           *ment advisers), by the Board of Di-*  
3           *rectors of the Federal Deposit In-*  
4           *surance Corporation; and*

5           “(iv) *savings associations the*  
6           *deposits of which are insured by*  
7           *the Federal Deposit Insurance*  
8           *Corporation, and any subsidiaries*  
9           *of such savings associations (ex-*  
10          *cept brokers, dealers, persons pro-*  
11          *viding insurance, investment com-*  
12          *panies, and investment advisers),*  
13          *by the Director of the Office of*  
14          *Thrift Supervision.*

15          “(B) *Under the Federal Credit*  
16          *Union Act, by the Board of the Na-*  
17          *tional Credit Union Administration*  
18          *with respect to any federally insured*  
19          *credit union, and any subsidiaries of*  
20          *such an entity.*

21          “(C) *Under the Securities Ex-*  
22          *change Act of 1934, by the Securities*  
23          *and Exchange Commission with re-*  
24          *spect to any broker, dealer, or*  
25          *nonbank transfer agent.*

1           “(D) *Under the Investment Com-*  
2           *pany Act of 1940, by the Securities and*  
3           *Exchange Commission with respect to*  
4           *investment companies.*

5           “(E) *Under the Investment Advis-*  
6           *ers Act of 1940, by the Securities and*  
7           *Exchange Commission with respect to*  
8           *investment advisers registered with*  
9           *the Commission under such Act.*

10          “(F) *Under the provisions of title*  
11          *XIII of the Housing and Community*  
12          *Development Act of 1992, by the Direc-*  
13          *tor of the Office of Federal Housing*  
14          *Enterprise Oversight (and any suc-*  
15          *cessor to such functional regulatory*  
16          *agency) with respect to the Federal*  
17          *National Mortgage Association, the*  
18          *Federal Home Loan Mortgage Cor-*  
19          *poration, and any other entity or en-*  
20          *terprise or bank (as defined in such*  
21          *title XIII) subject to the jurisdiction of*  
22          *such functional regulatory agency*  
23          *under such title, including any affil-*  
24          *iate of any such enterprise.*

1           “(G) *Under State insurance law,*  
2 *in the case of any person engaged in*  
3 *the business of insurance, by the ap-*  
4 *plicable State insurance authority of*  
5 *the State in which the person is domi-*  
6 *ciled.*

7           “(H) *Under the Federal Home*  
8 *Loan Bank Act, by the Federal Hous-*  
9 *ing Finance Board (and any successor*  
10 *to such functional regulatory agency)*  
11 *with respect to the Federal home loan*  
12 *banks and any other entity subject to*  
13 *the jurisdiction of such functional*  
14 *regulatory agency, including any af-*  
15 *iliate of any such bank.*

16           “(I) *Under the Federal Trade Com-*  
17 *mission Act, by the Commission for*  
18 *any other person that is not subject to*  
19 *the jurisdiction of any agency or au-*  
20 *thority under subparagraphs (A)*  
21 *through (G) of this subsection, except*  
22 *that for the purposes of this subpara-*  
23 *graph a violation of this section shall*  
24 *be treated as an unfair and deceptive*  
25 *act or practice in violation of a regu-*

1            *lation under section 18(a)(1)(B) of the*  
2            *Federal Trade Commission Act re-*  
3            *garding unfair or deceptive acts or*  
4            *practices.*

5            **“(2) EXERCISE OF CERTAIN POWERS.—**  
6            *For the purpose of the exercise by any*  
7            *agency referred to in paragraph (1) of its*  
8            *powers under any Act referred to in such*  
9            *paragraph, a violation of any require-*  
10           *ment imposed under this section shall be*  
11           *deemed to be a violation of a requirement*  
12           *imposed under that Act. In addition to its*  
13           *powers under any provision of law specifi-*  
14           *cally referred to in paragraph (1), each of*  
15           *the agencies referred to in that para-*  
16           *graph may exercise, for the purpose of en-*  
17           *forcing compliance with any requirement*  
18           *imposed under this section, any other au-*  
19           *thority conferred on it by law.*

20           **“(3) USE OF UNDISTRIBUTED FUNDS FOR**  
21           **FINANCIAL EDUCATION.—If—**

22                    *“(A) in connection with any ad-*  
23                    *ministrative action under this section,*  
24                    *a fund is created or a functional regu-*

1            *latory agency has obtained*  
2            *disgorgement; and*

3            *“(B) the functional regulatory*  
4            *agency determines that—*

5            *“(i) due to the size of the fund*  
6            *to be distributed, the number of*  
7            *individuals affected, the nature of*  
8            *the underlying violation, or for*  
9            *other reasons, it would be infeasible*  
10           *to distribute such fund or*  
11           *disgorgement to the victims of the*  
12           *violation; or*

13           *“(ii) there are excess monies*  
14           *remaining after the distribution*  
15           *of the fund or disgorgement to vic-*  
16           *tims,*

17           *the functional regulatory agency may*  
18           *issue an order in an administrative pro-*  
19           *ceeding requiring that the undistributed*  
20           *amount of the fund or disgorgement be*  
21           *used in whole or in part by the functional*  
22           *regulatory agency for education programs*  
23           *and outreach activities of consumer*  
24           *groups, community based groups, and the*  
25           *Financial Literacy and Education Com-*

1 *mission established under the Fair and*  
2 *Accurate Credit Transactions Act of 2003*  
3 *that are consistent with and further the*  
4 *purposes of this title.*

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

7 *“(1) BREACH OF DATA SECURITY.—The*  
8 *term ‘breach of data security’ or ‘data se-*  
9 *curity breach’ means any loss, unauthor-*  
10 *ized acquisition, or misuse of sensitive fi-*  
11 *ancial personal information handled by*  
12 *a consumer reporter that could be mis-*  
13 *used to commit financial fraud (such as*  
14 *identity theft or fraudulent transactions*  
15 *made on financial accounts) in a manner*  
16 *causing harm or inconvenience to a con-*  
17 *sumer.*

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

20 *“(3) CONSUMER REPORTER AND RELATED*  
21 *TERMS.—*

22 *“(A) CONSUMER FINANCIAL FILE AND*  
23 *CONSUMER REPORTS.—The term ‘con-*  
24 *sumer financial file and consumer re-*  
25 *ports’ includes any written, oral, or*

1           *other communication of any informa-*  
2           *tion by a consumer reporter bearing*  
3           *on a consumer's credit worthiness,*  
4           *credit standing, credit capacity, char-*  
5           *acter, general reputation, personal*  
6           *characteristics, personal identifiers,*  
7           *financial account information, or*  
8           *mode of living.*

9           “(B) CONSUMER REPORTER.—*The*  
10          *term ‘consumer reporter’ means any*  
11          *consumer reporting agency or finan-*  
12          *cial institution, or any person which,*  
13          *for monetary fees, dues, on a coopera-*  
14          *tive nonprofit basis, or otherwise regu-*  
15          *larly engages in whole or in part in*  
16          *the practice of assembling or evalu-*  
17          *ating consumer financial file and con-*  
18          *sumer reports, consumer credit infor-*  
19          *mation, or other information on con-*  
20          *sumers, for the purpose of furnishing*  
21          *consumer reports to third parties or to*  
22          *provide or collect payment for or mar-*  
23          *ket products and services, or for em-*  
24          *ployment purposes, and which uses*



1           *any means or facility of interstate*  
2           *commerce for such purposes.*

3           “(4) *FINANCIAL INSTITUTION.*—*The term*  
4           *‘financial institution’ means—*

5                     “(A) *any person the business of*  
6                     *which is engaging in activities that*  
7                     *are financial in nature as described*  
8                     *in or determined under section 4(k) of*  
9                     *the Bank Holding Company Act;*

10                    “(B) *any person that is primarily*  
11                    *engaged in activities that are subject*  
12                    *to the Fair Credit Reporting Act; and*

13                    “(C) *any person that is maintain-*  
14                    *ing, receiving, or communicating sen-*  
15                    *sitive financial personal information*  
16                    *on an ongoing basis for the purposes*  
17                    *of engaging in interstate commerce.*

18           “(5) *FUNCTIONAL REGULATORY AGEN-*  
19           *CY.*—*The term ‘functional regulatory agen-*  
20           *cy’ means any agency described in sub-*  
21           *section (l) with respect to the financial in-*  
22           *stitutions and other persons subject to the*  
23           *jurisdiction of such agency.*

24           “(6) *HANDLED BY.*—*The term ‘handled*  
25           *by’ includes with respect to sensitive fi-*

1     *nancial personal information, any access*  
2     *to or generation, maintenance, servicing,*  
3     *or ownership of such information, as well*  
4     *as any transfer to or allowed access to or*  
5     *similar sharing or servicing of such infor-*  
6     *mation by or with a third party on a con-*  
7     *sumer reporter’s behalf.*

8             “(7) *NATIONWIDE CONSUMER REPORTING*  
9     *AGENCY.—The term ‘nationwide consumer*  
10    *reporting agency’ means—*

11             “(A) *a consumer reporting agency*  
12    *described in section 603(p);*

13             “(B) *any person who notifies the*  
14    *Commission that the person reason-*  
15    *ably expects to become a consumer re-*  
16    *porting agency described in section*  
17    *603(p) within a reasonable time; and*

18             “(C) *a consumer reporting agency*  
19    *described in section 603(w) that noti-*  
20    *fies the Commission that the person*  
21    *wishes to receive breach of data secu-*  
22    *rity notices under this section that in-*  
23    *volve information of the type main-*  
24    *tained by such agency.*

1           **“(8) NEURAL NETWORK.—The term ‘neu-**  
2           **ral network’ means an information secu-**  
3           **urity program that monitors financial ac-**  
4           **count transactions for potential fraud,**  
5           **using historical patterns to analyze and**  
6           **identify suspicious financial account**  
7           **transactions.**

8           **“(9) SENSITIVE FINANCIAL ACCOUNT IN-**  
9           **FORMATION.—The term ‘sensitive financial**  
10           **account information’ means a financial**  
11           **account number of a consumer, such as a**  
12           **credit card number or debit card number,**  
13           **in combination with any required security**  
14           **code, access code, biometric code, pass-**  
15           **word, or other personal identification in-**  
16           **formation that would allow access to the**  
17           **financial account.**

18           **“(10) SENSITIVE FINANCIAL IDENTITY IN-**  
19           **FORMATION.—The term ‘sensitive financial**  
20           **identity information’ means the first and**  
21           **last name, the address, or the telephone**  
22           **number of a consumer, in combination**  
23           **with any of the following of the consumer:**

24                   **“(A) Social Security number.**

1           ***“(B) Driver’s license number or***  
2           ***equivalent State identification num-***  
3           ***ber.***

4           ***“(C) IRS Individual Taxpayer***  
5           ***Identification Number.***

6           ***“(D) IRS Adoption Taxpayer Iden-***  
7           ***tification Number.***

8           ***“(E)           The           consumer’s***  
9           ***deoxyribonucleic acid profile or other***  
10          ***unique biometric data, including fin-***  
11          ***gerprint, voice print, retina or iris***  
12          ***image, or any other unique physical***  
13          ***representation.***

14          ***“(11) SENSITIVE FINANCIAL PERSONAL***  
15          ***INFORMATION.—The term ‘sensitive finan-***  
16          ***cial personal information’ means any in-***  
17          ***formation that is sensitive financial ac-***  
18          ***count information, sensitive financial***  
19          ***identity information, or both.***

20          ***“(12) HARM OR INCONVENIENCE.—The***  
21          ***term ‘harm or inconvenience’, with respect***  
22          ***to a consumer, means financial loss to or***  
23          ***civil or criminal penalties imposed on the***  
24          ***consumer or the need for the consumer to***  
25          ***expend significant time and effort to cor-***

1 *rect erroneous information relating to the*  
2 *consumer, including information main-*  
3 *tained by consumer reporting agencies, fi-*  
4 *nancial institutions, or government enti-*  
5 *ties, in order to avoid the risk of financial*  
6 *loss or increased costs or civil or criminal*  
7 *penalties.*

8 **“(n) RELATION TO STATE LAWS.—**

9 **“(1) IN GENERAL.—***No requirement or*  
10 *prohibition may be imposed under the*  
11 *laws of any State with respect to the re-*  
12 *sponsibilities of any consumer reporter or*  
13 *the functional equivalent of such respon-*  
14 *sibilities—*

15 **“(A) to protect the security or con-**  
16 **fidentiality of information on con-**  
17 **sumers maintained by or on behalf of**  
18 **the person;**

19 **“(B) to safeguard such informa-**  
20 **tion from potential misuse;**

21 **“(C) to investigate or provide no-**  
22 **tices of any unauthorized access to in-**  
23 **formation concerning the consumer,**  
24 **or the potential misuse of such infor-**  
25 **mation, for fraudulent purposes;**

1           “(D) to mitigate any loss or harm  
2 resulting from such unauthorized ac-  
3 cess or misuse; or

4           “(E) involving restricting credit  
5 reports from being provided, or impos-  
6 ing any requirement on such provi-  
7 sion, for a permissible purpose pursu-  
8 ant to section 604, such as—

9           “(i) the responsibilities of a  
10 consumer reporting agency to  
11 honor a request, or withdrawal of  
12 such a request, to prohibit the  
13 consumer reporting agency from  
14 releasing any type of information  
15 from the file of a consumer;

16           “(ii) the process by which such  
17 a request or withdrawal of such a  
18 request is made, honored, or de-  
19 nied;

20           “(iii) any notice that is re-  
21 quired to be provided to the con-  
22 sumer in connection with such a  
23 request or withdrawal of such a  
24 request; or

1           “(iv) *the ability of a consumer*  
2           *reporting agency to update or*  
3           *change information in a con-*  
4           *sumer’s file as a result of such a*  
5           *request or withdrawal of such a*  
6           *request; or*

7           “(v) *the responsibilities of*  
8           *third parties if information from*  
9           *a consumer’s file is unavailable as*  
10           *a result of such a request.*

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

14           “(A) *State laws governing profes-*  
15           *sional confidentiality; or*

16           “(B) *State privacy laws limiting*  
17           *the purposes for which information*  
18           *may be disclosed.*

19           “(3) *EXCEPTION FOR CERTAIN COVERED*  
20           *ENTITIES.—Paragraph (1) shall not apply*  
21           *with respect to the entities described in*  
22           *subsection (l)(1)(G) to the extent that such*  
23           *entities are acting in accordance with*  
24           *subsection (k)(4)(G) in a manner that is*  
25           *consistent with this section and the imple-*

1        *mentation of this section by the regulators*  
2        *described in subsection (k)(1).”.*

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

*“630. Data security safeguards.”.*

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

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

17       *Not later than April 30, 2008, the President*  
18       *or the designee of the President shall convene*  
19       *a National Summit on Data Security Safe-*  
20       *guards for Sensitive Personal Financial Infor-*  
21       *mation in the District of Columbia.*

22       **SEC. 4. GAO STUDY.**

23       **(a) STUDY REQUIRED.**—*The Comptroller*  
24       *General shall conduct a study to determine a*  
25       *system that would provide notices of data*





1 *local law enforcement officers and agencies*  
2 *who work with such victims for the purpose of*  
3 *enlisting the cooperation of such officers and*  
4 *agencies in the compilation of such informa-*  
5 *tion. Notwithstanding any other provision of*  
6 *law, such compilation of information shall be*  
7 *made available exclusively to the Commission*  
8 *and law enforcement entities.*

9 **SEC. 6. CLARIFICATION RELATING TO CREDIT MONITORING**  
10 **SERVICES.**

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

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

17 **(2) by adding at the end the following**  
18 **new subsection:**

19 **“(b) CLARIFICATION WITH RESPECT TO CER-**  
20 **TAIN CREDIT MONITORING SERVICES UNDER CER-**  
21 **TAIN CIRCUMSTANCES.—**

22 **“(1) IN GENERAL.—Subject to para-**  
23 **graph (2)—**

24 **“(A) the provision of, or provision**  
25 **of access to, credit reports, credit mon-**

1           *itoring notifications, credit scores and*  
2           *scoring algorithms, and other credit*  
3           *score-related tools to a consumer (in-*  
4           *cluding generation of projections and*  
5           *forecasts of such consumer’s potential*  
6           *credit scores under various prospec-*  
7           *tive trends or hypothetical or alter-*  
8           *native scenarios);*

9           *“(B) any analysis, evaluation, and*  
10          *explanation of such actual or hypo-*  
11          *thetical credit scores, or any similar*  
12          *projections, forecasts, analyses, eval-*  
13          *uations or explanations; or*

14          *“(C) in conjunction with offering*  
15          *any of the services described in sub-*  
16          *paragraph (A) or (B), the provision of*  
17          *materials or services to assist a con-*  
18          *sumer who is a victim of identity theft,*  
19          *shall not be treated as activities described*  
20          *in clause (i) of subsection (a)(3)(A).*

21          *“(2) CONDITIONS FOR APPLICATION OF*  
22          *PARAGRAPH (1).—Paragraph (1) shall apply*  
23          *with respect to any person engaging in*  
24          *any activity described in such paragraph*  
25          *only if—*

1           “(A) *the person does not represent,*  
2           *expressly or by implication, that such*  
3           *person—*

4                   “(i) *will or can modify or re-*  
5                   *move, or assist the consumer in*  
6                   *modifying or removing, adverse in-*  
7                   *formation that is accurate and*  
8                   *not obsolete in the consumer’s*  
9                   *credit report; or*

10                   “(ii) *will or can alter, or assist*  
11                   *the consumer in altering, the con-*  
12                   *sumer’s identification to prevent*  
13                   *the display of the consumer’s cred-*  
14                   *it record, history, or rating for the*  
15                   *purpose of concealing adverse in-*  
16                   *formation that is accurate and*  
17                   *not obsolete;*

18           “(B) *in any case in which the per-*  
19           *son represents, expressly or by impli-*  
20           *cation, that it will or can modify or*  
21           *remove, or assist the consumer in*  
22           *modifying or removing, any informa-*  
23           *tion in the consumer’s credit report,*  
24           *except for a representation with re-*  
25           *spect to any requirement imposed on*

1 *the person under section 611 or 623(b)*  
2 *of the Fair Credit Reporting Act, the*  
3 *person discloses, clearly and conspicu-*  
4 *ously, before the consumer pays or*  
5 *agrees to pay any money or other valu-*  
6 *able consideration to such person,*  
7 *whichever occurs first, the following*  
8 *statement:*

9 *“NOTICE: Neither you*  
10 *nor anyone else has the right*  
11 *to have accurate and current*  
12 *information removed from*  
13 *your credit report. If informa-*  
14 *tion in your report is inac-*  
15 *curate, you have the right to*  
16 *dispute it by contacting the*  
17 *credit bureau directly.”;*

18 *“(C) the person provides the con-*  
19 *sumer in writing with the following*  
20 *statement before any contract or*  
21 *agreement between the consumer and*  
22 *the person is executed:*

23 *“Your Rights Concerning*  
24 *Your Consumer Credit File*

1           ***“You have a right to obtain a***  
2           ***free copy of your credit report once***  
3           ***every 12 months from each of the***  
4           ***nationwide consumer reporting***  
5           ***agencies. To request your free an-***  
6           ***ual credit report, you may go to***  
7           ***www.annualcreditreport.com, or***  
8           ***call 877-322-8228, or complete the***  
9           ***Annual Credit Report Request***  
10           ***Form and mail it to: Annual Cred-***  
11           ***it Report Request Service, P.O.***  
12           ***Box 105281, Atlanta, GA 30348-***  
13           ***5281. You can obtain additional***  
14           ***copies of your credit report from a***  
15           ***credit bureau, for which you may***  
16           ***be charged a reasonable fee. There***  
17           ***is no fee, however, if you have been***  
18           ***turned down for credit, employ-***  
19           ***ment, insurance, or a rental***  
20           ***dwelling because of information***  
21           ***in your credit report within the***  
22           ***preceding 60 days. The credit bu-***  
23           ***reau must provide someone to help***  
24           ***you interpret the information in***  
25           ***your credit file. You are entitled to***

1           *receive a free copy of your credit*  
2           *report if you are unemployed and*  
3           *intend to apply for employment in*  
4           *the next 60 days, if you are a re-*  
5           *cipient of public welfare assist-*  
6           *ance, or if you have reason to be-*  
7           *lieve that there is inaccurate in-*  
8           *formation in your credit report*  
9           *due to fraud.*

10           *“You have the right to cancel*  
11           *your contract with a credit moni-*  
12           *toring service without fee or pen-*  
13           *alty at any time, and in the case*  
14           *in which you have prepaid for a*  
15           *credit monitoring service, you are*  
16           *entitled to a pro rata refund for*  
17           *the remaining term of the credit*  
18           *monitoring service.*

19           *“The Federal Trade Commis-*  
20           *sion regulates credit bureaus and*  
21           *credit monitoring services. For*  
22           *more information contact:*

23           *“Federal Trade Commission*

24           *“Washington, D.C. 20580*

25           *“1-877-FTC-HELP*

1           “*www.ftc.gov.*”; and

2           “(D) *in any case in which the per-*  
3           *son offers a subscription to a credit*  
4           *file monitoring program to a con-*  
5           *sumer, the consumer may cancel the*  
6           *subscription at any time upon written*  
7           *notice to the person without penalty*  
8           *or fee for such cancellation and, in*  
9           *any case in which the consumer is*  
10           *billed for the subscription on other*  
11           *than a monthly basis, within 60 days*  
12           *of receipt of the consumer’s notice of*  
13           *cancellation, the person shall make a*  
14           *pro rata refund to the consumer of a*  
15           *subscription fee prepaid by the con-*  
16           *sumer, calculated from the date that*  
17           *the person receives the consumer’s no-*  
18           *tice of cancellation until the end of*  
19           *the subscription period.”.*

20           **(b) CLARIFICATION OF NONEXEMPT STATUS.—**

21           ***Section 403(a) of the Credit Repair Organiza-***  
22           ***tions Act (15 U.S.C. 1679a) (as so redesignated***  
23           ***by subsection (a) of this section) is amended,***  
24           ***in paragraph (3)(B)(i), by inserting “and is not***



1 *for its own profit or for that of its members”*  
2 *before the semicolon at the end.*

3 (c) **REVISION OF DISCLOSURE REQUIRE-**  
4 **MENT.**—*Section 405(a) of the Credit Repair Or-*  
5 *ganizations Act (15 U.S.C. 1679c) is amended*  
6 *by striking everything after the heading of the*  
7 *disclosure statement contained in such section*  
8 *and inserting the following new text of the dis-*  
9 *closure statement:*

10 “*You have a right to dispute inac-*  
11 *curate information in your credit report*  
12 *by contacting the credit bureau directly.*  
13 *However, neither you nor any “credit re-*  
14 *pair” company or credit repair organiza-*  
15 *tion has the right to have accurate, cur-*  
16 *rent, and verifiable information removed*  
17 *from your credit report. The credit bureau*  
18 *must remove accurate, negative informa-*  
19 *tion from your report only if it is over 7*  
20 *years old. Bankruptcy information can be*  
21 *reported for 10 years.*

22 “*You have a right to obtain a free*  
23 *copy of your credit report once every 12*  
24 *months from each of the nationwide con-*  
25 *sumer reporting agencies. To request your*

1 *free annual credit report, you may go to*  
2 *www.annualcreditreport.com, or call 877-*  
3 *322-8228, or complete the Annual Credit*  
4 *Report Request Form and mail it to: An-*  
5 *ual Credit Report Request Service, P.O.*  
6 *Box 105281, Atlanta, GA 30348-5281. You*  
7 *can obtain additional copies of your cred-*  
8 *it report from a credit bureau, for which*  
9 *you may be charged a reasonable fee.*  
10 *There is no fee, however, if you have been*  
11 *turned down for credit, employment, in-*  
12 *surance, or a rental dwelling because of*  
13 *information in your credit report within*  
14 *the preceding 60 days. The credit bureau*  
15 *must provide someone to help you inter-*  
16 *pret the information in your credit file.*  
17 *You are entitled to receive a free copy of*  
18 *your credit report if you are unemployed*  
19 *and intend to apply for employment in the*  
20 *next 60 days, if you are a recipient of pub-*  
21 *lic welfare assistance, or if you have rea-*  
22 *son to believe that there is inaccurate in-*  
23 *formation in your credit report due to*  
24 *fraud.*

1           *“You have a right to sue a credit re-*  
2           *pair organization that violates the Credit*  
3           *Repair Organization Act. This law pro-*  
4           *hibits deceptive practices by credit repair*  
5           *organizations.*

6           *“You have the right to cancel your*  
7           *contract with any credit repair organiza-*  
8           *tion for any reason within 3 business days*  
9           *from the date you signed it.*

10           *“Credit bureaus are required to fol-*  
11           *low reasonable procedures to ensure that*  
12           *the information they report is accurate.*  
13           *However, mistakes may occur.*

14           *“You may, on your own, notify a cred-*  
15           *it bureau in writing that you dispute the*  
16           *accuracy of information in your credit*  
17           *file. The credit bureau must then reinves-*  
18           *tigate and modify or remove inaccurate or*  
19           *incomplete information. The credit bu-*  
20           *reau may not charge any fee for this serv-*  
21           *ice. Any pertinent information and copies*  
22           *of all documents you have concerning an*  
23           *error should be given to the credit bureau.*

24           *“If the credit bureau’s reinvestigation*  
25           *does not resolve the dispute to your satis-*

1        *faction, you may send a brief statement to*  
2        *the credit bureau, to be kept in your file,*  
3        *explaining why you think the record is in-*  
4        *accurate. The credit bureau must include*  
5        *a summary of your statement about dis-*  
6        *puted information with any report it*  
7        *issues about you.*

8                *“The Federal Trade Commission reg-*  
9                *ulates credit bureaus and credit repair*  
10               *organizations. For more information con-*  
11               *tact:*

12                *“Federal Trade Commission*

13                *“Washington, D.C. 20580*

14                *“1-877-FTC-HELP*

15                *“(877 382-4357)*

16                *“www.ftc.gov.”*

Amend the title so as to read: “A bill to amend the Fair Credit Reporting Act to provide for secure financial data, and for other purposes.”.



Union Calendar No. 270

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 4127**

[Report No. 109-453, Parts I, II, and III]

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## **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.

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JUNE 2, 2006

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