

109TH CONGRESS
1ST SESSION

S. 2169

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 21, 2005

Mr. CARPER (for himself and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Data Protec-
5 tion Act of 2005”.

6 **SEC. 2. DATA SECURITY SAFEGUARDS.**

7 (a) IN GENERAL.—The Fair Credit Reporting Act
8 (15 U.S.C. 1681) is amended by adding at the end the
9 following new section:

1 **“§ 630. Data security safeguards**

2 “(a) SECURITY POLICIES AND PROCEDURES.—Each
3 consumer reporter shall have an affirmative obligation to
4 implement, and a continuing obligation to maintain, rea-
5 sonable policies and procedures to protect the security and
6 confidentiality of sensitive financial personal information
7 relating to any consumer that is maintained, serviced, or
8 communicated by or on behalf of such consumer reporter
9 against any unauthorized use that is reasonably likely to
10 result in substantial harm or inconvenience to such con-
11 sumer.

12 “(b) INVESTIGATION REQUIREMENTS.—

13 “(1) INVESTIGATION REQUIRED.—Whenever
14 any consumer reporter determines or becomes aware
15 of information that would reasonably indicate that a
16 breach of data security has or may have occurred or
17 is reasonably likely to be about to occur, or receives
18 notice under subsection (d), the consumer reporter
19 shall immediately conduct a reasonable investigation
20 to—

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

23 “(B) identify the sensitive financial per-
24 sonal information involved; and

25 “(C) determine if the potential breach is
26 reasonably likely to result in substantial harm

1 or inconvenience to any consumer to whom the
2 information relates.

3 “(2) SCOPE OF INVESTIGATION.—An investiga-
4 tion conducted under paragraph (1) shall be com-
5 mensurate with the nature and the amount of the
6 sensitive financial personal information that is sub-
7 ject to the breach of data security.

8 “(3) FACTORS TO BE CONSIDERED.—In deter-
9 mining the likelihood under this section that sen-
10 sitive financial personal information that was the
11 subject of a breach of data security has been or will
12 be misused, the consumer reporter shall consider all
13 available relevant facts, including whether the infor-
14 mation that was subject to the breach was
15 encrypted, redacted, required technology to use that
16 is not generally commercially available, or is other-
17 wise unreadable or unusable.

18 “(c) INVESTIGATION NOTICES AND SYSTEM RES-
19 TORATION REQUIREMENTS.—If a consumer reporter de-
20 termines after commencing an investigation under sub-
21 section (b) that a potential breach of data security may
22 result in substantial harm or inconvenience to any con-
23 sumer to whom the sensitive financial personal informa-
24 tion involved in such potential breach relates, the con-
25 sumer reporter shall—

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

3 “(2) promptly notify the appropriate functional
4 regulatory agency for the consumer reporter;

5 “(3) notify as appropriate and without unrea-
6 sonable delay—

7 “(A) any entity that owns or is obligated
8 on a financial account that may be subject to
9 unauthorized transactions as a result of the
10 breach, to the extent the breach involves related
11 sensitive financial account information, includ-
12 ing in such notification information reasonably
13 identifying the nature and scope of the breach
14 and the sensitive financial personal information
15 involved;

16 “(B) each nationwide consumer reporting
17 agency, in the case of a breach involving sen-
18 sitive financial identity information relating to
19 1,000 or more consumers; and

20 “(C) any other appropriate critical third
21 parties—

22 “(i) whose involvement is necessary to
23 investigate the breach; or

24 “(ii) who will be required to undertake
25 further action with respect to such infor-

1 mation to protect such consumers from re-
2 sulting fraud or identity theft;

3 “(4) to the extent possible and practicable, take
4 reasonable measures to repair the breach and restore
5 the security and confidentiality of the sensitive fi-
6 nancial personal information involved to limit fur-
7 ther unauthorized use of such information; and

8 “(5) take reasonable measures to restore the in-
9 tegrity of the affected data security safeguards and
10 make appropriate improvements to data security
11 policies and procedures.

12 “(d) THIRD PARTY DUTIES.—

13 “(1) COORDINATED INVESTIGATION.—When-
14 ever any consumer reporter that maintains or re-
15 ceives sensitive financial personal information for or
16 on behalf of another party determines, or has reason
17 to believe, that a breach of data security has oc-
18 curred with respect to such information, the con-
19 sumer reporter shall—

20 “(A) promptly notify the other party of the
21 breach;

22 “(B) conduct a coordinated investigation
23 with the other party as described in subsection
24 (b); and

1 “(C) ensure that the appropriate notices
2 are provided as required under subsection (e).

3 “(2) CONTRACTUAL OBLIGATION REQUIRED.—

4 No consumer reporter may provide sensitive finan-
5 cial personal information to a third party to main-
6 tain, receive, or communicate on behalf of the con-
7 sumer reporter, unless such third party agrees that
8 whenever the third party becomes aware that a
9 breach of data security has occurred or is reasonably
10 likely to have occurred with respect to such informa-
11 tion maintained, received, or communicated by such
12 third party, the third party shall be obligated—

13 “(A) to provide notice of the breach to the
14 consumer reporter;

15 “(B) to conduct a coordinated investigation
16 with the consumer reporter to determine the
17 likelihood that such information will be misused
18 against the consumers to whom the information
19 relates in a manner that would cause substan-
20 tial harm or inconvenience to any such con-
21 sumers; and

22 “(C) provide any consumer notices re-
23 quired under subsection (e), except to the ex-
24 tent that such notices are provided by the con-

1 consumer reporter in a manner meeting the re-
2 quirements of such subsection.

3 “(e) CONSUMER NOTICE.—

4 “(1) POTENTIAL IDENTITY THEFT RISK.—A
5 consumer reporter shall provide a consumer notice in
6 accordance with subsection (f) if, after being re-
7 quired to commence an investigation pursuant to
8 this section, the consumer reporter becomes aware—

9 “(A) that a breach of data security is rea-
10 sonably likely to have occurred, with respect to
11 sensitive financial identity information main-
12 tained, received, or communicated by or on be-
13 half of the consumer reporter;

14 “(B) of information reasonably identi-
15 fying—

16 “(i) the nature and scope of the
17 breach, and

18 “(ii) the sensitive financial identity in-
19 formation involved; and

20 “(C) that such information has been or is
21 reasonably likely to be misused in a manner
22 causing substantial harm or inconvenience
23 against the consumers to whom such informa-
24 tion relates to commit identity theft.

1 “(2) POTENTIAL FRAUDULENT TRANSACTION
2 RISK.—

3 “(A) IN GENERAL.—A consumer reporter
4 shall provide a consumer notice in accordance
5 with subsection (f) if, after being required to
6 commence an investigation pursuant to this sec-
7 tion, the consumer reporter becomes aware—

8 “(i) that a breach of data security is
9 reasonably likely to have occurred, with re-
10 spect to sensitive financial account infor-
11 mation maintained, serviced, or commu-
12 nicated by or on behalf of the consumer re-
13 porter;

14 “(ii) of information reasonably identi-
15 fying—

16 “(I) the nature and scope of the
17 breach, and

18 “(II) the sensitive financial ac-
19 count information involved; and

20 “(iii) that such information has been
21 or is reasonably likely to be misused in a
22 manner causing substantial harm or incon-
23 venience against consumers to whom such
24 information relates to make fraudulent

1 transactions on such consumers' financial
2 accounts.

3 “(B) POTENTIAL DELAYED DETERMINA-
4 TION FOR INFORMATION SECURITY PRO-
5 GRAMS.—In determining the likelihood of mis-
6 use of sensitive financial account information
7 under subparagraph (A), the consumer reporter
8 may additionally consider whether any neural
9 networks or security programs used by, or on
10 behalf of, the consumer reporter have detected,
11 or are likely to detect on an ongoing basis over
12 a reasonable period of time, fraudulent trans-
13 actions resulting from the breach of data secu-
14 rity.

15 “(f) TIMING, CONTENT, AND MANNER OF NO-
16 TICES.—

17 “(1) ORDER OF NOTICE.—The notices required
18 under this section shall be made promptly to the en-
19 tities described in paragraphs (1) and (2) of sub-
20 section (c), then promptly to any appropriate third
21 parties, and then without unreasonable delay to any
22 consumers described in subsection (e)(1)(C) or
23 (e)(2)(A)(iii), in accordance with such subsections.

24 “(2) DELAY OF NOTICE FOR LAW ENFORCE-
25 MENT PURPOSES.—If a consumer reporter receives a

1 written request from an appropriate law enforcement
2 agency indicating that providing a notice under sub-
3 section (c)(3) or (e) would impede a criminal or civil
4 investigation by that law enforcement agency, or an
5 oral request from an appropriate law enforcement
6 agency indicating that such a written request will be
7 provided within 2 business days—

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

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

15 “(ii) the law enforcement agency fails
16 to—

17 “(I) provide a written request
18 within 2 business days following an
19 oral request for a delay; or

20 “(II) provide within 10 days a
21 written request to continue such delay
22 for a specific time that is approved by
23 a court of competent jurisdiction;

24 “(B) the consumer reporter shall not be
25 liable for any losses that would not have oc-

1 curred but for the delay provided for under this
2 paragraph or but for the communication of any
3 information provided to any law enforcement
4 agency pursuant to this section, except that
5 nothing in this subparagraph shall be construed
6 as creating any inference with respect to the es-
7 tablishment or existence of any such liability;
8 and

9 “(C) the consumer reporter may—

10 “(i) conduct appropriate security
11 measures that are not inconsistent with
12 such request; and

13 “(ii) contact any law enforcement
14 agency to determine whether any such in-
15 consistency would be created by such
16 measures.

17 “(3) CONTENT OF CONSUMER NOTICE.—Any
18 notice required to be provided by a consumer re-
19 porter to a consumer under paragraph (1) or (2) of
20 subsection (e), and any notice required in accord-
21 ance with subsection (d)(2)(A), shall be provided in
22 a standardized envelope or transmission, and shall
23 include the following in a clear and conspicuous
24 manner:

1 “(A) An appropriate heading or notice
2 title.

3 “(B) A description of the nature and type
4 of information that was, or is reasonably be-
5 lieved to have been, subject to the breach of
6 data security.

7 “(C) The identity and relationship to the
8 consumer of any entity that suffered the
9 breach.

10 “(D) If known, the date, or a reasonable
11 approximation of the period of time, on or with-
12 in which sensitive financial personal information
13 related to the consumer was, or is reasonably
14 believed to have been, subject to a breach.

15 “(E) A general description of the actions
16 taken by the consumer reporter to restore the
17 security and confidentiality of the breached in-
18 formation.

19 “(F) A telephone number by which a con-
20 sumer to whom the breached information re-
21 lates may call free of charge to obtain addi-
22 tional information about how to respond to the
23 breach.

24 “(G) With respect to notices involving sen-
25 sitive financial identity information, a summary

1 of rights of consumer victims of fraud or iden-
2 tity theft, such as that prepared by the Com-
3 mission under section 609(d), including any ad-
4 ditional appropriate information on how the
5 consumer may—

6 “(i) obtain a copy of a consumer re-
7 port free of charge in accordance with sec-
8 tion 612;

9 “(ii) place a fraud alert in any file re-
10 lating to the consumer at a consumer re-
11 porting agency under section 605A to dis-
12 courage unauthorized use; and

13 “(iii) contact the Commission for
14 more detailed information.

15 “(H) With respect to notices involving sen-
16 sitive financial identity information, appropriate
17 instructions to the consumer for obtaining file
18 monitoring mitigation under subsection (g),
19 which shall include a mailing address for the
20 consumer to make a request for such mitiga-
21 tion, and may also include additional contact in-
22 formation, such as an e-mail or website address
23 or a telephone number.

24 “(I) The approximate date the notice is
25 being issued.

1 “(4) OTHER TRANSMISSION OF NOTICE.—The
2 notice described in paragraph (3) may be made by
3 other means of transmission (such as electronic or
4 oral) to a consumer only if—

5 “(A) the consumer has previously and ex-
6 pressly agreed to receive notice by such means;
7 and

8 “(B) all of the relevant information in
9 paragraph (3) is communicated to such con-
10 sumer in such transmission.

11 “(5) DUPLICATIVE NOTICES.—

12 “(A) IN GENERAL.—A consumer reporter,
13 whether acting directly or in coordination with
14 another entity—

15 “(i) shall not be required to provide
16 more than 1 notice with respect to any
17 breach of data security to any affected
18 consumer, so long as such notice meets all
19 the applicable requirements of this section,
20 and

21 “(ii) shall not be required to provide
22 a notice with respect to any consumer if a
23 notice meeting the applicable requirements
24 of this section has already been provided
25 by another entity.

1 “(B) UPDATING NOTICES.—If a consumer
2 notice is provided to consumers pursuant only
3 to subsection (e)(2) (relating to sensitive finan-
4 cial account information), and the consumer re-
5 porter subsequently becomes aware of a reason-
6 able likelihood that sensitive financial personal
7 information involved in the breach is being mis-
8 used in a manner causing substantial harm or
9 inconvenience against such consumer to commit
10 identity theft, then an additional notice must be
11 provided to such consumers as well any other
12 appropriate parties under this section, including
13 the summary of rights and file monitoring miti-
14 gation instructions under subparagraphs (G)
15 and (H) of subsection (e)(3).

16 “(6) RESPONSIBILITY AND COSTS.—Except as
17 otherwise established by agreement, the entity that
18 suffered a breach of data security shall be—

19 “(A) primarily responsible for providing
20 any consumer notices required under this sec-
21 tion with respect to such breach; and

22 “(B) responsible for the reasonable actual
23 costs of any notices provided under this section,
24 except as otherwise established by agreement.

25 “(g) FINANCIAL FRAUD MITIGATION.—

1 “(1) FREE FILE MONITORING.—Any consumer
2 reporter that is required to provide notice to a con-
3 sumer under paragraph (1) of subsection (e), or that
4 is deemed to be in compliance with such requirement
5 by operation of subsection (h), if requested by the
6 consumer before the end of the 90-day period begin-
7 ning on the date of such notice, shall make available
8 to the consumer, free of charge and for at least a
9 6-month period, a service that monitors nationwide
10 credit activity regarding a consumer from a con-
11 sumer reporting agency described in section 603(p).

12 “(2) JOINT RULEMAKING FOR SAFE HARBOR.—
13 In accordance with subsection (i), the Secretary of
14 the Treasury, the Board of Governors of the Federal
15 Reserve System, and the Commission shall jointly
16 develop standards and guidelines, which shall be
17 issued by all functional regulatory agencies, that, in
18 any case in which—

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

21 “(B) subsequent to the offer, another
22 party misuses sensitive financial identity infor-
23 mation on the consumer obtained through the
24 breach of data security (that gave rise to such

1 offer) to commit identity theft against the con-
2 sumer; and

3 “(C) at the time of such breach the con-
4 sumer reporter met the requirements of sub-
5 section (a),

6 exempts the consumer reporter from any liability for
7 any harm to the consumer resulting from such mis-
8 use, other than any direct pecuniary loss or loss pur-
9 suant to agreement by the consumer reporter, except
10 that nothing in this paragraph shall be construed as
11 creating any inference with respect to the establish-
12 ment or existence of any such liability.

13 “(h) COMPLIANCE WITH GLBA.—

14 “(1) IN GENERAL.—For the purposes of this
15 section, any person subject to section 501(b) of title
16 V of the Gramm-Leach-Bliley Act shall be deemed to
17 be in compliance with—

18 “(A) subsection (a), if—

19 “(i) the person is obliged to imple-
20 ment appropriate safeguards, with respect
21 to customer records and information, pur-
22 suant to regulations, guidelines, or guid-
23 ance prescribed by or issued by an agency
24 or authority in accordance with such sub-
25 section of the Gramm-Leach-Bliley Act;

1 “(ii) the person is substantially in
2 compliance with such obligation; and

3 “(iii) the safeguards are being applied
4 by the person with respect to sensitive fi-
5 nancial personal information in the same
6 manner as with respect to customer
7 records and information;

8 “(B) subsection (b), if—

9 “(i) the person is obliged to conduct
10 investigations of breaches of information
11 security pursuant to regulations, guide-
12 lines, or guidance prescribed by or issued
13 by an agency or authority in accordance
14 with such subsection of the Gramm-Leach-
15 Bliley Act;

16 “(ii) the person is substantially in
17 compliance with such obligation; and

18 “(iii) the person conducts such inves-
19 tigation with respect to sensitive financial
20 personal information in the same manner
21 as with other information subject to such
22 regulation, guideline, or guidance; and

23 “(C) subsections (c), (d), (e), and (f)
24 (other than subsection (f)(3)), if—

1 “(i) the person is obliged to imple-
2 ment a consumer notification program
3 after breaches of such data safeguards
4 pursuant to regulations, guidelines, or
5 guidance prescribed by or issued by an
6 agency or authority in accordance with sec-
7 tion 501 of the Gramm-Leach-Bliley Act;

8 “(ii) the person is substantially in
9 compliance with such obligation; and

10 “(iii) the person implements such con-
11 sumer notification program with respect to
12 sensitive financial personal information in
13 the same manner as with other informa-
14 tion subject to such regulations, guidelines,
15 or guidance.

16 “(2) COORDINATION WITH REQUIREMENTS FOR
17 GSES.—For purposes of paragraph (1), if—

18 “(A) with respect to any requirement de-
19 scribed in subparagraph (A)(i), (B)(i), or (C)(i)
20 of paragraph (1) relating to sensitive financial
21 personal information—

22 “(i) an enterprise (as defined in title
23 XIII of the Housing and Community De-
24 velopment Act of 1992) is required to com-
25 ply with orders, guidance, or regulations

1 issued by the functional regulatory agency
2 set forth in subsection (j)(1)(F); and

3 “(ii) such orders, guidance, or regula-
4 tions of such functional regulatory agency
5 are substantially consistent with regula-
6 tions, guidelines, or guidance prescribed by
7 or issued by an agency or authority in ac-
8 cordance with section 501(b) of the
9 Gramm-Leach-Bliley Act (without regard
10 to whether such enterprise or functional
11 regulatory agency is subject to such section
12 501(b)) that relate to any requirement de-
13 scribed in subparagraph (A)(i), (B)(i), or
14 (C)(i) of paragraph (1);

15 “(B) the enterprise is substantially in com-
16 pliance with such requirement relating to sen-
17 sitive financial personal information; and

18 “(C) the enterprise implements any such
19 requirement with respect to sensitive financial
20 personal information in the same manner as
21 with other information subject to the regula-
22 tions, guidelines, or guidance prescribed or
23 issued by the functional regulatory agency set
24 forth in subsection (j)(1)(F),

1 the enterprise shall be treated as a person subject to
2 section 501(b) of the Gramm-Leach-Bliley Act.

3 “(3) HARMONIZATION OF GLBA.—

4 “(A) IN GENERAL.—To the extent that
5 compliance by any consumer reporter with the
6 requirements of title V of the Gramm-Leach-
7 Bliley Act shall be deemed, pursuant to this
8 subsection, to be compliance with this section,
9 and the requirements of such title, and any reg-
10 ulations, guidelines, or orders issued or pre-
11 scribed under such title, differ in any way from
12 this section, it is the sense of the Congress that
13 the applicable regulators shall make every ap-
14 propriate effort as any relevant regulations are
15 prescribed, reviewed, or updated to reconcile
16 such differences to harmonize the corresponding
17 requirements.

18 “(B) AGENCIES THAT HAVE NOT FULLY
19 IMPLEMENTED TITLE V OF THE GLBA.—Any
20 agency described in subsection (j) that has not
21 issued or prescribed regulations, guidelines, or
22 orders that are required or permitted under
23 title V of the Gramm-Leach-Bliley Act and that
24 set forth the requirements for compliance with
25 such title, including with respect to providing

1 notice of a breach of data security, shall pre-
2 scribe such regulations, guidelines, or orders, as
3 appropriate, before the end of the 12-month pe-
4 riod beginning on the date of the enactment of
5 the Financial Data Protection Act of 2005, in
6 a manner that—

7 “(i) is consistent with this section;

8 and

9 “(ii) allows, to the extent practical,
10 consistent standards across holding compa-
11 nies with respect to compliance with this
12 section and section 501(b) of the Gramm-
13 Leach-Bliley Act that is deemed compli-
14 ance under this subsection.

15 “(C) AGENCIES THAT HAVE IMPLEMENTED
16 TITLE V OF THE GLBA.—Any agency described
17 in subsection (j) that has issued or prescribed
18 regulations, guidelines, or orders that are re-
19 quired or permitted under title V of the
20 Gramm-Leach-Bliley Act and that set forth the
21 requirements for compliance with such title
22 shall modify such regulations, guidelines, or or-
23 ders, as appropriate, before the end of the 12-
24 month period beginning on the date of the en-

1 actment of the Financial Data Protection Act
2 of 2005, in a manner that—

3 “(i) is consistent with this section;
4 and

5 “(ii) allows, to the extent practical,
6 consistent standards across holding compa-
7 nies with respect to compliance with this
8 section and section 501(b) of the Gramm-
9 Leach-Bliley Act that is deemed compli-
10 ance under this subsection.

11 “(D) COORDINATION UNDER THIS SEC-
12 TION.—To the extent practical, any regulations,
13 guidelines, standards, or orders issued or pre-
14 scribed under this section shall be issued or
15 prescribed in a manner that—

16 “(i) is consistent with this section;
17 and

18 “(ii) allows, to the extent practical,
19 consistent standards across holding compa-
20 nies with respect to compliance with this
21 section and section 501(b) of the Gramm-
22 Leach-Bliley Act that is deemed compli-
23 ance under this subsection.

24 “(i) UNIFORM SECURITY REGULATIONS.—

1 “(1) UNIFORM STANDARDS.—The Secretary of
2 the Treasury, the Board of Governors of the Federal
3 Reserve System, and the Commission shall jointly
4 develop appropriate standards and guidelines to im-
5 plement this section (other than subsection (h), in-
6 cluding—

7 “(A) prescribing regulations requiring each
8 consumer reporter to establish reasonable poli-
9 cies and procedures implementing such stand-
10 ards and guidelines, consistent, as appropriate,
11 with subsection (h) and section 501(b) of title
12 V of the Gramm-Leach-Bliley Act, and any reg-
13 ulations, guidelines, or orders issued or pre-
14 scribed under such section;

15 “(B) prescribing specific regulations with
16 respect to subsection (f)(3) setting forth a rea-
17 sonably unique and, pursuant to paragraph
18 (2)(B), exclusive color and titling of the notice,
19 and standardized formatting of the notice con-
20 tents described under such subsection to stand-
21 ardize such communications and make them
22 more likely to be reviewed and understood by
23 consumers;

1 “(C) providing in such standards and
2 guidelines that the responsibility of a consumer
3 reporter to provide notice under this section—

4 “(i) has been satisfied with respect to
5 any particular consumer, even if the con-
6 sumer reporter is unable to contact the
7 consumer, so long as the consumer re-
8 porter has made reasonable efforts to ob-
9 tain a current address or other current
10 contact information with respect to such
11 consumer;

12 “(ii) may be made by public notice in
13 appropriate cases where such reasonable
14 efforts have failed; and

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

23 “(D) providing in such standards and
24 guidelines elaboration on how to determine
25 whether a technology is generally commercially

1 available for the purposes of subsection (b), fo-
2 cusing on the availability of such technology to
3 persons who potentially could seek to breach the
4 data security of the consumer reporter.

5 “(2) ENFORCEMENT.—

6 “(A) REGULATIONS.—Each of the func-
7 tional regulatory agencies shall prescribe such
8 regulations as may be necessary, consistent
9 with the standards in paragraph (1), to ensure
10 compliance with this section with respect to the
11 persons subject to the jurisdiction of such agen-
12 cy under subsection (i).

13 “(B) MISUSE OF UNIQUE COLOR AND TI-
14 TLES OF NOTICES.—Any person who uses the
15 unique color and titling adopted under para-
16 graph (1)(B) for notices under subsection (f)(3)
17 in a way that is likely to create a false belief
18 in a consumer that a communication is such a
19 notice shall be liable in the same manner and
20 to the same extent as a debt collector is liable
21 under section 813 for any failure to comply
22 with any provision of the Fair Debt Collection
23 Practices Act.

24 “(3) PROCEDURES AND DEADLINE.—

1 “(A) PROCEDURES.—Standards and guide-
2 lines issued under this subsection shall be
3 issued in accordance with applicable require-
4 ments of title 5, United States Code.

5 “(B) DEADLINE FOR INITIAL STANDARDS
6 AND GUIDELINES.—The standards and guide-
7 lines required to be issued under paragraph (1)
8 shall be published in final form before the end
9 of the 12-month period beginning on the date
10 of the enactment of the Financial Data Protec-
11 tion Act of 2005.

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

19 “(D) AUTHORITY TO GRANT EXCEP-
20 TIONS.—The regulations prescribed under para-
21 graph (2) may include such additional excep-
22 tions to this section as are deemed by the func-
23 tional regulatory agencies to be consistent with
24 the purposes of this section.

1 “(E) CONSULTATION AND COORDINA-
2 TION.—The Secretary of the Treasury, the
3 Board of Governors of the Federal Reserve Sys-
4 tem, and the Commission shall consult and co-
5 ordinate with the other functional regulatory
6 agencies to the extent appropriate in pre-
7 scribing regulations under this subsection.

8 “(F) FAILURE TO MEET DEADLINE.—Any
9 agency or authority required to publish stand-
10 ards and guidelines or regulations under this
11 subsection that fails to meet the deadline for
12 such publishing shall submit a report to the
13 Congress within 30 days of such deadline de-
14 scribing—

15 “(i) the reasons for the failure to
16 meet such deadline;

17 “(ii) when the agency or authority ex-
18 pects to complete the publication required;
19 and

20 “(iii) the detriment such failure to
21 publish by the required deadline will have
22 on consumers and other affected parties.

23 “(G) UNIFORM IMPLEMENTATION AND IN-
24 TERPRETATION.—It is the intention of the Con-
25 gress that the agencies and authorities de-

1 scribed in subsection (j)(1)(G) will implement
2 and interpret their enforcement regulations, in-
3 cluding any exceptions provided under subpara-
4 graph (D), in a uniform manner.

5 “(4) APPROPRIATE EXEMPTIONS OR MODIFICA-
6 TIONS.—The Secretary of the Treasury, the Board
7 of Governors of the Federal Reserve System, and the
8 Commission, in consultation with the Administrator
9 of the Small Business Administration and other
10 functional regulatory agencies, shall provide appro-
11 priate exemptions or modifications from require-
12 ments of this section relating to sensitive financial
13 personal information for consumer reporters that do
14 not maintain, service, or communicate a large quan-
15 tity of sensitive financial account information or sen-
16 sitive financial identity information.

17 “(j) ADMINISTRATIVE ENFORCEMENT.—

18 “(1) IN GENERAL.—Notwithstanding section
19 616, 617, or 621, compliance with this section and
20 the regulations prescribed under this section shall be
21 enforced exclusively by the functional regulatory
22 agencies with respect to financial institutions and
23 other persons subject to the jurisdiction of each such
24 agency under applicable law, as follows:

1 “(A) Under section 8 of the Federal De-
2 posit Insurance Act, in the case of—

3 “(i) national banks, Federal branches
4 and Federal agencies of foreign banks, and
5 any subsidiaries of such entities (except
6 brokers, dealers, persons providing insur-
7 ance, investment companies, and invest-
8 ment advisers), by the Comptroller of the
9 Currency;

10 “(ii) member banks of the Federal
11 Reserve System (other than national
12 banks), branches and agencies of foreign
13 banks (other than Federal branches, Fed-
14 eral agencies, and insured State branches
15 of foreign banks), commercial lending com-
16 panies owned or controlled by foreign
17 banks, organizations operating under sec-
18 tion 25 or 25A of the Federal Reserve Act,
19 and bank holding companies and their
20 nonbank subsidiaries or affiliates (except
21 brokers, dealers, persons providing insur-
22 ance, investment companies, and invest-
23 ment advisers), by the Board of Governors
24 of the Federal Reserve System;

1 “(iii) banks insured by the Federal
2 Deposit Insurance Corporation (other than
3 members of the Federal Reserve System),
4 insured State branches of foreign banks,
5 and any subsidiaries of such entities (ex-
6 cept brokers, dealers, persons providing in-
7 surance, investment companies, and invest-
8 ment advisers), by the Board of Directors
9 of the Federal Deposit Insurance Corpora-
10 tion; and

11 “(iv) savings associations the deposits
12 of which are insured by the Federal De-
13 posit Insurance Corporation, and any sub-
14 sidiaries of such savings associations (ex-
15 cept brokers, dealers, persons providing in-
16 surance, investment companies, and invest-
17 ment advisers), by the Director of the Of-
18 fice of Thrift Supervision.

19 “(B) Under the Federal Credit Union Act,
20 by the Board of the National Credit Union Ad-
21 ministration with respect to any federally in-
22 sured credit union, and any subsidiaries of such
23 an entity.

24 “(C) Under the Securities Exchange Act of
25 1934, by the Securities and Exchange Commis-

1 sion with respect to any broker, dealer, or
2 nonbank transfer agent.

3 “(D) Under the Investment Company Act
4 of 1940, by the Securities and Exchange Com-
5 mission with respect to investment companies.

6 “(E) Under the Investment Advisers Act
7 of 1940, by the Securities and Exchange Com-
8 mission with respect to investment advisers reg-
9 istered with the Commission under such Act.

10 “(F) Under the provisions of title XIII of
11 the Housing and Community Development Act
12 of 1992, by the Director of Federal Housing
13 Enterprise Oversight (and any successor to
14 such functional regulatory agency) with respect
15 to the Federal National Mortgage Association,
16 the Federal Home Loan Mortgage Corporation,
17 and any other entity or enterprise (as defined
18 in such title XIII) subject to the jurisdiction of
19 such functional regulatory agency under such
20 title, including any affiliate of any such enter-
21 prise.

22 “(G) Under State insurance law, in the
23 case of any person engaged in the business of
24 insurance, by the applicable State insurance au-

1 thority of the State in which the person is dom-
2 iciled.

3 “(H) Under the Federal Trade Commis-
4 sion Act, by the Commission for any other per-
5 son that is not subject to the jurisdiction of any
6 agency or authority under paragraphs (1)
7 through (7) of this subsection.

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

20 “(k) DEFINITIONS.—For purposes of this section, the
21 following definitions shall apply:

22 “(1) BREACH OF DATA SECURITY.—The term
23 ‘breach of data security’ means, with respect to sen-
24 sitive financial personal information that is main-

1 tained, serviced, or communicated by or on behalf of
2 any consumer reporter—

3 “(A) an unauthorized acquisition of such
4 information that could be used to commit finan-
5 cial fraud (such as identity theft or fraudulent
6 transactions made on financial accounts); or

7 “(B) an unusual pattern of use of such in-
8 formation indicative of financial fraud.

9 “(2) CONSUMER.—The term ‘consumer’ means
10 an individual.

11 “(3) CONSUMER REPORTER AND RELATED
12 TERMS.—

13 “(A) CONSUMER REPORT.—The term ‘con-
14 sumer report’ includes any written, oral, or
15 other communication of any information by a
16 consumer reporter bearing on a consumer’s
17 credit worthiness, credit standing, credit capac-
18 ity, character, general reputation, personal
19 characteristics, personal identifiers, financial
20 account information, or mode of living.

21 “(B) CONSUMER REPORTER.—The term
22 ‘consumer reporter’ means any consumer re-
23 porting agency or financial institution, or any
24 person which, for monetary fees, dues, on a co-
25 operative nonprofit basis, or otherwise regularly

1 engages in whole or in part in the practice of
2 assembling or evaluating consumer reports, con-
3 sumer credit information, or other information
4 on consumers, for the purpose of furnishing
5 consumer reports to third parties or to provide
6 or collect payment for or market products and
7 services, or for employment purposes, and
8 which uses any means or facility of interstate
9 commerce for such purposes.

10 “(4) FINANCIAL INSTITUTION.—The term ‘fi-
11 nancial institution’ means—

12 “(A) any person the business of which is
13 engaging in activities that are financial in na-
14 ture as described in or determined under sec-
15 tion 4(k) of the Bank Holding Company Act;

16 “(B) any entity that is primarily engaged
17 in activities that are subject to the Fair Credit
18 Reporting Act; and

19 “(C) any person that is maintaining, re-
20 ceiving, or communicating sensitive financial
21 personal information on an ongoing basis for
22 the purposes of engaging in interstate com-
23 merce.

24 “(5) FUNCTIONAL REGULATORY AGENCY.—The
25 term ‘functional regulatory agency’ means any agen-

1 cy described in subsection (j) with respect to the fi-
2 nancial institutions and other persons subject to the
3 jurisdiction of such agency.

4 “(6) NATIONWIDE CONSUMER REPORTING
5 AGENCY.—The term ‘nationwide consumer reporting
6 agency’ means—

7 “(A) a consumer reporting agency de-
8 scribed in section 603(p);

9 “(B) any person who notifies the Commis-
10 sion that the person reasonably expects to be-
11 come a consumer reporting agency described in
12 section 603(p) within a reasonable time; and

13 “(C) a consumer reporting agency de-
14 scribed in section 603(w) that notifies the Com-
15 mission that the person wishes to receive breach
16 of data security notices under this section that
17 involve information of the type maintained by
18 such agency.

19 “(7) NEURAL NETWORK.—The term ‘neural
20 network’ means an information security program
21 that monitors financial account transactions for po-
22 tential fraud, using historical patterns to analyze
23 and identify suspicious financial account trans-
24 actions.

1 “(8) SENSITIVE FINANCIAL ACCOUNT INFORMA-
2 TION.—The term ‘sensitive financial account infor-
3 mation’ means a financial account number of a con-
4 sumer, such as a credit card number or debit card
5 number, in combination with any security code, ac-
6 cess code, biometric code, password, or other per-
7 sonal identification information that would allow ac-
8 cess to the financial account.

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

14 “(A) Social Security number.

15 “(B) Driver’s license number or equivalent
16 State identification number.

17 “(C) Taxpayer identification number.

18 “(10) SENSITIVE FINANCIAL PERSONAL INFOR-
19 MATION.—The term ‘sensitive financial personal in-
20 formation’ means any information that is sensitive
21 financial account information, sensitive financial
22 identity information, or both.

23 “(11) SUBSTANTIAL HARM OR INCONVEN-
24 IENCE.—The term ‘substantial harm or inconven-
25 ience’ with respect to a consumer means material fi-

1 nancial loss to or civil or criminal penalties imposed
2 on the consumer or the need for the consumer to ex-
3 pend significant time and effort to correct erroneous
4 information relating to the consumer, including in-
5 formation maintained by consumer reporting agen-
6 cies, financial institutions, or government entities, in
7 order to avoid material financial loss or increased
8 costs or civil or criminal penalties, due to unauthor-
9 ized use of sensitive financial personal information
10 relating to such consumer, but does not include
11 other harm or inconvenience that is not substantial,
12 including changing a financial account number or
13 closing a financial account.

14 “(1) RELATION TO STATE LAWS.—No requirement or
15 prohibition may be imposed under the laws of any State
16 with respect to the responsibilities of any person—

17 “(1) to protect the security or confidentiality of
18 information on consumers maintained by or on be-
19 half of the person;

20 “(2) to safeguard such information from poten-
21 tial misuse;

22 “(3) to investigate or provide notices of any un-
23 authorized access to information concerning the con-
24 sumer, or the potential misuse of such information,
25 for fraudulent purposes; or

1 “(4) to mitigate any loss or harm resulting
2 from such unauthorized access or misuse.”.

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

“630. Data security safeguards.”.

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

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