

PROTECTING INNOCENT CONSUMERS AFFECTED BY A
SHUTDOWN ACT

DECEMBER 8, 2020.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Ms. WATERS, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4328]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4328) to amend the Fair Credit Reporting Act to protect certain consumers affected by a shutdown, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting Innocent Consumers Affected by a Shutdown Act”.

SEC. 2. DEFINITIONS.

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a), as amended by section 302(b)(1) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Public Law 115–174), is amended by adding at the end the following:

“(bb) EMPLOYEE AFFECTED BY A SHUTDOWN.—With respect to a shutdown, the term ‘employee affected by a shutdown’ means a consumer who—

“(1) is an employee of—

“(A) the Federal Government, and who is furloughed or excepted from a furlough during the shutdown;

“(B) the District of Columbia, and who is not receiving pay because of the shutdown; or

“(C) a Federal contractor (as defined under section 7101 of title 41, United States Code) or other business, and who has experienced a substantial reduction in pay (directly or indirectly) due to the shutdown; and

“(2) who—

“(A) is listed in the database established under section 630; or

“(B) has self-certified pursuant to such section.

“(cc) SHUTDOWN.—The term ‘shutdown’ means any period in which there is more than a 24-hour lapse in appropriations as a result of a failure to enact a regular appropriations bill or continuing resolution.

“(dd) COVERED SHUTDOWN PERIOD.—The term ‘covered shutdown period’ means, with respect to a shutdown, the period beginning on the first day of the shutdown and ending on the date that is 90 days after the last day of the shutdown.”.

SEC. 3. EXCLUSION FOR EMPLOYEES AFFECTED BY A SHUTDOWN.

Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)), as amended by section 302(b)(2) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Public Law 115–174), is amended by adding at the end the following:

“(9) Any adverse item of information with respect to an action or inaction taken during a covered shutdown period by an employee affected by a shutdown.”.

SEC. 4. AMENDMENT TO SUMMARY OF RIGHTS FOR EMPLOYEES AFFECTED BY A SHUTDOWN.

Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended by adding at the end the following:

“(7) Information on the rights of an employee affected by a shutdown, including which consumers may be an employee affected by a shutdown and the process for a consumer to self-certify as an employee affected by a shutdown under section 630.”.

SEC. 5. DATABASE AND SELF-CERTIFICATION FOR EMPLOYEES AFFECTED BY A SHUTDOWN.

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

“§ 630. Database and self-certification for employees affected by a shutdown

“(a) DATABASE.—

“(1) IN GENERAL.—With respect to each shutdown, the consumer reporting agencies described in section 603(p) shall jointly establish a database that includes employees affected by the shutdown as reported pursuant to paragraph (2).

“(2) CONTENTS OF DATABASE.—

“(A) FURLOUGHED EMPLOYEES AND CONTRACTORS.—Each authority of the executive, legislative, or judicial branch of the Federal Government or District of Columbia shall provide to the consumer reporting agencies described in section 603(p) a list identifying—

“(i) employees of such authority that are furloughed, excepted from furlough, or not receiving pay because of a shutdown; and

“(ii) to the extent practicable, employees of contractors of such authority.

“(B) SELF-CERTIFIED CONSUMERS.—A consumer that self-certifies as an employee affected by a shutdown pursuant to subsection (b) shall be included in the database, unless the Bureau determines such consumer is not an employee affected by a shutdown.

“(3) ACCESS TO DATABASE.—The consumer reporting agencies described in section 603(p) shall make the database established under this subsection available to the Bureau, other consumer reporting agencies, furnishers of information to consumer reporting agencies, and users of consumer reports. A consumer reporting agency described in section 603(x) shall periodically access the database to confirm the accuracy of information such as an agency has that identifies a consumer as an employee affected by a shutdown.

“(b) SELF-CERTIFICATION PROCESS.—A consumer shall be deemed to be a employee affected by a shutdown if such consumer self-certifies through—

“(1) the website established under subsection (c); or

“(2) a toll-free telephone number established by a consumer reporting agency.

“(c) WEBSITE.—The consumer reporting agencies described in section 603(p) shall jointly establish a website for a consumer to self-certify as an employee affected by a shutdown. Such website may not include any advertisement or other solicitation.”.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Fair Credit Reporting Act is amended by adding at the end the following new item:

“630. Database and self-certification for employees affected by a shutdown.”.

SEC. 6. PROHIBITION ON ADVERSE ACTIONS AGAINST EMPLOYEES AFFECTED BY A SHUTDOWN.

Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended by adding at the end the following:

“(h) PROHIBITION ON ADVERSE ACTIONS AGAINST EMPLOYEES AFFECTED BY A SHUTDOWN.—If a user of a consumer report knows that a consumer is an employee affected by a shutdown, such user may not take an adverse action based on—

“(1) any adverse item of information contained in such report with respect to an action or inaction taken during a covered shutdown period by the employee; or

“(2) information on the consumer included in the database established under section 630.”.

SEC. 7. BUREAU REGULATIONS OR GUIDANCE.

Not later than 30 days after the date of the enactment of this Act, the Bureau of Consumer Financial Protection shall issue rules or guidance, as appropriate, to carry out the requirements of this Act.

PURPOSE AND SUMMARY

On September 13, 2019, Chairwoman Maxine Waters introduced H.R. 4328, the “Protecting Innocent Consumers Affected by a Shutdown Act,” which amends the Fair Credit Reporting Act to protect government employees, contractors, and other consumers affected by a Federal government shutdown. H.R. 4328 restricts “furnishers” and the credit rating agencies from including any adverse financial information resulting from a government shutdown in the affected consumers’ credit profiles for the duration of a shutdown, plus 90 days. H.R. 4328 also prohibits banks, employers and other users of consumer reports from considering adverse credit information regarding such consumers from the applicable period.

BACKGROUND AND NEED FOR LEGISLATION

At the end of last Congress, President Trump shut the government down for 35 days, the longest shutdown in U.S. history, resulting in missed paychecks for countless government employees, as well as contractors and businesses that rely on the government. During that time, approximately 800,000 federally employees were partially or fully furloughed and about four million federal contractors were affected. Many of these consumers found it hard to make essential housing or consumer payments when their income was temporarily limited. The shutdown directly affecting nearly 3 percent of the entire U.S. labor force. The Congressional Budget Office estimated the shutdown cost the American economy \$11 billion,

and delayed approximately \$18 billion in federal discretionary spending for compensation and purchases of goods and services.

During the shutdown, Chairwoman Maxine Waters wrote to the heads of financial services industry trade associations and the largest credit reporting agencies to ask them to describe what their institutions and member companies were doing to help consumers affected by the Trump shutdown. Rep. Waters reminded these companies that these affected employees, contractors, and other individuals did not cause the shutdown and should not suffer any adverse consequences from these circumstances. These individuals who experienced a loss of income during the government shutdown may have been unable to make payments on debts such as mortgages, student loans, car loans, business loans, or credit cards. And, as a result, their credit scores and reports, which are increasingly relied upon by creditors, employers, insurers, and even law enforcement would be negatively affected through no fault of their own.

Current law does not provide for assistance to Federal employees, contractors and other consumers negatively affected by a Federal government shutdown. H.R. 4328, by establishing a mechanism to prevent credit reporting agencies from including any adverse financial information that occurs during the shutdown or within 90 days thereafter, would provide consumer relief and certainty to affected workers. To help affected consumers, H.R. 4328 restricts the persons and companies who provide financial information, known as “furnishers” and the credit rating agencies from including adverse financial information resulting from a government shutdown in the affected consumers’ credit profiles for the duration of a shutdown plus 90 days. This bill would prohibit banks, employers and other users of consumer reports from considering adverse information regarding such consumers.

H.R. 4328 also restricts any user of consumer reports, including creditors, potential employers, and others, from considering adverse information regarding a consumer affected by a shutdown. Once negative information is reported to consumer reporting agencies, affected employees are likely to see a reduction in their credit scores, thereby negatively affecting their ability to access credit in the future. At the September 18, 2019 Committee mark-up, Representative Axne suggested adding a provision to H.R. 4328 that would allow any employee to opt-out of being included in the database as either a government employee or contractor if they wished to do so for privacy reasons.

H.R. 4328 is supported by the American Federation of Government Employees (AFGE), the largest Federal employee union representing 700,000 Federal and D.C. government workers, and the National Treasury Employees Union, which represents 150,000 workers in 33 departments and agencies.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states that the title of the bill is the “Protecting Innocent Consumers Affected by a Shutdown Act”.

Section 2. Definition of employee affected by a shutdown

Section 2 amends Section 603 of the Fair Credit Reporting Act to define employees affected by a shutdown as an employee of the Federal Government, an employee of the District of Columbia, a Federal contractor, or as someone who has self-certified as an affected worker in a database created by consumer reporting agencies. Furthermore, this section defines a “shutdown” as any period with more than a 24-hour lapse in appropriations, and defines the term “covered shutdown period” as the period beginning on the first day of the shutdown and ending on the date that is 90 days after the last day of the shutdown.

Section 2 further requires the Securities and Exchange Commission (SEC), within 270 days of the enactment of this bill, to issue final rules requiring disclosure of: workforce demographic information; workforce stability information; workforce composition, including data on diversity; workforce skills and capabilities; workforce empowerment; workforce health and safety, and workforce compensation and incentives.

Section 3. Exclusion for employees affected by a shutdown

Section 3 amends Section 605(a) of the Fair Credit Reporting Act to require that no consumer reporting agency may make a consumer report containing adverse information of an employee affected by the shutdown taken during the covered shutdown period.

Section 4. Amendment to summary of rights for employees affected by a shutdown

Section 4 amends Section 609(a) of the Fair Credit Reporting Act to require consumer reporting agencies, if requested, to clearly and accurately disclose to consumers information on the rights of an employee affected by a shutdown.

Section 5. Database and self-certification for employees affected by a shutdown

Section 5 amends the Fair Credit Reporting Act to create a database and self-certification procedure for employees affected by a shutdown. It stipulates that credit reporting agencies shall jointly establish this database, which will be comprised of furloughed employees and contractors sent by the Federal Government or District of Columbia. Self-certified consumers may include themselves in the database through a website or toll-free number, but the Consumer Bureau has the authority to determine whether they are an affected consumer.

Section 6. Prohibition on adverse actions against employees affected by a shutdown

Section 6 amends Section 604 of the Fair Credit Reporting Act to prohibit any user of a consumer report from adversely acting against an eligible employee affected by a shutdown.

Section 7. Bureau regulations or guidance

Section 7 grants the Consumer Financial Protection Bureau (CFPB) the authority to issue rules or guidance, as appropriate, to carry out the requirements of this Act.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress—

(1) On February 26, 2019, the Committee on Financial Services held a hearing to consider a discussion draft of H.R. 4328 entitled “Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System” to consider two discussion drafts, specifically the “Protecting Innocent Consumers Affected by a Shutdown Act” as well as the “Comprehensive Consumer Credit Reporting Reform Act of 2019.” The first panel of the two-panel hearing consisted of the three CEOs of the three largest Credit Reporting Agencies: Equifax, TransUnion, and Experian. Witnesses on the second panel included representatives from the National Fair Housing Alliance, the National Consumer Law Center, UnidosUS, U.S. Public Interest Research Group (PIRG), and a Paul Hastings partner and attorney. The hearing allowed Members of the Financial Services Committee to hear from witnesses about the challenges to modernizing the Fair Credit Reporting Act to better protect consumers and their data, including those affected by a government shutdown.

(2) The House Financial Services Committee’s taskforce on Financial Technology held a hearing, entitled “Examining the Use of Alternative Data in Underwriting and Credit Scoring to Expand Access to Credit” on July 25, 2019 to discuss emerging technologies and how they impact access to credit, and their impact across communities. The panel consisted of representatives from the National Consumer Law Center, Tulane University Law School, The Government Accountability Office (GAO), Upstart, and Upturn.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 18, 2019, and ordered H.R. 4328 to be reported favorably to the House without an amendment in the nature of a substitute by a recorded vote of 32 yeas and 22 nays, a quorum being present.

COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee’s consideration of H.R. 4328:

Present	Representatives	Ayes	Nays	Committee on Financial Services					
	Ms. Waters, <i>Chairwoman</i>		X	Full Committee 116th Congress (1st Session)					
	Mrs. Maloney		X						
	Ms. Velázquez		X						
	Mr. Sherman		X						
	Mr. Meeks		X						
	Mr. Clay		X						
	Mr. Scott		X	Date: 9/18/2019					
	Mr. Green		X						
	Mr. Cleaver		X						
	Mr. Perlmutter		X	Measure H.R. 4328					
	Mr. Himes		X						
	Mr. Foster		X						
	Mrs. Beatty								
	Mr. Heck		X						
	Mr. Vargas		X	Amendment No. 6a					
	Mr. Gottheimer		X						
	Mr. Gonzalez (TX)		X	Offered by: Riggleman to Waters ANS					
	Mr. Lawson		X						
	Mr. San Nicolas		X						
	Ms. Tlaib		X						
	Ms. Porter		X						
	Ms. Axne		X						
	Mr. Casten		X						
	Ms. Pressley		X						
	Mr. McAdams		X						
	Ms. Ocasio-Cortez		X						
	Mrs. Wexton		X						
	Mr. Lynch		X						
	Ms. Gabbard		X						
	Ms. Adams		X						
	Ms. Dean		X						
	Mr. Garcia (IL)		X						
	Ms. Garcia (TX)		X						
	Mr. Phillips		X						
34									
	Mr. McHenry, <i>Ranking Member</i>	X							
	Mrs. Wagner	X							
	Mr. King			Agreed To	Yes	No	Prsnt	Wdrn	
	Mr. Lucas	X				X			
	Mr. Posey	X							
	Mr. Luetkemeyer	X							
	Mr. Huizenga	X		Voice Vote	Ayes			Nays	
	Mr. Duffy								
	Mr. Stivers	X							
	Mr. Barr	X							
	Mr. Tipton	X							
	Mr. Williams	X							
	Mr. Hill	X							
	Mr. Emmer	X							
	Mr. Zeldin	X							
	Mr. Loudermilk	X		Record Vote	FC 21-33				
	Mr. Mooney	X							
	Mr. Davidson								
	Mr. Budd	X							
	Mr. Kustoff								
	Mr. Hollingsworth	X							
	Mr. Gonzalez (OH)	X							
	Mr. Rose	X							
	Mr. Steil	X							
	Mr. Gooden	X							
	Mr. Riggleman								
26									

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 4328 are to ensure that government employees, contractors, and other consumers affected by a Federal government shutdown.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 4328 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC.

Hon. MAXINE WATERS,
*Chairwoman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4328, the Protecting Innocent Consumers Affected by a Shutdown Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford and David Hughes.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 4328, Protecting Innocent Consumers Affected by a Shutdown Act			
As ordered reported by the House Committee on Financial Services on September 20, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	*	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	15	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Under Threshold
* = between zero and \$500,000.			

H.R. 4328 would prohibit consumer reporting agencies (CRAs) from assembling any consumer report that includes adverse information about any action or inaction taken by a furloughed federal employee during a government shutdown and for 90 days following a shutdown. Some federal contractors and District of Columbia employees whose compensation is affected by a shutdown would receive the same protections. Under the bill, users of consumer reports would be prohibited from taking adverse action against those employees and contractors based on adverse information collected during a shutdown period.

In the event of a government shutdown, H.R. 4328 would require nationwide CRAs to establish and maintain a database of federal employees and contractors whose compensation is affected by the shutdown. Federal agencies would be required to provide the CRA industry with a list of furloughed federal employees and affected contractors. That database would be shared with the Consumer Financial Protection Bureau (CFPB), entities that provide information to CRAs, and users of consumer reports.

Federal Cost: The ability of the federal government to share information about employees and contractors is constrained by existing privacy laws. The Privacy Act of 1974, 5 U.S.C. 552, prevents government agencies from sharing any personally identifiable information it maintains about an individual with other agencies or private sources unless the agency obtains the individual's consent.

CBO estimates that creating the electric authorization process would be similar to the effort that was required to develop another federal system known as Login.gov. The cost of developing Login.gov—a system that offers 14 million users secure access to 18 federal agencies and more than 30 applications—was \$30 million over a four year period. CBO anticipates that obtaining consent from all furloughed federal employees and contractors under H.R. 4328 would require a system with a single application and fewer users. On that basis, CBO estimates that creating the new database would cost \$15 million over the 2020–2025 period, or less

than \$1 million per major federal agency. Most of those costs would be subject to the availability of appropriated funds.

Enacting H.R. 4328 could affect direct spending by some agencies that are allowed to use fees, receipts from the sale of goods, and other collections to cover operating costs. CBO estimates that any net changes in direct spending by those agencies would be negligible because most of them can adjust amounts collected to reflect changes in operating costs.

Based on information from the CFPB, CBO estimates that CFPB would need the services of two full-time employees at a cost of \$200,000 per employee to issue regulations and establish processes to implement the bill's requirements in 2020. On that basis, CBO estimates that enacting H.R. 4328 would increase direct spending by less than \$500,000 over the 2020–2030 period. The CFPB is permanently authorized to receive funding from the Federal Reserve in an amount necessary to carry out its operations and can spend those amounts without further appropriation.

Mandates: H.R. 4328 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the mandates would not exceed UMRA's intergovernmental or private-sector threshold (\$84 million and \$168 million in 2020, respectively, adjusted annually for inflation).

The bill would impose private-sector mandates by placing new requirements and prohibitions on consumer reporting agencies. Using industry data, CBO estimates that CRAs would spend roughly \$80 million to comply with those mandates.

Specifically, CRAs would be required to:

- Create a shared database for each shutdown of the federal government to log federal employees and contractors affected by the shutdown,
- Access the new database periodically to ensure the accuracy of information it holds,
- Create a website and a toll-free telephone number for use by consumers to self-certify as an employee affected by a shutdown, and
- Disclose to consumers, upon request, the rights of employees affected by a shutdown.

The bill also would prohibit CRAs from including adverse information in consumer reports, and users of those reports from knowingly taking an adverse action against an employee based on information contained in their consumer report about actions that occurred during the period of a federal government shutdown. That prohibition would impose an intergovernmental and private-sector mandate because individuals in the public and private sector use consumer reports for background checks and personnel decisions. The incremental cost for users to disregard adverse information in a consumer report would be small.

Finally, the bill would impose an additional intergovernmental mandate by requiring the District of Columbia to disclose a list to CRAs identifying employees affected by a shutdown of the federal government. The cost to supply the list would be small because the District of Columbia already possesses the information to be reported under the bill.

The CBO staff contacts for this estimate are Matthew Pickford and David Hughes (for federal costs) and Rachel Austin (for mandates). This estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 4328. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*, which is attached.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104-4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 4328, as amended, prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104-1, H.R. 4328, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4328 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 4328 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CHANGES TO EXISTING LAW

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 5930, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

FAIR CREDIT REPORTING ACT

TITLE VI—CONSUMER CREDIT REPORTING

Sec.

601. Short title.

* * * * *

629. Corporate and technological circumvention prohibited.

630. *Database and self-certification for employees affected by a shutdown.*

* * * * *

§ 603. Definitions and rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term “consumer” means an individual.

(d) CONSUMER REPORT.—

(1) IN GENERAL.—The term “consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for—

- (A) credit or insurance to be used primarily for personal, family, or household purposes;
- (B) employment purposes; or
- (C) any other purpose authorized under section 604.

(2) EXCLUSIONS.—Except as provided in paragraph (3), the term “consumer report” does not include—

- (A) subject to section 624, any—
 - (i) report containing information solely as to transactions or experiences between the consumer and the person making the report;
 - (ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615; or

(D) a communication described in subsection (o) or (x).

(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is—

(A) medical information;

(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

(C) an aggregate list of identified consumers based on payment transactions for medical products or services.

(e) The term “investigative consumer report” means a consumer report or portion thereof in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer’s credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term “consumer reporting agency” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term “file”, when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term “employment purposes” when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) MEDICAL INFORMATION.—The term “medical information”—

(1) means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) the payment for the provision of health care to an individual.

(2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer’s residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

(j) DEFINITIONS RELATING TO CHILD SUPPORT OBLIGATIONS.—

(1) OVERDUE SUPPORT.—The term “overdue support” has the meaning given to such term in section 466(e) of the Social Security Act.

(2) STATE OR LOCAL CHILD SUPPORT ENFORCEMENT AGENCY.—The term “State or local child support enforcement agency” means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

(k) ADVERSE ACTION.—

(1) ACTIONS INCLUDED.—The term “adverse action”—

(A) has the same meaning as in section 701(d)(6) of the Equal Credit Opportunity Act; and

(B) means—

(i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

(ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

(iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D); and

(iv) an action taken or determination that is—

(I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 604(a)(3)(F)(ii); and

(II) adverse to the interests of the consumer.

(2) APPLICABLE FINDINGS, DECISIONS, COMMENTARY, AND ORDERS.—For purposes of any determination of whether an action is an adverse action under paragraph (1)(A), all appropriate final findings, decisions, commentary, and orders issued under

section 701(d)(6) of the Equal Credit Opportunity Act by the Bureau or any court shall apply.

(l) **FIRM OFFER OF CREDIT OR INSURANCE.**—The term “firm offer of credit or insurance” means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer’s application for the credit or insurance, to meet specific criteria bearing on credit worthiness or insurability, as applicable, that are established—

(A) before selection of the consumer for the offer; and

(B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.

(2) Verification—

(A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer’s application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer; or

(B) of the information in the consumer’s application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.

(3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was—

(A) established before selection of the consumer for the offer of credit or insurance; and

(B) disclosed to the consumer in the offer of credit or insurance.

(m) **CREDIT OR INSURANCE TRANSACTION THAT IS NOT INITIATED BY THE CONSUMER.**—The term “credit or insurance transaction that is not initiated by the consumer” does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of—

(1) reviewing the account or insurance policy; or

(2) collecting the account.

(n) **STATE.**—The term “State” means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(o) **EXCLUDED COMMUNICATIONS.**—A communication is described in this subsection if it is a communication—

(1) that, but for subsection (d)(2)(D), would be an investigative consumer report;

(2) that is made to a prospective employer for the purpose of—

(A) procuring an employee for the employer; or

(B) procuring an opportunity for a natural person to work for the employer;

(3) that is made by a person who regularly performs such procurement;

(4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); and

(5) with respect to which—

(A) the consumer who is the subject of the communication—

(i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;

(ii) consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication—

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

(p) CONSUMER REPORTING AGENCY THAT COMPILES AND MAINTAINS FILES ON CONSUMERS ON A NATIONWIDE BASIS.—The term “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

(q) DEFINITIONS RELATING TO FRAUD ALERTS.—

(1) ACTIVE DUTY MILITARY CONSUMER.—The term “active duty military consumer” means a consumer in military service who—

- (A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and
- (B) is assigned to service away from the usual duty station of the consumer.
- (2) FRAUD ALERT; ACTIVE DUTY ALERT.—The terms “fraud alert” and “active duty alert” mean a statement in the file of a consumer that—
- (A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable; and
- (B) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) by any person requesting such consumer report.
- (3) IDENTITY THEFT.—The term “identity theft” means a fraud committed using the identifying information of another person, subject to such further definition as the Bureau may prescribe, by regulation.
- (4) IDENTITY THEFT REPORT.—The term “identity theft report” has the meaning given that term by rule of the Bureau, and means, at a minimum, a report—
- (A) that alleges an identity theft;
- (B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Bureau; and
- (C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.
- (5) NEW CREDIT PLAN.—The term “new credit plan” means a new account under an open end credit plan (as defined in section 103(i) of the Truth in Lending Act) or a new credit transaction not under an open end credit plan.
- (r) CREDIT AND DEBIT RELATED TERMS—
- (1) CARD ISSUER.—The term “card issuer” means—
- (A) a credit card issuer, in the case of a credit card; and
- (B) a debit card issuer, in the case of a debit card.
- (2) CREDIT CARD.—The term “credit card” has the same meaning as in section 103 of the Truth in Lending Act.
- (3) DEBIT CARD.—The term “debit card” means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.
- (4) ACCOUNT AND ELECTRONIC FUND TRANSFER.—The terms “account” and “electronic fund transfer” have the same meanings as in section 903 of the Electronic Fund Transfer Act.
- (5) CREDIT AND CREDITOR.—The terms “credit” and “creditor” have the same meanings as in section 702 of the Equal Credit Opportunity Act.

(s) FEDERAL BANKING AGENCY.—The term “Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(t) FINANCIAL INSTITUTION.—The term “financial institution” means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.

(u) RESELLER.—The term “reseller” means a consumer reporting agency that—

(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

(v) COMMISSION.—The term “Commission” means the Bureau.

(w) The term “Bureau” means the Bureau of Consumer Financial Protection.

(x) NATIONWIDE SPECIALTY CONSUMER REPORTING AGENCY.—The term “nationwide specialty consumer reporting agency” means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to—

- (1) medical records or payments;
- (2) residential or tenant history;
- (3) check writing history;
- (4) employment history; or
- (5) insurance claims.

(y) EXCLUSION OF CERTAIN COMMUNICATIONS FOR EMPLOYEE INVESTIGATIONS.—

(1) COMMUNICATIONS DESCRIBED IN THIS SUBSECTION.—A communication is described in this subsection if—

(A) but for subsection (d)(2)(D), the communication would be a consumer report;

(B) the communication is made to an employer in connection with an investigation of—

- (i) suspected misconduct relating to employment; or
- (ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

(C) the communication is not made for the purpose of investigating a consumer’s credit worthiness, credit standing, or credit capacity; and

(D) the communication is not provided to any person except—

- (i) to the employer or an agent of the employer;
- (ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;
- (iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;
- (iv) as otherwise required by law; or

(v) pursuant to section 608.

(2) **SUBSEQUENT DISCLOSURE.**—After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

(3) **SELF-REGULATORY ORGANIZATION DEFINED.**—For purposes of this subsection, the term “self-regulatory organization” includes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), any entity established under title I of the Sarbanes-Oxley Act of 2002, any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.

(z) **VETERAN.**—The term “veteran” has the meaning given the term in section 101 of title 38, United States Code.

(aa) **VETERAN’S MEDICAL DEBT.**—The term “veteran’s medical debt”—

(1) means a medical collection debt of a veteran owed to a non-Department of Veterans Affairs health care provider that was submitted to the Department for payment for health care authorized by the Department of Veterans Affairs; and

(2) includes medical collection debt that the Department of Veterans Affairs has wrongfully charged a veteran.

(bb) **EMPLOYEE AFFECTED BY A SHUTDOWN.**—*With respect to a shutdown, the term “employee affected by a shutdown” means a consumer who—*

(1) *is an employee of—*

(A) *the Federal Government, and who is furloughed or excepted from a furlough during the shutdown;*

(B) *the District of Columbia, and who is not receiving pay because of the shutdown; or*

(C) *a Federal contractor (as defined under section 7101 of title 41, United States Code) or other business, and who has experienced a substantial reduction in pay (directly or indirectly) due to the shutdown; and*

(2) *who—*

(A) *is listed in the database established under section 630; or*

(B) *has self-certified pursuant to such section.*

(cc) **SHUTDOWN.**—*The term “shutdown” means any period in which there is more than a 24-hour lapse in appropriations as a result of a failure to enact a regular appropriations bill or continuing resolution.*

(dd) **COVERED SHUTDOWN PERIOD.**—*The term “covered shutdown period” means, with respect to a shutdown, the period beginning on the first day of the shutdown and ending on the date that is 90 days after the last day of the shutdown.*

§ 604. Permissible purposes of reports

(a) IN GENERAL.—Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or

(F) otherwise has a legitimate business need for the information—

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

(G) executive departments and agencies in connection with the issuance of government-sponsored individually-billed travel charge cards.

(4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that—

(A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments, determining the appropriate level of such payments, or enforcing a child support order, award, agreement, or judgment;

(B) the parentage of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws); and

(C) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, ad-

ministrative, or criminal proceeding, or for any other purpose.

(5) To an agency administering a State plan under section 454 of the Social Security Act (42 U.S.C. 654) for use to set an initial or modified child support award.

(6) To the Federal Deposit Insurance Corporation or the National Credit Union Administration as part of its preparation for its appointment or as part of its exercise of powers, as conservator, receiver, or liquidating agent for an insured depository institution or insured credit union under the Federal Deposit Insurance Act or the Federal Credit Union Act, or other applicable Federal or State law, or in connection with the resolution or liquidation of a failed or failing insured depository institution or insured credit union, as applicable.

(b) CONDITIONS FOR FURNISHING AND USING CONSUMER REPORTS FOR EMPLOYMENT PURPOSES.—

(1) CERTIFICATION FROM USER.—A consumer reporting agency may furnish a consumer report for employment purposes only if—

(A) the person who obtains such report from the agency certifies to the agency that—

(i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and

(ii) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and

(B) the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer's rights under this title, as prescribed by the Bureau under section 609(c)(3).

(2) DISCLOSURE TO CONSUMER.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

(i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

(ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

(B) APPLICATION BY MAIL, TELEPHONE, COMPUTER, OR OTHER SIMILAR MEANS.—If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be procured in connection with that application—

(i) the person who procures the consumer report on the consumer for employment purposes shall provide

to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer's rights under section 615(a)(3); and

(ii) the consumer shall have consented, orally, in writing, or electronically to the procurement of the report by that person.

(C) SCOPE.—Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if—

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(3) CONDITIONS ON USE FOR ADVERSE ACTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates—

(i) a copy of the report; and

(ii) a description in writing of the rights of the consumer under this title, as prescribed by the Bureau under section 609(c)(3).

(B) APPLICATION BY MAIL, TELEPHONE, COMPUTER, OR OTHER SIMILAR MEANS.—

(i) If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, and if a person who has procured a consumer report on the consumer for employment purposes takes adverse action on the employment application based in whole or in part on the report, then the person must provide to the consumer to whom the report relates, in lieu of the notices required under subparagraph (A) of this section and under section 615(a), within 3 business days of taking such action, an oral, written or electronic notification—

(I) that adverse action has been taken based in whole or in part on a consumer report received from a consumer reporting agency;

(II) of the name, address and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis);

(III) that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; and

(IV) that the consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.

(ii) If, under clause (B)(i)(IV), the consumer requests a copy of a consumer report from the person who procured the report, then, within 3 business days of receiving the consumer's request, together with proper identification, the person must send or provide to the consumer a copy of a report and a copy of the consumer's rights as prescribed by the Bureau under section 609(c)(3).

(C) SCOPE.—Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if—

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(4) EXCEPTION FOR NATIONAL SECURITY INVESTIGATIONS.—

(A) IN GENERAL.—In the case of an agency or department of the United States Government which seeks to obtain and use a consumer report for employment purposes, paragraph (3) shall not apply to any adverse action by such agency or department which is based in part on such consumer report, if the head of such agency or department makes a written finding that—

(i) the consumer report is relevant to a national security investigation of such agency or department;

(ii) the investigation is within the jurisdiction of such agency or department;

(iii) there is reason to believe that compliance with paragraph (3) will—

(I) endanger the life or physical safety of any person;

(II) result in flight from prosecution;

(III) result in the destruction of, or tampering with, evidence relevant to the investigation;

(IV) result in the intimidation of a potential witness relevant to the investigation;

(V) result in the compromise of classified information; or

(VI) otherwise seriously jeopardize or unduly delay the investigation or another official proceeding.

(B) NOTIFICATION OF CONSUMER UPON CONCLUSION OF INVESTIGATION.—Upon the conclusion of a national security investigation described in subparagraph (A), or upon the determination that the exception under subparagraph (A) is no longer required for the reasons set forth in such subparagraph, the official exercising the authority in such subparagraph shall provide to the consumer who is the subject of the consumer report with regard to which such finding was made—

- (i) a copy of such consumer report with any classified information redacted as necessary;
- (ii) notice of any adverse action which is based, in part, on the consumer report; and
- (iii) the identification with reasonable specificity of the nature of the investigation for which the consumer report was sought.

(C) DELEGATION BY HEAD OF AGENCY OR DEPARTMENT.—For purposes of subparagraphs (A) and (B), the head of any agency or department of the United States Government may delegate his or her authorities under this paragraph to an official of such agency or department who has personnel security responsibilities and is a member of the Senior Executive Service or equivalent civilian or military rank.

(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

- (i) CLASSIFIED INFORMATION.—The term “classified information” means information that is protected from unauthorized disclosure under Executive Order No. 12958 or successor orders.
- (ii) NATIONAL SECURITY INVESTIGATION.—The term “national security investigation” means any official inquiry by an agency or department of the United States Government to determine the eligibility of a consumer to receive access or continued access to classified information or to determine whether classified information has been lost or compromised.

(c) FURNISHING REPORTS IN CONNECTION WITH CREDIT OR INSURANCE TRANSACTIONS THAT ARE NOT INITIATED BY THE CONSUMER.—

(1) IN GENERAL.—A consumer reporting agency may furnish a consumer report relating to any consumer pursuant to subparagraph (A) or (C) of subsection (a)(3) in connection with any credit or insurance transaction that is not initiated by the consumer only if—

- (A) the consumer authorizes the agency to provide such report to such person; or
- (B)(i) the transaction consists of a firm offer of credit or insurance;
- (ii) the consumer reporting agency has complied with subsection (e);

(iii) there is not in effect an election by the consumer, made in accordance with subsection (e), to have the consumer's name and address excluded from lists of names provided by the agency pursuant to this paragraph; and

(iv) the consumer report does not contain a date of birth that shows that the consumer has not attained the age of 21, or, if the date of birth on the consumer report shows that the consumer has not attained the age of 21, such consumer consents to the consumer reporting agency to such furnishing.

(2) LIMITS ON INFORMATION RECEIVED UNDER PARAGRAPH (1)(B).—A person may receive pursuant to paragraph (1)(B) only—

(A) the name and address of a consumer;

(B) an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and

(C) other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.

(3) INFORMATION REGARDING INQUIRIES.—Except as provided in section 609(a)(5), a consumer reporting agency shall not furnish to any person a record of inquiries in connection with a credit or insurance transaction that is not initiated by a consumer.

(d) RESERVED.—

(e) ELECTION OF CONSUMER TO BE EXCLUDED FROM LISTS.—

(1) IN GENERAL.—A consumer may elect to have the consumer's name and address excluded from any list provided by a consumer reporting agency under subsection (c)(1)(B) in connection with a credit or insurance transaction that is not initiated by the consumer by notifying the agency in accordance with paragraph (2) that the consumer does not consent to any use of a consumer report relating to the consumer in connection with any credit or insurance transaction that is not initiated by the consumer.

(2) MANNER OF NOTIFICATION.—A consumer shall notify a consumer reporting agency under paragraph (1)—

(A) through the notification system maintained by the agency under paragraph (5); or

(B) by submitting to the agency a signed notice of election form issued by the agency for purposes of this subparagraph.

(3) RESPONSE OF AGENCY AFTER NOTIFICATION THROUGH SYSTEM.—Upon receipt of notification of the election of a consumer under paragraph (1) through the notification system maintained by the agency under paragraph (5), a consumer reporting agency shall—

(A) inform the consumer that the election is effective only for the 5-year period following the election if the consumer does not submit to the agency a signed notice of election form issued by the agency for purposes of paragraph (2)(B); and

(B) provide to the consumer a notice of election form, if requested by the consumer, not later than 5 business days

after receipt of the notification of the election through the system established under paragraph (5), in the case of a request made at the time the consumer provides notification through the system.

(4) EFFECTIVENESS OF ELECTION.—An election of a consumer under paragraph (1)—

(A) shall be effective with respect to a consumer reporting agency beginning 5 business days after the date on which the consumer notifies the agency in accordance with paragraph (2);

(B) shall be effective with respect to a consumer reporting agency—

(i) subject to subparagraph (C), during the 5-year period beginning 5 business days after the date on which the consumer notifies the agency of the election, in the case of an election for which a consumer notifies the agency only in accordance with paragraph (2)(A); or

(ii) until the consumer notifies the agency under subparagraph (C), in the case of an election for which a consumer notifies the agency in accordance with paragraph (2)(B);

(C) shall not be effective after the date on which the consumer notifies the agency, through the notification system established by the agency under paragraph (5), that the election is no longer effective; and

(D) shall be effective with respect to each affiliate of the agency.

(5) NOTIFICATION SYSTEM.—

(A) IN GENERAL.—Each consumer reporting agency that, under subsection (c)(1)(B), furnishes a consumer report in connection with a credit or insurance transaction that is not initiated by a consumer shall—

(i) establish and maintain a notification system, including a toll-free telephone number, which permits any consumer whose consumer report is maintained by the agency to notify the agency, with appropriate identification, of the consumer's election to have the consumer's name and address excluded from any such list of names and addresses provided by the agency for such a transaction; and

(ii) publish by not later than 365 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996, and not less than annually thereafter, in a publication of general circulation in the area served by the agency—

(I) a notification that information in consumer files maintained by the agency may be used in connection with such transactions; and

(II) the address and toll-free telephone number for consumers to use to notify the agency of the consumer's election under clause (i).

(B) ESTABLISHMENT AND MAINTENANCE AS COMPLIANCE.—Establishment and maintenance of a notification system (including a toll-free telephone number) and publi-

cation by a consumer reporting agency on the agency's own behalf and on behalf of any of its affiliates in accordance with this paragraph is deemed to be compliance with this paragraph by each of those affiliates.

(6) NOTIFICATION SYSTEM BY AGENCIES THAT OPERATE NATIONWIDE.—Each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system for purposes of paragraph (5) jointly with other such consumer reporting agencies.

(f) CERTAIN USE OR OBTAINING OF INFORMATION PROHIBITED.—A person shall not use or obtain a consumer report for any purpose unless—

(1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and

(2) the purpose is certified in accordance with section 607 by a prospective user of the report through a general or specific certification.

(g) PROTECTION OF MEDICAL INFORMATION.—

(1) LIMITATION ON CONSUMER REPORTING AGENCIES.—A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information (other than medical contact information treated in the manner required under section 605(a)(6)) about a consumer, unless—

(A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

(B) if furnished for employment purposes or in connection with a credit transaction—

(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

(C) the information to be furnished pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devices, where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices, as provided in section 605(a)(6).

(2) LIMITATION ON CREDITORS.—Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information (other than medical information treated in the manner required under section 605(a)(6)) pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.

(3) ACTIONS AUTHORIZED BY FEDERAL LAW, INSURANCE ACTIVITIES AND REGULATORY DETERMINATIONS.—Section 603(d)(3)

shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed—

(A) in connection with the business of insurance or annuities, including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);

(B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act, or described in section 502(e) of Public Law 106–102; or

(C) as otherwise determined to be necessary and appropriate, by regulation or order, by the Bureau or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).

(4) **LIMITATION ON REDISCLOSURE OF MEDICAL INFORMATION.**—Any person that receives medical information pursuant to paragraph (1) or (3) shall not disclose such information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

(5) **REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).**—

(A) **REGULATIONS REQUIRED.**—The Bureau may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

(6) **COORDINATION WITH OTHER LAWS.**—No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

(h) PROHIBITION ON ADVERSE ACTIONS AGAINST EMPLOYEES AFFECTED BY A SHUTDOWN.—*If a user of a consumer report knows that a consumer is an employee affected by a shutdown, such user may not take an adverse action based on—*

(1) any adverse item of information contained in such report with respect to an action or inaction taken during a covered shutdown period by the employee; or

(2) information on the consumer included in the database established under section 630.

§ 605. Requirements relating to information contained in consumer reports

(a) **INFORMATION EXCLUDED FROM CONSUMER REPORTS.**—Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Cases under title 11 of the United States Code or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.

(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.

(7) With respect to a consumer reporting agency described in section 603(p), any information related to a veteran's medical debt if the date on which the hospital care, medical services, or extended care services was rendered relating to the debt antedates the report by less than 1 year if the consumer reporting agency has actual knowledge that the information is related to a veteran's medical debt and the consumer reporting agency is in compliance with its obligation under section 302(c)(5) of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

(8) With respect to a consumer reporting agency described in section 603(p), any information related to a fully paid or settled veteran's medical debt that had been characterized as delinquent, charged off, or in collection if the consumer reporting agency has actual knowledge that the information is related to a veteran's medical debt and the consumer reporting agency is in compliance with its obligation under section 302(c)(5) of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

(9) *Any adverse item of information with respect to an action or inaction taken during a covered shutdown period by an employee affected by a shutdown.*

(b) The provisions of paragraphs (1) through (5) of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$150,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$150,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$75,000, or more.

(c) RUNNING OF REPORTING PERIOD.—

(1) IN GENERAL.—The 7-year period referred to in paragraphs (4) and (6) of subsection (a) shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action.

(2) EFFECTIVE DATE.—Paragraph (1) shall apply only to items of information added to the file of a consumer on or after the date that is 455 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996.

(d) INFORMATION REQUIRED TO BE DISCLOSED.—

(1) TITLE 11 INFORMATION.—Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under title 11, United States Code, shall include in the report an identification of the chapter of such title 11 under which such case arises if provided by the source of the information. If any case arising or filed under title 11, United States Code, is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.

(2) KEY FACTOR IN CREDIT SCORE INFORMATION.—Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 609(f)(2)(B)) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score. This paragraph shall not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, but only to the extent that such company is engaged in such activities.

(e) INDICATION OF CLOSURE OF ACCOUNT BY CONSUMER.—If a consumer reporting agency is notified pursuant to section 623(a)(4) that a credit account of a consumer was voluntarily closed by the consumer, the agency shall indicate that fact in any consumer report that includes information related to the account.

(f) INDICATION OF DISPUTE BY CONSUMER.—If a consumer reporting agency is notified pursuant to section 623(a)(3) that information regarding a consumer who was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

(g) TRUNCATION OF CREDIT CARD AND DEBIT CARD NUMBERS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

(2) LIMITATION.—This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(3) EFFECTIVE DATE.—This subsection shall become effective—

(A) 3 years after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(B) 1 year after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

(h) NOTICE OF DISCREPANCY IN ADDRESS.—

(1) IN GENERAL.—If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

(2) REGULATIONS.—

(A) REGULATIONS REQUIRED.—The Bureau shall, in consultation with the Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission,, prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

(B) POLICIES AND PROCEDURES TO BE INCLUDED.—The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report—

(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the address of the consumer with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of in-

formation regularly furnished by the user for the period in which the relationship is established.

* * * * *

§ 609. Disclosures to consumers

(a) Every consumer reporting agency shall, upon request, and subject to section 610(a)(1), clearly and accurately disclose to the consumer:

(1) All information in the consumer's file at the time of the request, except that—

(A) if the consumer to whom the file relates requests that the first 5 digits of the social security number (or similar identification number) of the consumer not be included in the disclosure and the consumer reporting agency has received appropriate proof of the identity of the requester, the consumer reporting agency shall so truncate such number in such disclosure; and

(B) nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3)(A) Identification of each person (including each end-user identified under section 607(e)(1)) that procured a consumer report—

(i) for employment purposes, during the 2-year period preceding the date on which the request is made; or

(ii) for any other purpose, during the 1-year period preceding the date on which the request is made.

(B) An identification of a person under subparagraph (A) shall include—

(i) the name of the person or, if applicable, the trade name (written in full) under which such person conducts business; and

(ii) upon request of the consumer, the address and telephone number of the person.

(C) Subparagraph (A) does not apply if—

(i) the end user is an agency or department of the United States Government that procures the report from the person for purposes of determining the eligibility of the consumer to whom the report relates to receive access or continued access to classified information (as defined in section 604(b)(4)(E)(i)); and

(ii) the head of the agency or department makes a written finding as prescribed under section 604(b)(4)(A).

(4) The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.

(5) A record of all inquiries received by the agency during the 1-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

(6) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.

(7) *Information on the rights of an employee affected by a shutdown, including which consumers may be an employee affected by a shutdown and the process for a consumer to self-certify as an employee affected by a shutdown under section 630.*

(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

(c) SUMMARY OF RIGHTS TO OBTAIN AND DISPUTE INFORMATION IN CONSUMER REPORTS AND TO OBTAIN CREDIT SCORES.—

(1) COMMISSION SUMMARY OF RIGHTS REQUIRED.—

(A) IN GENERAL.—The Commission shall prepare a model summary of the rights of consumers under this title.

(B) CONTENT OF SUMMARY.—The summary of rights prepared under subparagraph (A) shall include a description of—

(i) the right of a consumer to obtain a copy of a consumer report under subsection (a) from each consumer reporting agency;

(ii) the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge under section 612;

(iii) the right of a consumer to dispute information in the file of the consumer under section 611;

(iv) the right of a consumer to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score;

(v) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge, as provided in the regulations of the Bureau prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and

(vi) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 603(w), as provided in the regulations of the Bureau prescribed under section 612(a)(1)(C).

(C) AVAILABILITY OF SUMMARY OF RIGHTS.—The Commission shall—

(i) actively publicize the availability of the summary of rights prepared under this paragraph;

(ii) conspicuously post on its Internet website the availability of such summary of rights; and

(iii) promptly make such summary of rights available to consumers, on request.

(2) SUMMARY OF RIGHTS REQUIRED TO BE INCLUDED WITH AGENCY DISCLOSURES.—A consumer reporting agency shall provide to a consumer, with each written disclosure by the agency to the consumer under this section—

(A) the summary of rights prepared by the Bureau under paragraph (1);

(B) in the case of a consumer reporting agency described in section 603(p), a toll-free telephone number established by the agency, at which personnel are accessible to consumers during normal business hours;

(C) a list of all Federal agencies responsible for enforcing any provision of this title, and the address and any appropriate phone number of each such agency, in a form that will assist the consumer in selecting the appropriate agency;

(D) a statement that the consumer may have additional rights under State law, and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general (or the equivalent thereof) to learn of those rights; and

(E) a statement that a consumer reporting agency is not required to remove accurate derogatory information from the file of a consumer, unless the information is outdated under section 605 or cannot be verified.

(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.—

(1) IN GENERAL.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor.

(2) SUMMARY OF RIGHTS AND CONTACT INFORMATION.—Beginning 60 days after the date on which the model summary of rights is prescribed in final form by the Bureau pursuant to paragraph (1), if any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor, the consumer reporting agency shall, in addition to any other action that the agency may take, provide the consumer with a summary of rights that contains all of the information required by the Bureau under paragraph (1), and information on how to contact the Bureau to obtain more detailed information.

(e) INFORMATION AVAILABLE TO VICTIMS.—

(1) IN GENERAL.—For the purpose of documenting fraudulent transactions resulting from identity theft, not later than 30 days after the date of receipt of a request from a victim in accordance with paragraph (3), and subject to verification of the identity of the victim and the claim of identity theft in accordance with paragraph (2), a business entity that has provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has

allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to—

(A) the victim;

(B) any Federal, State, or local government law enforcement agency or officer specified by the victim in such a request; or

(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection.

(2) VERIFICATION OF IDENTITY AND CLAIM.—Before a business entity provides any information under paragraph (1), unless the business entity, at its discretion, otherwise has a high degree of confidence that it knows the identity of the victim making a request under paragraph (1), the victim shall provide to the business entity—

(A) as proof of positive identification of the victim, at the election of the business entity—

(i) the presentation of a government-issued identification card;

(ii) personally identifying information of the same type as was provided to the business entity by the unauthorized person; or

(iii) personally identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including any documentation described in clauses (i) and (ii); and

(B) as proof of a claim of identity theft, at the election of the business entity—

(i) a copy of a police report evidencing the claim of the victim of identity theft; and

(ii) a properly completed—

(I) copy of a standardized affidavit of identity theft developed and made available by the Bureau; or

(II) an affidavit of fact that is acceptable to the business entity for that purpose.

(3) PROCEDURES.—The request of a victim under paragraph (1) shall—

(A) be in writing;

(B) be mailed to an address specified by the business entity, if any; and

(C) if asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft to facilitate compliance with this section including—

(i) if known by the victim (or if readily obtainable by the victim), the date of the application or transaction; and

(ii) if known by the victim (or if readily obtainable by the victim), any other identifying information such as an account or transaction number.

(4) NO CHARGE TO VICTIM.—Information required to be provided under paragraph (1) shall be so provided without charge.

(5) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information under paragraph (1) if, in the exercise of good faith, the business entity determines that—

(A) this subsection does not require disclosure of the information;

(B) after reviewing the information provided pursuant to paragraph (2), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;

(C) the request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for information; or

(D) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.

(6) LIMITATION ON LIABILITY.—Except as provided in section 621, sections 616 and 617 do not apply to any violation of this subsection.

(7) LIMITATION ON CIVIL LIABILITY.—No business entity may be held civilly liable under any provision of Federal, State, or other law for disclosure, made in good faith pursuant to this subsection.

(8) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this subsection creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

(9) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—No provision of subtitle A of title V of Public Law 106–102, prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this subsection.

(B) LIMITATION.—Except as provided in subparagraph (A), nothing in this subsection permits a business entity to disclose information, including information to law enforcement under subparagraphs (B) and (C) of paragraph (1), that the business entity is otherwise prohibited from disclosing under any other applicable provision of Federal or State law.

(10) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this subsection, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

(A) the business entity has made a reasonably diligent search of its available business records; and

(B) the records requested under this subsection do not exist or are not reasonably available.

(11) DEFINITION OF VICTIM.—For purposes of this subsection, the term “victim” means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer, with the intent to commit, or to aid or abet, an identity theft or a similar crime.

(12) EFFECTIVE DATE.—This subsection shall become effective 180 days after the date of enactment of this subsection.

(13) EFFECTIVENESS STUDY.—Not later than 18 months after the date of enactment of this subsection, the Comptroller General of the United States shall submit a report to Congress assessing the effectiveness of this provision.

(f) DISCLOSURE OF CREDIT SCORES.—

(1) IN GENERAL.—Upon the request of a consumer for a credit score, a consumer reporting agency shall supply to the consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include—

(A) the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;

(B) the range of possible credit scores under the model used;

(C) all of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4, subject to paragraph (9);

(D) the date on which the credit score was created; and

(E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.

(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) CREDIT SCORE.—The term “credit score”—

(i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a “risk predictor” or “risk score”); and

(ii) does not include—

(I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or

(II) any other elements of the underwriting process or underwriting decision.

(B) KEY FACTORS.—The term “key factors” means all relevant elements or reasons adversely affecting the credit

- score for the particular individual, listed in the order of their importance based on their effect on the credit score.
- (3) TIMEFRAME AND MANNER OF DISCLOSURE.—The information required by this subsection shall be provided in the same timeframe and manner as the information described in subsection (a).
- (4) APPLICABILITY TO CERTAIN USES.—This subsection shall not be construed so as to compel a consumer reporting agency to develop or disclose a score if the agency does not—
- (A) distribute scores that are used in connection with residential real property loans; or
 - (B) develop scores that assist credit providers in understanding the general credit behavior of a consumer and predicting the future credit behavior of the consumer.
- (5) APPLICABILITY TO CREDIT SCORES DEVELOPED BY ANOTHER PERSON.—
- (A) IN GENERAL.—This subsection shall not be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of them, or to process a dispute arising pursuant to section 611, except that the consumer reporting agency shall provide the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score.
 - (B) EXCEPTION.—This paragraph shall not apply to a consumer reporting agency that develops or modifies scores that are developed by another person or entity.
- (6) MAINTENANCE OF CREDIT SCORES NOT REQUIRED.—This subsection shall not be construed to require a consumer reporting agency to maintain credit scores in its files.
- (7) COMPLIANCE IN CERTAIN CASES.—In complying with this subsection, a consumer reporting agency shall—
- (A) supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer; and
 - (B) a statement indicating that the information and credit scoring model may be different than that used by the lender.
- (8) FAIR AND REASONABLE FEE.—A consumer reporting agency may charge a fair and reasonable fee, as determined by the Bureau, for providing the information required under this subsection.
- (9) USE OF ENQUIRIES AS A KEY FACTOR.—If a key factor that adversely affects the credit score of a consumer consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to paragraph (1)(C) without regard to the numerical limitation in such paragraph.

(g) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.—

(1) IN GENERAL.—Any person who makes or arranges loans and who uses a consumer credit score, as defined in subsection (f), in connection with an application initiated or sought by a consumer for a closed end loan or the establishment of an open end loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter in this subsection referred to as the “lender”) shall provide the following to the consumer as soon as reasonably practicable:

(A) INFORMATION REQUIRED UNDER SUBSECTION (f).—

(i) IN GENERAL.—A copy of the information identified in subsection (f) that was obtained from a consumer reporting agency or was developed and used by the user of the information.

(ii) NOTICE UNDER SUBPARAGRAPH (D).—In addition to the information provided to it by a third party that provided the credit score or scores, a lender is only required to provide the notice contained in subparagraph (D).

(B) DISCLOSURES IN CASE OF AUTOMATED UNDERWRITING SYSTEM.—

(i) IN GENERAL.—If a person that is subject to this subsection uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(ii) NUMERICAL CREDIT SCORE.—However, if a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person, the score shall be disclosed to the consumer consistent with subparagraph (C).

(iii) ENTERPRISE DEFINED.—For purposes of this subparagraph, the term “enterprise” has the same meaning as in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(C) DISCLOSURES OF CREDIT SCORES NOT OBTAINED FROM A CONSUMER REPORTING AGENCY.—A person that is subject to the provisions of this subsection and that uses a credit score, other than a credit score provided by a consumer reporting agency, may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(D) NOTICE TO HOME LOAN APPLICANTS.—A copy of the following notice, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used:”.

(E) ACTIONS NOT REQUIRED UNDER THIS SUBSECTION.—This subsection shall not require any person to—

(i) explain the information provided pursuant to subsection (f);

- (ii) disclose any information other than a credit score or key factors, as defined in subsection (f);
- (iii) disclose any credit score or related information obtained by the user after a loan has closed;
- (iv) provide more than 1 disclosure per loan transaction; or
- (v) provide the disclosure required by this subsection when another person has made the disclosure to the consumer for that loan transaction.

(F) NO OBLIGATION FOR CONTENT.—

(i) IN GENERAL.—The obligation of any person pursuant to this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency.

(ii) LIMIT ON LIABILITY.—No person has liability under this subsection for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.

(G) PERSON DEFINED AS EXCLUDING ENTERPRISE.—As used in this subsection, the term “person” does not include an enterprise (as defined in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).

(2) PROHIBITION ON DISCLOSURE CLAUSES NULL AND VOID.—

(A) IN GENERAL.—Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void.

(B) NO LIABILITY FOR DISCLOSURE UNDER THIS SUBSECTION.—A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to this subsection.

* * * * *

§ 630. Database and self-certification for employees affected by a shutdown

(a) DATABASE.—

(1) IN GENERAL.—With respect to each shutdown, the consumer reporting agencies described in section 603(p) shall jointly establish a database that includes employees affected by the shutdown as reported pursuant to paragraph (2).

(2) CONTENTS OF DATABASE.—

(A) FURLOUGHED EMPLOYEES AND CONTRACTORS.—Each authority of the executive, legislative, or judicial branch of the Federal Government or District of Columbia shall provide to the consumer reporting agencies described in section 603(p) a list identifying—

(i) employees of such authority that are furloughed, excepted from furlough, or not receiving pay because of a shutdown; and

(ii) to the extent practicable, employees of contractors of such authority.

(B) SELF-CERTIFIED CONSUMERS.—A consumer that self-certifies as an employee affected by a shutdown pursuant to subsection (b) shall be included in the database, unless the

Bureau determines such consumer is not an employee affected by a shutdown.

(3) *ACCESS TO DATABASE.—The consumer reporting agencies described in section 603(p) shall make the database established under this subsection available to the Bureau, other consumer reporting agencies, furnishers of information to consumer reporting agencies, and users of consumer reports. A consumer reporting agency described in section 603(x) shall periodically access the database to confirm the accuracy of information such an agency has that identifies a consumer as an employee affected by a shutdown.*

(b) *SELF-CERTIFICATION PROCESS.—A consumer shall be deemed to be an employee affected by a shutdown if such consumer self-certifies through—*

(1) the website established under subsection (c); or

(2) a toll-free telephone number established by a consumer reporting agency.

(c) *WEBSITE.—The consumer reporting agencies described in section 603(p) shall jointly establish a website for a consumer to self-certify as an employee affected by a shutdown. Such website may not include any advertisement or other solicitation.*

MINORITY VIEWS

H.R. 4328 forces federal employees and others to keep their personal information in a new government-created database that has no safeguards to protect that information.

This bill requires the three largest credit rating agencies to create and populate a database with information identifying consumers who may be struggling to make ends meet because of a government shutdown.

- The legislation does not permit an opt-in, nor does it allow federal employees, contractors, or other individuals impacted by a shutdown to opt-out of having their personal information included in this database.

- This new database would be accessible to potentially thousands of entities, including “furnishers of information to consumer reporting agencies” and “users of consumer reports.” The bill fails to define these terms.

- Committee Republicans are concerned this database, paired with broad language on which entity can access this database, could result in these consumers being targeted with predatory financial products and services.

H.R. 4328 fails to establish minimum safeguards that would protect the personal information from unplanned or unauthorized uses.

- Previous breaches of financial entities demonstrate the industry is a target.

- Committee Republicans are concerned that the lack of privacy and security safeguards included in this bill leaves the names of millions of federal employees, contractors, and other individuals who self-certify to be vulnerable to a breach.

The legislation permits individuals to self-certify if they believe they have been harmed by a federal government shutdown.

- Without a mechanism to determine who has actually been harmed by a shutdown, the bill could have additional negative consequences on underwriting standards. This may further limit access to credit for those who need it most.

Republicans offered two commonsense amendments during Committee markup that would have mitigated the risks created by the bill—both amendments were rejected by Democrats.

- Rep. Tipton offered an amendment to limit the bill’s scope to consumers who are directly impacted by a federal government shutdown.

- The amendment would have helped to prevent abuse and fraud, while also preserving underwriting standards.

- Rep. Riggleman offered an amendment to replace the bill’s text with H.R. 2290, the *Shutdown Guidance for Financial Institutions Act*.

- H.R. 2290 is a productive, measured, and bipartisan approach to the financial difficulties facing federal employees impacted by a government shutdown.

- H.R. 2290 codifies practices already utilized by financial regulators and institutions. For example, during the most recent government shutdown, more than 100 banks offered customers loan modifications, payment deadline extensions, payroll advances, or low- or zero-interest rate loans, to protect individuals affected by the shutdown.

- This past January, in a joint press conference, the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Federal Reserve Board of Governors, Consumer Financial Protection Bureau, and Conference of State Bank Supervisors came together to encourage institutions to work with consumers who were negatively impacted by the shutdown.

Ironically, one day after the Committee considered H.R. 4328 and rejected H.R. 2290 as an amendment in committee, the House unanimously passed H.R. 2290, the Shutdown Guidance for Financial Institutions Act. Committee Republicans supported passage of the *Shutdown Guidance for Financial Institutions Act* and will continue to ensure that consumers impacted by a federal government shutdown receive the support they need.

Republicans oppose H.R. 4328 and the creation of a new, unsecure database that creates an environment ripe for fraud and abuse.

ROGER WILLIAMS.
 BARRY LOUDERMILK.
 TREY HOLLINGSWORTH.
 LANCE GOODEN.
 DAVID KUSTOFF.
 WILLIAM R. TIMMONS, IV.
 SCOTT R. TIPTON.
 WARREN DAVIDSON.
 DENVER RIGGLEMAN.
 ANDY BARR.
 ANN WAGNER.
 BLAINE LUETKEMEYER.
 ALEXANDER X. MOONEY.
 JOHN W. ROSE.
 STEVE STIVERS.
 J. FRENCH HILL.
 VAN TAYLOR.
 TOM EMMER.
 TED BUDD.
 BRYAN STEIL.
 ANTHONY GONZALEZ.
 FRANK D. LUCAS.
 LEE M. ZELDIN.
 BILL HUIZENGA.
 BILL POSEY.

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PATRICK T. MCHENRY.

