

112TH CONGRESS
1ST SESSION

H. R. 653

To amend the Gramm-Leach-Bliley Act to improve regulations dealing with the disclosure by financial institutions of nonpublic personal information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2011

Ms. SPEIER (for herself, Mr. HASTINGS of Florida, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Gramm-Leach-Bliley Act to improve regulations dealing with the disclosure by financial institutions of nonpublic personal information, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Information
5 Privacy Act of 2011”.

1 **SEC. 2. OBLIGATIONS WITH RESPECT TO DISCLOSURE OF**
2 **PERSONAL INFORMATION.**

3 (a) IN GENERAL.—The Gramm-Leach-Bliley Act is
4 amended—

5 (1) in section 501(b)—

6 (A) in paragraph (1), by inserting after
7 “security” the following: “, integrity,”; and

8 (B) in paragraph (2), by striking “or in-
9 tegrity” and inserting “, integrity, or confiden-
10 tiality”;

11 (2) by striking section 502 and inserting the
12 following new sections:

13 **“SEC. 502. OBLIGATIONS WITH RESPECT TO DISCLOSURES**
14 **OF PERSONAL INFORMATION TO NON-**
15 **AFFILIATED THIRD PARTIES.**

16 “(a) NOTICE REQUIREMENT.—Except as otherwise
17 provided in this subtitle, a financial institution may not,
18 directly or through any affiliate, disclose to a nonaffiliated
19 third party any nonpublic personal information, unless
20 such financial institution provides or has provided to the
21 consumer a notice that complies with section 503.

22 “(b) OPT IN BEFORE DISCLOSURE IS PERMITTED.—
23 A financial institution may not disclose nonpublic personal
24 information to a nonaffiliated third party unless the finan-
25 cial institution has obtained the express consent of the
26 consumer on an express consent form that—

1 “(1) complies with the requirements of sub-
2 section (e); and

3 “(2) authorizes the financial institution to dis-
4 close or share the nonpublic personal information.

5 “(c) NON-DISCRIMINATORY TREATMENT.—

6 “(1) IN GENERAL.—A financial institution shall
7 not discriminate against a consumer or deny an oth-
8 erwise qualified consumer a financial product or
9 service or offer a financial product or service on less
10 favorable terms and conditions, except as permitted
11 in subsection (d), because the consumer has not pro-
12 vided the express consent described under subsection
13 (b).

14 “(2) EXCEPTION.—With respect to a consumer
15 who has not provided a financial institution with the
16 express consent described under subsection (b)—

17 “(A) nothing in this section shall prohibit
18 such institution from denying the consumer a
19 financial product or service if the institution
20 can not provide such product or service to the
21 consumer without such express consent; and

22 “(B) such institution shall not be required
23 to offer a financial product or service to the
24 customer if such product or service cannot be

1 offered to the consumer without such express
2 consent.

3 “(d) INCENTIVES AND DISCOUNTS PERMITTED.—
4 Nothing in this section shall be construed to prohibit a
5 financial institution from offering reasonable incentives or
6 discounts in exchange for a consumer providing the ex-
7 press consent described under subsection (b).

8 “(e) CONSENT FORM REQUIREMENTS.—An express
9 consent form complies with the requirements of this sub-
10 section if it meets the following criteria:

11 “(1) It is a separate document, not attached to
12 any other document.

13 “(2) It is dated and signed by the consumer.

14 “(3) It clearly and conspicuously discloses that
15 by signing, the consumer is consenting to the disclo-
16 sure to nonaffiliated third parties of nonpublic per-
17 sonal information pertaining to the consumer.

18 “(4) It clearly and conspicuously discloses—

19 “(A) that the consent will remain in effect
20 until revoked by the consumer;

21 “(B) that the consumer may revoke the
22 consent at any time; and

23 “(C) the procedure for the consumer to re-
24 voke consent.

1 “(5) It clearly and conspicuously informs the
2 consumer that—

3 “(A) the financial institution will maintain
4 the form or a true and correct copy;

5 “(B) the consumer is entitled to a copy of
6 the form upon request; and

7 “(C) the consumer may want to make a
8 copy of the document for the consumer’s
9 records.

10 “(6) Such other criteria as the Bureau of Con-
11 sumer Financial Protection may determine appro-
12 priate.

13 “(f) PREEXISTING CONTRACTS.—Notwithstanding
14 the prohibition under subsection (a), until January 1,
15 2012, a financial institution may disclose nonpublic per-
16 sonal information to a nonaffiliated financial institution
17 pursuant to a preexisting contract with the nonaffiliated
18 financial institution for purposes of offering a financial
19 product or service, if such contract was entered into on
20 or before January 1, 2011.

21 “(g) LIMITATION ON THE SHARING OF ACCOUNT
22 NUMBER INFORMATION FOR MARKETING PURPOSES.—A
23 financial institution shall not disclose, other than to a con-
24 sumer reporting agency, an account number or similar
25 form of access number or access code for a credit card

1 account, debit card account, deposit account, or other
2 transaction account of a consumer to any nonaffiliated
3 third party for use in telemarketing, direct mail mar-
4 keting, or other marketing through electronic mail to the
5 consumer.

6 **“SEC. 502A. OBLIGATIONS WITH RESPECT TO DISCLOSURES**
7 **OF PERSONAL INFORMATION TO AFFILIATES.**

8 “(a) NOTICE REQUIREMENT.—A financial institution
9 may not disclose a consumer’s nonpublic personal informa-
10 tion to an affiliate, or share such information with an affil-
11 iate, unless—

12 “(1) the financial institution has notified the
13 consumer, in the disclosure described under section
14 503(a), that the nonpublic personal information may
15 be disclosed to, or shared with, an affiliate of the fi-
16 nancial institution; and

17 “(2) the consumer has not directed that the
18 nonpublic personal information not be disclosed or
19 shared.

20 “(b) EXCEPTIONS.—

21 “(1) COMMON SYSTEMS EXCLUSION.—For pur-
22 poses of this section, a financial institution shall not
23 be deemed to have disclosed information to, or
24 shared information with, an affiliate merely be-
25 cause—

1 “(A) such information is—

2 “(i) maintained in common informa-
3 tion systems or databases, where employ-
4 ees of the financial institution and its affil-
5 iate have access to those common informa-
6 tion systems or databases; and

7 “(ii) subject to reasonable access con-
8 trols consistent with whether or not the
9 consumer has directed that the consumer’s
10 nonpublic personal information not be dis-
11 closed to affiliates; or

12 “(B) a consumer accesses a website jointly
13 operated or maintained by or on behalf of the
14 financial institution and its affiliate.

15 “(2) JOINT OFFERINGS WITH A NON-
16 AFFILIATED FINANCIAL INSTITUTION.—The prohibi-
17 tion under subsection (a) shall not apply to the re-
18 lease of a consumer’s nonpublic personal information
19 by a financial institution with whom the consumer
20 has a relationship to a nonaffiliated financial institu-
21 tion for purposes of jointly offering to the consumer
22 a financial product or service if the following re-
23 quirements are met:

24 “(A) The financial product or service is a
25 product or service of, and is provided by, at

1 least one of the financial institutions that is a
2 party to the written agreement described under
3 subparagraph (C).

4 “(B) The financial product or service is
5 jointly offered, endorsed, or sponsored, and
6 clearly and conspicuously identifies for the con-
7 sumer the financial institutions that disclose
8 and receive the disclosed nonpublic personal in-
9 formation.

10 “(C) The release of the consumer’s non-
11 public personal information is made pursuant to
12 a written agreement between the financial insti-
13 tutions and such agreement provides that the
14 financial institution that receives the nonpublic
15 personal information is required to maintain the
16 confidentiality of the information and is prohib-
17 ited from disclosing or using the information
18 other than to carry out the joint offering or
19 servicing of the financial product or service that
20 is the subject of the written agreement.

21 “(D) The consumer has not directed that
22 the consumer’s nonpublic personal information
23 not be disclosed.

24 “(3) INFORMATION SHARING AMONG RELATED
25 ENTITIES.—

1 “(A) IN GENERAL.—The prohibition under
2 subsection (a) shall not apply to the sharing of
3 nonpublic personal information between a finan-
4 cial institution and its wholly owned financial
5 institution subsidiary, among financial institu-
6 tions that are each wholly owned by the same
7 financial institution, among financial institu-
8 tions that are wholly owned by the same hold-
9 ing company, or among the insurance and man-
10 agement entities of a single insurance holding
11 company system consisting of one or more re-
12 ciprocal insurance exchanges which have a sin-
13 gle corporation or its wholly owned subsidiaries
14 providing management services to the reciprocal
15 insurance exchanges if the following require-
16 ments are met:

17 “(i) The financial institution dis-
18 closing the nonpublic personal information
19 and the entity receiving it are regulated by
20 the same functional regulator. Notwith-
21 standing the previous sentence, an insurer
22 admitted in a State to transact insurance
23 and licensed to write insurance policies
24 shall be deemed to meet the requirement of
25 this clause.

1 “(ii) The financial institution dis-
2 closing the nonpublic personal information
3 and the entity receiving it are both prin-
4 cipally engaged in the same line of busi-
5 ness, and such line of business is one, and
6 only one, of the following lines of business:

7 “(I) Insurance.

8 “(II) Banking.

9 “(III) Securities.

10 “(iii) The financial institution dis-
11 closing the nonpublic personal information
12 and the entity receiving it share a common
13 brand, other than a brand consisting solely
14 of a graphic element or symbol, within
15 their trademark, service mark, or trade
16 name, which is used to identify the source
17 of the products and services provided.

18 “(B) RULES OF CONSTRUCTION.—For
19 purposes of this paragraph:

20 “(i) DETERMINING THE SAME FUNC-
21 TIONAL REGULATOR.—In determining
22 whether two entities are regulated by the
23 same functional regulator—

24 “(I) entities whose functional
25 regulator is the Office of the Comp-

1 troller of the Currency, the Board of
2 Governors of the Federal Reserve Sys-
3 tem, the National Credit Union Ad-
4 ministration, or a State regulator of
5 depository institutions shall be
6 deemed to be regulated by the same
7 functional regulator; and

8 “(II) entities whose functional
9 regulator is the Securities and Ex-
10 change Commission, the United
11 States Department of Labor, or a
12 State securities regulator shall be
13 deemed to be regulated by the same
14 functional regulator.

15 “(ii) WHOLLY OWNED FINANCIAL IN-
16 STITUTION SUBSIDIARY.—The term ‘wholly
17 owned financial institution subsidiary’ in-
18 cludes a financial institution subsidiary
19 wholly owned indirectly in a chain of one
20 or more wholly owned financial institution
21 subsidiaries.

22 “(4) DISCLOSURE TO AFFILIATES PERMITTED
23 IN CERTAIN CIRCUMSTANCES.—The prohibition
24 under subsection (a) shall not apply to a financial
25 institution providing nonpublic personal information

1 to an affiliate to perform services for or functions on
2 behalf of the financial institution, if—

3 “(A) the financial institution notifies the
4 consumer it is providing such information to
5 the affiliate; and

6 “(B) the financial institution enters into a
7 contract with the affiliate under which the affil-
8 iate agrees to maintain the confidentiality of
9 such information.

10 “(5) ADDITIONAL EXCLUSIONS.—The prohibi-
11 tion under subsection (a) shall not apply to the dis-
12 closure of nonpublic personal information—

13 “(A) as necessary to effect, administer, or
14 enforce a transaction—

15 “(i) requested or authorized by the
16 consumer; or

17 “(ii) in connection with—

18 “(I) servicing or processing a fi-
19 nancial product or service requested
20 or authorized by the consumer;

21 “(II) maintaining or servicing the
22 consumer’s account with the financial
23 institution, or with another entity as
24 part of a private label credit card pro-

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

3 “(III) a proposed or actual
4 securitization, secondary market sale
5 (including sales of servicing rights), or
6 similar transaction related to a trans-
7 action of the consumer;

8 “(B) with the express consent or at the di-
9 rection of the consumer for a specific trans-
10 action;

11 “(C) as reasonably necessary to protect the
12 confidentiality or security of the financial insti-
13 tution’s records pertaining to the consumer, the
14 service or product, or the transaction therein;

15 “(D) as reasonably necessary to protect
16 against or prevent actual or potential fraud, un-
17 authorized transactions, claims, or other liabil-
18 ity;

19 “(E) as reasonably necessary for required
20 institutional risk control;

21 “(F) to resolve customer disputes or in-
22 quiries;

23 “(G) to persons holding a legal or bene-
24 ficial interest relating to the consumer;

1 “(H) to persons acting in a fiduciary or
2 representative capacity on behalf of the con-
3 sumer;

4 “(I) as reasonably necessary to provide in-
5 formation to insurance rate advisory organiza-
6 tions, guaranty funds or agencies, applicable
7 rating agencies of the financial institution, per-
8 sons assessing the institution’s compliance with
9 industry standards, and the institution’s attor-
10 neys, accountants, and auditors;

11 “(J) to the extent specifically required
12 under other provisions of law and in accordance
13 with the Right to Financial Privacy Act of
14 1978, to law enforcement agencies (including a
15 Federal functional regulator, the Secretary of
16 the Treasury under subchapter II of chapter 53
17 of title 31, United States Code, and chapter 2
18 of title I of Public Law 91–508 (12 U.S.C.
19 1951–1959), a State insurance authority, or the
20 Federal Trade Commission), self-regulatory or-
21 ganizations, or for an investigation on a matter
22 related to public safety;

23 “(K) to a consumer reporting agency in ac-
24 cordance with the Fair Credit Reporting Act;

1 “(L) from a consumer report reported by
2 a consumer reporting agency;

3 “(M) in connection with a proposed or ac-
4 tual sale, merger, transfer, or exchange of all or
5 a portion of a business or operating unit if the
6 disclosure of nonpublic personal information
7 concerns solely consumers of such business or
8 unit;

9 “(N) to comply with Federal, State, or
10 local laws, rules, or other applicable legal re-
11 quirements;

12 “(O) to comply with a properly authorized
13 civil, criminal, or regulatory investigation or
14 subpoena or summons by Federal, State, or
15 local authorities; or

16 “(P) to respond to judicial process or gov-
17 ernment regulatory authorities having jurisdic-
18 tion over the financial institution for examina-
19 tion, compliance, or other purposes as author-
20 ized by law.

21 “(c) CONSTRUCTION.—Nothing in this section shall
22 be construed as prohibiting a financial institution from
23 disclosing or sharing nonpublic personal information as
24 otherwise specifically permitted under this title.

25 “(d) NON-DISCRIMINATORY TREATMENT.—

1 “(1) IN GENERAL.—A financial institution shall
2 not discriminate against a consumer or deny an oth-
3 erwise qualified consumer a financial product or
4 service or offer a financial product or service on less
5 favorable terms and conditions because the con-
6 sumer has directed that the nonpublic personal in-
7 formation of the consumer not be disclosed.

8 “(2) EXCEPTION.—With respect to a consumer
9 who has directed that the nonpublic personal infor-
10 mation of the consumer not be disclosed—

11 “(A) nothing in this section shall prohibit
12 a financial institution from denying the con-
13 sumer a financial product or service if the insti-
14 tution can not provide such product or service
15 to the consumer without making such disclo-
16 sure; and

17 “(B) such institution shall not be required
18 to offer a financial product or service to the
19 customer if such product or service cannot be
20 offered to the consumer without such disclo-
21 sure.

22 “(e) COMPLIANCE WITH SECTION 502 REQUIRE-
23 MENTS SATISFIES THIS SECTION.—The prohibition under
24 subsection (a) shall not apply to disclosures made to an
25 affiliate of a financial institution if, with respect to such

1 affiliate, the financial institution has provided the con-
2 sumer with the notice required under section 502(a) and
3 received the express consent described under section
4 502(b), to the same extent as would be required for mak-
5 ing a disclosure to a nonaffiliated third party under that
6 section.

7 “(f) LIMITS ON REUSE OF INFORMATION.—Except
8 as otherwise provided in this subtitle, an affiliate that re-
9 ceives from a financial institution nonpublic personal in-
10 formation shall not, directly or through an affiliate, dis-
11 close such information to any other person that is a non-
12 affiliated third party of both the financial institution and
13 such affiliate, unless such disclosure would be permitted
14 if made directly to such person by the financial institu-
15 tion.”;

16 (3) in section 503—

17 (A) by striking subsections (b), (d), and
18 (e);

19 (B) by redesignating subsection (c) as sub-
20 section (b);

21 (C) in paragraph (1) of subsection (b), as
22 so redesignated, by inserting after “subtitle,”
23 the following: “and with respect to disclosing
24 nonpublic personal information to affiliates,

1 consistent with section 502A of this subtitle,”;
2 and

3 (D) by adding at the end the following new
4 subsections:

5 “(c) MODEL DISCLOSURE FORM.—

6 “(1) IN GENERAL.—The Board of Governors of
7 the Federal Reserve System (before the designated
8 transfer date) and the Bureau of Consumer Finan-
9 cial Protection (on and after the designated transfer
10 date) shall develop a model disclosure form (herein-
11 after in this section referred to as the ‘model form’)
12 to be used by financial institutions that seek the
13 consent of a consumer to disclose nonpublic personal
14 information. The model form shall meet all of the
15 following requirements:

16 “(A) The model form shall have the title
17 ‘IMPORTANT PRIVACY CHOICES FOR
18 CONSUMERS’ and the headers, if applicable,
19 shall be as follows: ‘Restrict Information Shar-
20 ing With Companies We Own Or Control (Af-
21 filiates)’ and ‘Restrict Information Sharing
22 With Other Companies We Do Business With
23 To Provide Financial Products And Services’.

1 “(B) The title and headers shall be clearly
2 and conspicuously displayed, and no text in the
3 form shall be smaller than 10-point type.

4 “(C) The model form shall be designed to
5 call attention to the nature and significance of
6 the information in the form.

7 “(D) The model form shall present infor-
8 mation in clear and concise sentences, para-
9 graphs, and sections.

10 “(E) The model form shall use short ex-
11 planatory sentences (an average of 15–20
12 words) or bullet lists whenever possible.

13 “(F) The model form shall avoid multiple
14 negatives, legal terminology, and highly tech-
15 nical terminology whenever possible.

16 “(G) The model form shall avoid expla-
17 nations that are imprecise and readily subject
18 to different interpretations.

19 “(H) The model form provides wide mar-
20 gins, ample line spacing, and uses boldface or
21 italics for key words.

22 “(I) The model form may not be more
23 than one page.

24 “(J) The model form shall meet minimal
25 clarity and readability standards.

1 “(2) SATISFACTION OF REQUIREMENTS.—Use
2 of the model form shall be presumed to satisfy the
3 notice requirements of this section.

4 “(3) ALTERNATE FORMS.—If a financial insti-
5 tution uses a form other than the model form—

6 “(A) the financial institution may submit
7 that form to the Board of Governors of the
8 Federal Reserve System (before the designated
9 transfer date) and the Bureau of Consumer Fi-
10 nancial Protection (on and after the designated
11 transfer date) for approval, and that approval
12 shall constitute a rebuttable presumption that
13 the form complies with this section; and

14 “(B) that form shall be filed with the
15 Board of Governors of the Federal Reserve Sys-
16 tem (before the designated transfer date) and
17 the Bureau of Consumer Financial Protection
18 (on and after the designated transfer date)
19 within 30 days after it is first used.

20 “(d) ADDITIONAL REQUIREMENTS.—

21 “(1) USE OF EXAMPLES AND EXPLANATIONS.—
22 A financial institution shall not be in violation of
23 this section solely because the institution includes on
24 the disclosure form one or more brief examples or
25 explanations of the purpose or purposes for, or con-

1 text within, which information will be shared, as
2 long as those examples meet clarity and readability
3 standards established by the Board of Governors of
4 the Federal Reserve System.

5 “(2) ENVELOPE REQUIREMENTS.—If sent in an
6 envelope, the outside of the envelope in which the
7 disclosure form is sent to the consumer shall clearly
8 state in 16-point boldface type ‘IMPORTANT PRI-
9 VACY CHOICES’. This requirement shall not apply
10 if the form is sent to a consumer in the same enve-
11 lope as a bill, account statement, or application re-
12 quested by the consumer.

13 “(3) MAILING REQUIREMENTS.—The form may
14 be sent in any of the following ways:

15 “(A) With a bill, other statement of ac-
16 count, or application requested by the con-
17 sumer, in which case the information required
18 by this title may also be included in the same
19 envelope.

20 “(B) As a separate notice or with the in-
21 formation required by this title, and including
22 only information related to privacy.

23 “(C) With any other mailing, in which case
24 it shall be the first page of the mailing.

1 “(4) CONSUMER DIRECTION ON DISCLO-
2 SURES.—The consumer shall be provided a reason-
3 able opportunity prior to disclosure of nonpublic per-
4 sonal information to direct that nonpublic personal
5 information not be disclosed. A consumer may direct
6 at any time that his or her nonpublic personal infor-
7 mation not be disclosed. A financial institution shall
8 comply with a consumer’s directions concerning the
9 sharing of his or her nonpublic personal information
10 within 45 days of receipt by the financial institution.
11 When a consumer directs that nonpublic personal in-
12 formation not be disclosed, that direction is in effect
13 until otherwise stated by the consumer. A financial
14 institution that has not provided a consumer with
15 annual notice pursuant to this section shall provide
16 the consumer with a form that meets the require-
17 ments of this section, and shall allow 45 days to
18 lapse from the date of providing the form in person
19 or the postmark or other postal verification of mail-
20 ing before disclosing nonpublic personal information
21 pertaining to the consumer.

22 “(5) NON-CONTINUING RELATIONSHIP.—If a fi-
23 nancial institution does not have a continuing rela-
24 tionship with a consumer other than the initial
25 transaction in which the product or service is pro-

1 vided, no annual disclosure requirement exists pur-
2 suant to this section as long as the financial institu-
3 tion provides the consumer with the form required
4 by this section at the time of the initial transaction.

5 “(6) RESPONSE ALTERNATIVES.—

6 “(A) IN GENERAL.—A financial institution
7 shall include a self-addressed return envelope
8 with the notice required under subsection (a)
9 and a financial institution with assets of more
10 than \$25,000,000 shall—

11 “(i) additionally provide such envelope
12 stamped with first class business reply
13 postage; or

14 “(ii) provide two alternative cost-free
15 means for consumers to communicate their
16 privacy choices, such as calling a toll-free
17 number, sending a facsimile to a toll-free
18 telephone number, or using electronic
19 means.

20 “(B) CONTACT INFORMATION.—A financial
21 institution shall clearly and conspicuously dis-
22 close in the disclosure required by this section
23 the information necessary to direct the con-
24 sumer on how to communicate his or her
25 choices, including the toll-free or facsimile num-

1 ber or website address that may be used, if
2 those means of communication are offered by
3 the financial institution.

4 “(7) JOINT DISCLOSURES.—A financial institu-
5 tion may provide a joint disclosure from it and one
6 or more of its affiliates or other financial institu-
7 tions, as identified in the disclosure, so long as the
8 disclosure is accurate with respect to the financial
9 institution and the affiliates and other financial in-
10 stitutions.

11 “(8) RULE OF CONSTRUCTION.—Nothing in
12 this section may be construed as prohibiting a finan-
13 cial institution from marketing its own products and
14 services or the products and services of affiliates or
15 nonaffiliated third parties to customers of the finan-
16 cial institution as long as—

17 “(A) nonpublic personal information is not
18 disclosed in connection with the delivery of the
19 applicable marketing materials to those cus-
20 tomers, except as permitted under section 502;
21 and

22 “(B) in the case in which the applicable
23 nonaffiliated third party may extrapolate non-
24 public personal information about the consumer
25 responding to those marketing materials, the

1 applicable nonaffiliated third party has signed a
2 contract with the financial institution under the
3 terms of which—

4 “(i) the nonaffiliated third party is
5 prohibited from using that information for
6 any purpose other than the purpose for
7 which it was provided, as set forth in the
8 contract; and

9 “(ii) the financial institution has the
10 right by audit, inspections, or other means
11 to verify the nonaffiliated third party’s
12 compliance with that contract.

13 “(9) TREATMENT OF MEMBERS OF A SINGLE
14 HOUSEHOLD.—A notice provided to a member of a
15 household shall be considered notice to all members
16 of that household unless that household contains an-
17 other individual who also has a separate account
18 with the financial institution.

19 “(10) ELECTRONIC DISCLOSURE.—

20 “(A) IN GENERAL.—Notwithstanding sub-
21 section (a), the disclosure required under that
22 subsection may only be made in electronic form
23 if the following requirements are met:

24 “(i) The disclosure, and the manner
25 in which the consent for electronic disclo-

1 sures is obtained, meets all of the require-
2 ments for disclosures that are required by
3 law to be in writing, as set forth in section
4 101 of the Electronic Signatures in Global
5 and National Commerce Act.

6 “(ii) All other requirements applicable
7 to the disclosure, as set forth in this sub-
8 title, are met, including requirements con-
9 cerning content, timing, form, and delivery.

10 “(iii) The disclosure is delivered to the
11 consumer in a form the consumer may
12 keep and print.

13 “(B) NO ENVELOPE REQUIRED.—An elec-
14 tronic notice sent pursuant to this section is not
15 required to include a return envelope.

16 “(C) ELECTRONIC REPLY.—Any electronic
17 consumer reply to an electronic disclosure sent
18 pursuant to this subtitle is effective. A person
19 that electronically sends a disclosure required
20 by this subtitle to a consumer may not by con-
21 tract, or otherwise, eliminate the effectiveness
22 of the consumer’s electronic reply.

23 “(D) EFFECT ON ELECTRONIC SIGNA-
24 TURES IN GLOBAL AND NATIONAL COMMERCE
25 ACT.—This subtitle modifies the provisions of

1 section 101 of the Electronic Signatures in
2 Global and National Commerce Act. However,
3 it does not modify, limit, or supersede the pro-
4 visions of subsection (c), (d), (e), (f), or (h) of
5 section 101 of the Electronic Signatures in
6 Global and National Commerce Act, nor does it
7 authorize electronic delivery of any disclosure of
8 the type described in subsection (b) of section
9 103 of such Act.

10 “(11) AFFINITY PARTNERS.—

11 “(A) AFFINITY CARDS.—When a financial
12 institution and an organization or business enti-
13 ty that is not a financial institution (hereinafter
14 in this paragraph referred to as an ‘affinity
15 partner’) has an agreement to issue a credit
16 card in the name of the affinity partner (herein-
17 after in this paragraph referred to as an ‘affin-
18 ity card’), the financial institution may only dis-
19 close to the affinity partner in whose name the
20 card is issued the following information per-
21 taining to the financial institution’s customers
22 who are in receipt of the affinity card:

23 “(i) The name, address, telephone
24 number, and electronic mail address of the
25 customers.

1 “(ii) The record of purchases made
2 using the affinity card in a business estab-
3 lishment, including a website, bearing the
4 brand name of the affinity partner.

5 “(B) AFFINITY FINANCIAL PRODUCT OR
6 SERVICE.—When a financial institution and an
7 affinity partner have an agreement to issue a fi-
8 nancial product or service, other than a credit
9 card, on behalf of the affinity partner (herein-
10 after in this paragraph referred to as an ‘affin-
11 ity financial product or service’), the financial
12 institution may only disclose to the affinity
13 partner the name, address, telephone number,
14 and electronic mail address of the financial in-
15 stitution’s customers who obtained the affinity
16 financial product or service.

17 “(C) ADDITIONAL REQUIREMENTS.—The
18 disclosures permitted under subparagraphs (A)
19 and (B) may only be made if all of the following
20 requirements are met:

21 “(i) The financial institution has pro-
22 vided the consumer a notice meeting the
23 requirements of subsection (a), and the
24 consumer has not directed that the con-

1 sumer’s nonpublic personal information not
2 be disclosed.

3 “(ii) The financial institution has a
4 contractual agreement with the affinity
5 partner that requires the affinity partner
6 to maintain the confidentiality of the non-
7 public personal information and prohibits
8 affinity partners from using the informa-
9 tion for any purpose other than verifying
10 membership, verifying the consumer’s con-
11 tact information, or offering the affinity
12 partner’s own products or services to the
13 consumer.

14 “(iii) The customer list is not dis-
15 closed in any way that reveals or permits
16 extrapolation of any additional nonpublic
17 personal information about any customer
18 on the list.

19 “(D) ELECTRONIC MAIL NOTICES.—If an
20 affinity partner sends any message to any elec-
21 tronic mail addresses obtained from a financial
22 institution, the message shall include the fol-
23 lowing:

24 “(i) The identity of the sender of the
25 message.

1 “(ii) The identity of the entity that
2 provided the electronic mail address to the
3 affinity partner.

4 “(iii) A cost-free means for the recipi-
5 ent to notify the sender not to electroni-
6 cally mail any further message to the re-
7 cipient.

8 “(E) EXCEPTION.—This paragraph shall
9 not apply to credit cards issued—

10 “(i) in the name of an entity primarily
11 engaged in retail sales; or

12 “(ii) in a name proprietary to an enti-
13 ty primarily engaged in retail sales.

14 “(e) ANNUALLY DEFINED.—For purposes of this sec-
15 tion and with respect to a relationship between a financial
16 institution and a consumer, the term ‘annually’ means at
17 least once in any period of 12 consecutive months during
18 which that relationship exists. The financial institution
19 may define the 12-consecutive-month period, but shall
20 apply it to the consumer on a consistent basis.

21 “(f) NON-APPLICABILITY OF WRITTEN NOTICE IN
22 CERTAIN CIRCUMSTANCES.—Nothing in this subtitle shall
23 be construed as requiring a financial institution to provide
24 a written notice to a consumer pursuant to section 502
25 or 502A if the financial institution does not disclose non-

1 public personal information to any nonaffiliated third
2 party or to any affiliate, except as allowed in this sub-
3 title.”;

4 (4) by amending section 504 to read as follows:

5 **“SEC. 504. RULEMAKING.**

6 “Such regulations as may be necessary to carry out
7 the purposes of this subtitle shall be prescribed—

8 (1) before the designated transfer date, by
9 each of the Federal banking agencies, the National
10 Credit Union Administration, the Secretary of the
11 Treasury, the Securities and Exchange Commission,
12 and the Federal Trade Commission, after consulta-
13 tion as appropriate with representatives of State in-
14 surance authorities designated by the National Asso-
15 ciation of Insurance Commissioners; and

16 (2) on and after the designated transfer date,
17 by the Bureau of Consumer Financial Protection.”;

18 (5) in section 505—

19 (A) by redesignating subsections (b), (c),
20 and (d) as subsections (c), (d), and (e), respec-
21 tively;

22 (B) by inserting after subsection (a) the
23 following new subsection:

24 “(b) **TRANSFER OF RESPONSIBILITY TO THE BU-**
25 **REAU OF CONSUMER FINANCIAL PROTECTION.**—Notwith-

1 standing subsection (a), on the designated transfer date,
 2 the enforcement powers of the Federal functional regu-
 3 lators under this subtitle shall be transferred to the Bu-
 4 reau of Consumer Financial Protection.”; and

5 (C) in subsection (c)(1), as redesignated,
 6 by striking “, to the extent practicable, as
 7 standards prescribed pursuant to section 39(a)
 8 of the Federal Deposit Insurance Act are imple-
 9 mented pursuant to such section”;

10 (6) in section 509, by adding at the end the fol-
 11 lowing new paragraph:

12 “(12) DESIGNATED TRANSFER DATE.—The
 13 term ‘designated transfer date’ shall have the mean-
 14 ing given such term under section 1062 of the Con-
 15 sumer Financial Protection Act of 2010.”; and

16 (7) in the table of contents, by striking the item
 17 relating to section 502 and inserting the following
 18 new items:

“Sec. 502. Obligations with respect to disclosures of personal information to
 nonaffiliated third parties.

“Sec. 502A. Obligations with respect to disclosures of personal information to
 affiliates.”.

19 (b) EFFECTIVE DATE.—This Act, and the amend-
 20 ments made by this Act, shall take effect on January 1,
 21 2012.

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