

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 3997**  
**OFFERED BY**

Strike all after the enacting clause and insert the following:

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

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

4 (b) FINDINGS.—The Congress finds as follows:

5 (1) Protecting the security of sensitive informa-  
6 tion relating to consumers is important to limiting  
7 account fraud and identity theft.

8 (2) While the Gramm-Leach-Bliley Act requires  
9 financial institutions to protect the security and con-  
10 fidentiality of the nonpublic personal information of  
11 the customers of financial institutions, the scope of  
12 covered entities and type of information needs to be  
13 broadened to fully protect consumers.

14 (3) Some Federal agencies have issued model  
15 guidance under the Gramm-Leach-Bliley Act requir-  
16 ing banks to investigate and provide notice to cus-  
17 tomers of breaches of data security involving cus-  
18 tomer information that could lead to account fraud



1 or identity theft, but these standards need to broad-  
2 ened to apply to other entities acting as consumer  
3 reporters, in order to create a single, uniform data  
4 security standard that applies to all parties to trans-  
5 actions involving such financial information.

6 (4) Requiring all consumer reporters handling  
7 sensitive financial personal information to provide  
8 notice to consumers of data security breaches that  
9 are likely to result in substantial harm or inconven-  
10 ience will help consumers protect themselves and  
11 mitigate against the risk of identity theft or account  
12 fraud.

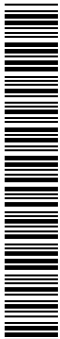
13 (5) Therefore, all consumer reporters should—

14 (A) protect sensitive financial personal in-  
15 formation;

16 (B) investigate potential data security  
17 breaches;

18 (C) provide breach notices as appropriate  
19 to the United States Secret Service, functional  
20 regulators, involved third parties, and con-  
21 sumers;

22 (D) restore the security of the information  
23 and improve safeguards after a breach; and



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

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

5 (a) IN GENERAL.—As set forth in section 630 of the  
6 Fair Credit Reporting Act, as amended by the Act, in the  
7 event a consumer reporter becomes aware of information  
8 suggesting a breach of data security, such consumer re-  
9 porter shall immediately conduct an investigation, and no-  
10 tify authorities and consumers as appropriate.

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

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

15 “(a) PROTECTION OF SENSITIVE FINANCIAL PER-  
16 SONAL INFORMATION.—

17 “(1) DATA SECURITY OBLIGATION POLICY.—It  
18 is the policy of the Congress that each consumer re-  
19 porter has an affirmative and continuing obligation  
20 to protect the security and confidentiality of sen-  
21 sitive financial personal information.

22 “(2) SECURITY POLICIES AND PROCEDURES.—  
23 Each consumer reporter shall have an affirmative  
24 obligation to implement, and a continuing obligation  
25 to maintain, reasonable policies and procedures to



1 protect the security and confidentiality of sensitive  
2 financial personal information relating to any con-  
3 sumer that is handled by such consumer reporter  
4 against any loss, unauthorized access, or misuse that  
5 is reasonably likely to result in substantial harm or  
6 inconvenience to such consumer.

7 “(b) INVESTIGATION REQUIREMENTS.—

8 “(1) INVESTIGATION TRIGGER.—A consumer  
9 reporter shall immediately conduct a data security  
10 breach investigation if it—

11 “(A) becomes aware of any information in-  
12 dicating a reasonable likelihood that a data se-  
13 curity breach has occurred or is unavoidable;

14 “(B) becomes aware of information indi-  
15 cating an unusual pattern of misuse of sensitive  
16 financial personal information handled by a  
17 consumer reporter indicative of financial fraud;  
18 or

19 “(C) receives a notice under subsection (e).

20 “(2) SCOPE OF INVESTIGATION.—Such inves-  
21 tigation shall be conducted in a manner commensu-  
22 rate with the nature and the amount of the sensitive  
23 financial personal information that is subject to the  
24 breach of data security, including appropriate ac-  
25 tions to—



1           “(A) assess the nature and scope of the  
2           potential breach;

3           “(B) identify the sensitive financial per-  
4           sonal information potentially involved;

5           “(C) determine whether such information  
6           is usable by the parties causing the breach; and

7           “(D) determine the likelihood that such in-  
8           formation has been, or will be, misused in a  
9           manner that may cause substantial harm or in-  
10          convenience to the related consumer.

11          “(3) ENCRYPTION AND OTHER SAFEGUARDS.—

12           “(A) SUGGESTED SAFEGUARDS.—The reg-  
13           ulators described in subsection (i)(1) shall joint-  
14           ly develop standards and guidelines to identify  
15           and regularly update appropriate technology  
16           safeguards for making consumer reporter’s sen-  
17           sitive financial personal information unusable in  
18           a manner commensurate with the nature and  
19           the amount of such information, including—

20           “(i) consideration of the encryption  
21           standards adopted by the National Insti-  
22           tute of Standards and Technology for use  
23           by the Federal Government; and

24           “(ii) appropriate management and  
25           protection of keys or codes necessary to

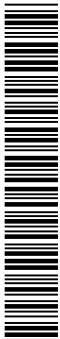


1 protect the integrity of encrypted informa-  
2 tion.

3 “(B) SAFEGUARD FACTORS.—In deter-  
4 mining the likelihood of a data security breach,  
5 a consumer reporter may consider whether the  
6 information subject to the potential breach is  
7 unusable because it is encrypted, redacted, re-  
8 quires technology to use that is not generally  
9 commercially available, or has otherwise simi-  
10 larly been rendered unreadable.

11 “(C) SAFE HARBOR FOR PROTECTED  
12 DATA.—As set forth in the standards and  
13 guidelines issued pursuant to subparagraph (A),  
14 a consumer reporter may reasonably conclude  
15 that a data security breach is not likely to have  
16 occurred where the sensitive personal financial  
17 information involved has been encrypted, re-  
18 dacted, requires technology to use that is not  
19 generally commercially available, or is otherwise  
20 unlikely to be usable

21 “(D) EXCEPTION.—Subparagraphs (B)  
22 and (C) shall not apply if the consumer re-  
23 porter becomes aware of information that would  
24 reasonably indicate that the information that  
25 was the subject of the potential breach is usable



1 by the entities causing the breach or potentially  
2 misusing the information, for example  
3 because—

4 “(i) an encryption code is potentially  
5 compromised,

6 “(ii) the entities are believed to have  
7 the technology to access the information;  
8 or

9 “(iii) there is an unusual pattern of  
10 misuse of such information indicative of fi-  
11 nancial fraud.

12 “(c) BREACH NOTICES.—If a consumer reporter de-  
13 termines that a breach of data security has occurred, is  
14 likely to have occurred, or is unavoidable, the consumer  
15 reporter shall in the order listed—

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

18 “(2) promptly notify the appropriate functional  
19 regulatory agency for the consumer reporter;

20 “(3) notify as appropriate and without unrea-  
21 sonable delay—

22 “(A) any third party entity that owns or is  
23 obligated on an affected financial account as set  
24 forth in the standards or guidelines pursuant to  
25 subsection (j)(1)(H), including in such notifica-



1           tion information reasonably identifying the na-  
2           ture and scope of the breach and the sensitive  
3           financial personal information involved; and

4                   “(B) any other appropriate critical third  
5           parties whose involvement is necessary to inves-  
6           tigate the breach; and

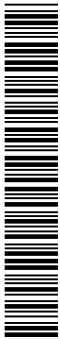
7                   “(4) without unreasonable delay notify any af-  
8           fected consumers to the extent required in sub-  
9           section (f), as well as—

10                   “(A) each nationwide consumer reporting  
11           agency, in the case of a breach involving sen-  
12           sitive financial identity information relating to  
13           1,000 or more consumers; and

14                   “(B) any other appropriate critical third  
15           parties who will be required to undertake fur-  
16           ther action with respect to such information to  
17           protect such consumers from resulting fraud or  
18           identity theft.

19           “(d) SYSTEM RESTORATION REQUIREMENTS.—If a  
20           consumer reporter determines that a breach of data secu-  
21           rity has occurred, is likely to have occurred, or is unavoid-  
22           able, the consumer reporter shall take prompt and reason-  
23           able measures to—

24                   “(1) repair the breach and restore the security  
25           and confidentiality of the sensitive financial personal



1 information involved to limit further unauthorized  
2 misuse of such information; and

3 “(2) restore the integrity of the consumer re-  
4 porter’s data security safeguards and make appro-  
5 priate improvements to its data security policies and  
6 procedures.

7 “(e) THIRD PARTY DUTIES.—

8 “(1) COORDINATED INVESTIGATION.—When-  
9 ever any consumer reporter that handles sensitive fi-  
10 nancial personal information for or on behalf of an-  
11 other party becomes aware that an investigation is  
12 required under subsection (b) with respect to such  
13 information, the consumer reporter shall—

14 “(A) promptly notify the other party of the  
15 breach;

16 “(B) conduct a coordinated investigation  
17 with the other party as described in subsection  
18 (b); and

19 “(C) ensure that the appropriate notices  
20 are provided as required under subsection (f).

21 “(2) CONTRACTUAL OBLIGATION REQUIRED.—

22 No consumer reporter may provide sensitive finan-  
23 cial personal information to a third party, unless  
24 such third party agrees to fulfill the obligations im-  
25 posed by subsections (a), (d), and (h), as well as



1       that whenever the third party becomes aware that a  
2       breach of data security has occurred, is reasonably  
3       likely to have occurred, or is unavoidable, with re-  
4       spect to such information, the third party shall be  
5       obligated—

6               “(A) to provide notice of the potential  
7       breach to the consumer reporter;

8               “(B) to conduct a coordinated investigation  
9       with the consumer reporter to identify the sen-  
10      sitive financial personal information involved  
11      and determine if the potential breach is reason-  
12      ably likely to result in substantial harm or in-  
13      convenience to any consumer to whom the in-  
14      formation relates; and

15              “(C) provide any notices required under  
16      this section, except to the extent that such no-  
17      tices are provided by the consumer reporter in  
18      a manner meeting the requirements of this sec-  
19      tion.

20      “(f) CONSUMER NOTICE.—

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



1 “(A) that a breach of data security is rea-  
2 sonably likely to have occurred or be unavoid-  
3 able, with respect to sensitive financial personal  
4 information handled by the consumer reporter;

5 “(B) of information reasonably identifying  
6 the nature and scope of the breach; and

7 “(C) that such information is reasonably  
8 likely to have been or to be misused in a man-  
9 ner causing substantial harm or inconvenience  
10 against the consumers to whom such informa-  
11 tion relates to—

12 “(i) commit identity theft if the infor-  
13 mation is sensitive financial identity infor-  
14 mation, or

15 “(ii) make fraudulent transactions on  
16 such consumers’ financial accounts if the  
17 information is sensitive financial account  
18 information.

19 “(2) SECURITY PROGRAM SAFEGUARDS AND  
20 REGULATIONS.—

21 “(A) STANDARDS FOR SAFEGUARDS.—The  
22 regulators described in subsection (j)(1) shall  
23 issue guidelines relating to the types of sophisti-  
24 cated neural networks and security programs  
25 that are likely to detect fraudulent account ac-



1           tivity and at what point detection of such activ-  
2           ity is sufficient to avoid consumer notice under  
3           this subsection.

4           “(B) ALTERNATIVE SAFEGUARDS.—In de-  
5           termining the likelihood of misuse of sensitive  
6           financial account information and whether a no-  
7           tice is required under paragraph (1), the con-  
8           sumer reporter may additionally consider—

9           “(i) consistent with any standards  
10          promulgated under subparagraph (A),  
11          whether any neural networks or security  
12          programs used by, or on behalf of, the con-  
13          sumer reporter have detected, or are likely  
14          to detect on an ongoing basis over a rea-  
15          sonable period of time, fraudulent trans-  
16          actions resulting from the breach of data  
17          security; or

18          “(ii) whether no substantial harm or  
19          inconvenience is reasonably likely to have  
20          occurred, because for example the related  
21          consumer account has been closed or its  
22          number has been changed.

23          “(3) COORDINATION WITH THE FAIR DEBT  
24          COLLECTION PRACTICES ACT.—The provision of a  
25          notice to the extent such notice and its contents are



1 required under this section shall not be considered a  
2 communication under the Fair Debt Collection Prac-  
3 tices Act.

4 “(g) TIMING, CONTENT, AND MANNER OF NO-  
5 TICES.—

6 “(1) DELAY OF NOTICE FOR LAW ENFORCE-  
7 MENT PURPOSES.—If a consumer reporter receives a  
8 written request from an appropriate law enforcement  
9 agency indicating that the provision of a notice  
10 under subsection (c)(3) or (e) would impede a crimi-  
11 nal or civil investigation by that law enforcement  
12 agency, or an oral request from an appropriate law  
13 enforcement agency indicating that such a written  
14 request will be provided within 2 business days—

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

18 “(i) the law enforcement agency in-  
19 forms the consumer reporter that such no-  
20 tice will no longer impede the investigation;  
21 or

22 “(ii) the law enforcement agency fails  
23 to—

24 “(I) provide within 10 days a  
25 written request to continue such delay



1 for a specific time that is approved by  
2 a court of competent jurisdiction; or

3 “(II) in the case of an oral re-  
4 quest for a delay, provide a written  
5 request within 2 business days, and if  
6 such delay is requested for more than  
7 10 additional days, such request must  
8 be approved by a court of competent  
9 jurisdiction; and

10 “(B) the consumer reporter may—

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

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

18 “(2) HOLD HARMLESS PROVISION.—A con-  
19 sumer reporter shall not be liable for any fraud miti-  
20 gation costs or for any losses that would not have  
21 occurred but for notice to or the provision of sen-  
22 sitive financial personal information to law enforce-  
23 ment, or the delay provided for under this sub-  
24 section, except that—



1           “(A) nothing in this subparagraph shall be  
2           construed as creating any inference with respect  
3           to the establishment or existence of any such li-  
4           ability; and

5           “(B) this subparagraph shall not apply if  
6           the costs or losses would not have occurred had  
7           the consumer reporter undertaken reasonable  
8           system restoration requirements to the extent  
9           required under subsection (d), or other similar  
10          provision of law, except to the extent that such  
11          system restoration was delayed at the request  
12          of law enforcement.

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

21                 “(A) An appropriate heading or notice  
22                 title.

23                 “(B) A description of the nature and types  
24                 of information and accounts as appropriate that



1           were, or are reasonably believed to have been,  
2           subject to the breach of data security.

3           “(C) A statement identifying the party re-  
4           sponsible, if known, that suffered the breach,  
5           including an explanation of the relationship of  
6           such party to the consumer.

7           “(D) If known, the date, or the best rea-  
8           sonable approximation of the period of time, on  
9           or within which sensitive financial personal in-  
10          formation related to the consumer was, or is  
11          reasonably believed to have been, subject to a  
12          breach.

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

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

22          “(G) With respect to notices involving sen-  
23          sitive financial identity information, a copy of  
24          the summary of rights of consumer victims of  
25          fraud or identity theft prepared by the Commis-



1 sion under section 609(d), as well as any addi-  
2 tional appropriate information on how the con-  
3 sumer may—

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

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

11 “(iii) contact the Commission for  
12 more detailed information.

13 “(H) With respect to notices involving sen-  
14 sitive financial identity information, a promi-  
15 nent statement in accordance with subsection  
16 (h) that file monitoring will be made available  
17 to the consumer free of charge for a period of  
18 not less than six months, together with a tele-  
19 phone number for requesting such services, and  
20 may also include such additional contact infor-  
21 mation as a mailing address, e-mail, or Internet  
22 website address.

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



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

5           “(A) the consumer has affirmatively con-  
6       sented to such use, has not withdrawn such  
7       consent, and with respect to electronic trans-  
8       missions is provided with the appropriate state-  
9       ments related to such consent as described in  
10      section 101(c)(1) of the Electronic Signatures  
11      in Global and National Commerce Act; and

12           “(B) all of the relevant information in  
13      paragraph (3) is communicated to such con-  
14      sumer in such transmission.

15           “(5) DUPLICATIVE NOTICES.—

16           “(A) IN GENERAL.—A consumer reporter,  
17      whether acting directly or in coordination with  
18      another entity—

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



1           “(ii) shall not be required to provide  
2           a notice with respect to any consumer if a  
3           notice meeting the applicable requirements  
4           of this section has already been provided to  
5           such consumer by another entity.

6           “(B) UPDATING NOTICES.—If a consumer  
7           notice is provided to consumers pursuant only  
8           to subsection (e)(2) (relating to sensitive finan-  
9           cial account information), and the consumer re-  
10          porter subsequently becomes aware of a reason-  
11          able likelihood that sensitive financial personal  
12          information involved in the breach is being mis-  
13          used in a manner causing substantial harm or  
14          inconvenience against such consumer to commit  
15          identity theft, an additional notice shall be pro-  
16          vided to such consumers as well any other ap-  
17          propriate parties under this section, including a  
18          copy of the Commission’s summary of rights  
19          and file monitoring mitigation instructions  
20          under subparagraphs (G) and (H) of subsection  
21          (e)(3).

22          “(6) RESPONSIBILITY AND COSTS.—

23                 “(A) IN GENERAL.—Except as otherwise  
24                 established by written agreement between the  
25                 consumer reporter and its agents or third party



1           servicers, the entity that suffered a breach of  
2           data security shall be—

3                   “(i) primarily responsible for pro-  
4                   viding any consumer notices and file moni-  
5                   toring required under this section with re-  
6                   spect to such breach; and

7                   “(ii) responsible for the reasonable ac-  
8                   tual costs of any notices provided under  
9                   this section.

10                  “(B) IDENTIFICATION TO CONSUMERS.—  
11                  No such agreement shall restrict the ability of  
12                  a consumer reporter to identify the entity re-  
13                  sponsible for the breach to consumers

14                  “(C) NO CHARGE TO CONSUMERS.— The  
15                  cost for the notices and file monitoring de-  
16                  scribed in subparagraph (A) may not be  
17                  charged to the related consumers.

18                  “(h) FINANCIAL FRAUD MITIGATION.—

19                   “(1) FREE FILE MONITORING.—Any consumer  
20                   reporter that is required to provide notice to a con-  
21                   sumer under clause (i) of subsection (f)(1)(C), or  
22                   that is deemed to be in compliance with such re-  
23                   quirement by operation of subsection (i), if requested  
24                   by the consumer before the end of the 90-day period  
25                   beginning on the date of such notice, shall make



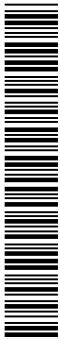
1 available to the consumer, free of charge and for at  
2 least a 6-month period, a service that monitors na-  
3 tionwide credit activity regarding a consumer from a  
4 consumer reporting agency described in section  
5 603(p).

6 “(2) JOINT RULEMAKING FOR SAFE HARBOR.—  
7 In accordance with subsection (j), the Secretary of  
8 the Treasury, the Board of Governors of the Federal  
9 Reserve System, and the Commission shall jointly  
10 develop standards and guidelines, which shall be  
11 issued by all functional regulatory agencies, that, in  
12 any case in which—

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

15 “(B) subsequent to the offer, another  
16 party misuses sensitive financial identity infor-  
17 mation on the consumer obtained through the  
18 breach of data security (that gave rise to such  
19 offer) to commit identity theft against the con-  
20 sumer; and

21 “(C) at the time of such breach the con-  
22 sumer reporter met the requirements of sub-  
23 sections (a) and (d),  
24 exempts the consumer reporter from any liability for  
25 any harm to the consumer resulting from such mis-



1 use, other than any direct pecuniary loss or loss pur-  
2 suant to agreement by the consumer reporter, except  
3 that nothing in this paragraph shall be construed as  
4 creating any inference with respect to the establish-  
5 ment or existence of any such liability.

6 “(i) CREDIT SECURITY FREEZE.—

7 “(1) DEFINITIONS.—For purposes of this sub-  
8 section, the following definitions shall apply:

9 “(A) SECURITY FREEZE.—The term ‘secu-  
10 rity freeze’ means a notice placed in a credit re-  
11 port on a consumer, at the request of the con-  
12 sumer who is a victim of identity theft, that  
13 prohibits the consumer reporting agency from  
14 releasing all or any part of the credit report,  
15 without the express authorization of the con-  
16 sumer, except as otherwise provided in this sec-  
17 tion.

18 “(B) REVIEWING THE ACCOUNT; ACCOUNT  
19 REVIEW.—The terms ‘reviewing the account’  
20 and ‘account review’ include activities related to  
21 account maintenance, monitoring, credit line in-  
22 creases, and account upgrades and enhance-  
23 ments.

24 “(2) REQUEST FOR A SECURITY FREEZE.—



1           “(A) IN GENERAL.—A consumer who has  
2           been the victim of identity theft may place a se-  
3           curity freeze on the file of such consumer at  
4           any consumer reporting agency by—

5                   “(i) making a request in writing by  
6                   certified mail to the consumer reporting  
7                   agency;

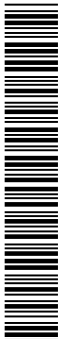
8                   “(ii) submitting an identity theft re-  
9                   port to the consumer reporting agency; and

10                   “(iii) providing such evidence of the  
11                   identity of the consumer as such consumer  
12                   reporting agency may require under para-  
13                   graph (5).

14           “(B) PROMPT IMPOSITION OF FREEZE.—A  
15           consumer reporting agency shall place a secu-  
16           rity freeze on a credit report on a consumer no  
17           later than 5 business days after receiving a  
18           written request from the consumer in accord-  
19           ance with subparagraph (A).

20           “(C) EFFECT OF FREEZE.—

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



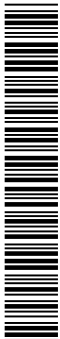
1 consumer reporting agency or reseller to  
2 any third party, including another con-  
3 sumer reporting agency or reseller, without  
4 the prior express authorization from the  
5 consumer or as otherwise permitted in this  
6 section.

7 “(ii) ADVISING OF EXISTENCE OF SE-  
8 CURITY FREEZE.—Clause (i) shall not be  
9 construed as preventing a consumer re-  
10 porting agency or reseller from advising a  
11 third party that a security freeze is in ef-  
12 fect with respect to the credit report on the  
13 consumer.

14 “(D) CONFIRMATION OF FREEZE; ACCESS  
15 CODE.—Any consumer reporting agency that  
16 receives a consumer request for a security  
17 freeze in accordance with subparagraph (A)  
18 shall—

19 “(i) send a written confirmation of the  
20 security freeze to the consumer within 10  
21 business days of placing the freeze; and

22 “(ii) at the same time, provide the  
23 consumer with a unique personal identi-  
24 fication number or password (other than  
25 the Social Security account number of any



1 consumer) to be used by the consumer  
2 when providing authorization for the re-  
3 lease of the credit report of the consumer  
4 to a specific party or for a specific period  
5 of time.

6 “(3) ACCESS PURSUANT TO CONSUMER AU-  
7 THORIZATION DURING SECURITY FREEZE.—

8 “(A) NOTICE BY CONSUMER.—If the con-  
9 sumer wishes to allow the credit report on the  
10 consumer to be accessed by a specific party or  
11 for a specific period of time while a freeze is in  
12 place, the consumer shall—

13 “(i) contact the consumer reporting  
14 agency in any manner the agency may pro-  
15 vide;

16 “(ii) request that the security freeze  
17 be temporarily lifted; and

18 “(iii) provide—

19 “(I) proper identification;

20 “(II) the unique personal identi-  
21 fication number or password provided  
22 by the consumer reporting agency  
23 pursuant to paragraph (2)(D)(ii); and

24 “(III) the proper information re-  
25 garding the third party who is to re-



1                   ceive the credit report or the time pe-  
2                   riod for which the report shall be  
3                   available to users of the credit report.

4                   “(B) TIMELY RESPONSE REQUIRED.—A  
5                   consumer reporting agency that receives a re-  
6                   quest from a consumer to temporarily lift a se-  
7                   curity freeze on a credit report in accordance  
8                   with subparagraph (A) shall comply with the  
9                   request no later than 3 business days after re-  
10                  ceiving the request.

11                  “(C) PROCEDURES FOR REQUESTS.—A  
12                  consumer reporting agency may develop proce-  
13                  dures involving the use of telephone, fax, or,  
14                  upon the consent of the consumer in the man-  
15                  ner required by the Electronic Signatures in  
16                  Global and National Commerce Act for notices  
17                  legally required to be in writing, by the Inter-  
18                  net, e-mail, or other electronic medium to re-  
19                  ceive and process a request from a consumer to  
20                  temporarily lift a security freeze on a credit re-  
21                  port pursuant to subparagraph (A) in an expe-  
22                  dited manner.

23                  “(4) LIFTING OR REMOVING SECURITY  
24                  FREEZE.—



1           “(A) IN GENERAL.—A consumer reporting  
2           agency may remove or temporarily lift a secu-  
3           rity freeze placed on a credit report on a con-  
4           sumer only in the following cases:

5                   “(i) Upon receiving a consumer re-  
6                   quest for a temporary lift of the security  
7                   freeze in accordance with paragraph  
8                   (3)(A).

9                   “(ii) Upon receiving a consumer re-  
10                  quest for the removal of the security freeze  
11                  in accordance with subparagraph (C).

12                  “(iii) Upon a determination by the  
13                  consumer reporting agency that the secu-  
14                  rity freeze was imposed on the credit re-  
15                  port due to a material misrepresentation of  
16                  fact by the consumer.

17           “(B) NOTICE TO CONSUMER OF DETER-  
18           MINATION.—If a consumer reporting agency  
19           makes a determination described in subpara-  
20           graph (A)(iii) with a respect to a security freeze  
21           imposed on the credit report on any consumer,  
22           the consumer reporting agency shall notify the  
23           consumer of such determination in writing prior  
24           to removing the security freeze on such credit  
25           report.



1 “(C) REMOVING SECURITY FREEZE.—

2 “(i) IN GENERAL.—Except as pro-  
3 vided in this section, a security freeze shall  
4 remain in place until the consumer re-  
5 quests that the security freeze be removed.

6 “(ii) PROCEDURE FOR REMOVING SE-  
7 CURITY FREEZE.—A consumer reporting  
8 agency shall remove a security freeze with-  
9 in 3 business days of receiving a request  
10 for removal from the consumer who  
11 provides—

12 “(I) proper identification; and

13 “(II) the unique personal identi-  
14 fication number or password provided  
15 by the consumer reporting agency  
16 pursuant to paragraph (2)(D)(ii).

17 “(5) PROPER IDENTIFICATION REQUIRED.—A  
18 consumer reporting agency shall require proper iden-  
19 tification of any person who makes a request to im-  
20 pose, temporarily lift, or permanently remove a secu-  
21 rity freeze on the credit report of any consumer  
22 under this section.

23 “(6) THIRD PARTY REQUESTS.—If—

24 “(A) a third party requests access to a  
25 consumer’s credit report on which a security



1 freeze is in effect under this section in connec-  
2 tion with an application by the consumer for  
3 credit or any other use; and

4 “(B) the consumer does not allow the con-  
5 sumer’s credit report to be accessed by that  
6 specific party or during the specific period such  
7 application is pending,

8 the third party may treat the application as incom-  
9 plete.

10 “(7) CERTAIN ENTITY EXEMPTIONS.—

11 “(A) AGGREGATORS AND OTHER AGEN-  
12 CIES.—This section shall not apply to a con-  
13 sumer reporting agency that acts only as a re-  
14 seller of credit information by assembling and  
15 merging information contained in the database  
16 of another consumer reporting agency or mul-  
17 tiple consumer reporting agencies, and does not  
18 maintain a permanent database of credit infor-  
19 mation from which new credit reports are pro-  
20 duced.

21 “(B) OTHER EXEMPTED ENTITIES.—The  
22 following entities shall not be required to place  
23 a security freeze in a credit report:

24 “(i) An entity which provides check  
25 verification or fraud prevention services,



1 including but not limited to, reports on in-  
2 cidents of fraud, verification or authentica-  
3 tion of a consumer's identification, or au-  
4 thorizations for the purpose of approving  
5 or processing negotiable instruments, elec-  
6 tronic funds transfers, or similar methods  
7 of payments.

8 “(ii) A deposit account information  
9 service company, which issues reports re-  
10 garding account closures due to fraud, sub-  
11 stantial overdrafts, automated teller ma-  
12 chine abuse, or similar negative informa-  
13 tion regarding a consumer, to inquiring  
14 banks or other financial institutions for  
15 use only in reviewing a consumer request  
16 for a deposit account at the inquiring bank  
17 or other financial institution.

18 “(8) EXCEPTIONS.—This section shall not  
19 apply with respect to the use of a consumer credit  
20 report by any of the following for the purpose de-  
21 scribed:

22 “(A) A person, or any affiliate, agent, or  
23 assignee of any person, with whom the con-  
24 sumer has or, prior to an assignment, had an  
25 account, contract, or debtor-creditor relation-



1 ship for the purposes of reviewing the account  
2 or collecting the financial obligation owing for  
3 the account, contract, or debt.

4 “(B) An affiliate, agent, assignee, or pro-  
5 spective assignee of a person to whom access  
6 has been granted under paragraph (3) for pur-  
7 poses of facilitating the extension of credit or  
8 other permissible use of the report in accord-  
9 ance with the consumer’s request under such  
10 paragraph.

11 “(C) Any State or local agency, law en-  
12 forcement agency, trial court, or person acting  
13 pursuant to a court order, warrant, or sub-  
14 poena.

15 “(D) A Federal, State, or local agency that  
16 administers a program for establishing an en-  
17 forcing child support obligations for the purpose  
18 of administering such program.

19 “(E) A Federal, State, or local health  
20 agency, or any agent or assignee of such agen-  
21 cy, acting to investigate fraud within the juris-  
22 diction of such agency.

23 “(F) A Federal, State, or local tax agency,  
24 or any agent or assignee of such agency, acting  
25 to investigate or collect delinquent taxes or un-



1           paid court orders or to fulfill any of other stat-  
2           utory responsibility of such agency.

3           “(G) Any person that intends to use the  
4           information in accordance with section 604(c).

5           “(H) Any person administering a credit  
6           file monitoring subscription or similar service to  
7           which the consumer has subscribed.

8           “(I) Any person for the purpose of pro-  
9           viding a consumer with a copy of the credit re-  
10          port or credit score of the consumer upon the  
11          consumer’s request.

12          “(9) PROHIBITION ON FEE.—A consumer re-  
13          porting agency may not impose a fee for placing, re-  
14          moving, or removing for a specific party or parties  
15          a security freeze on a credit report.

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

20                 ‘Consumers Who Are Victims of Identity  
21                 Theft Have the Right to Obtain a Security  
22                 Freeze on Your Consumer Report

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

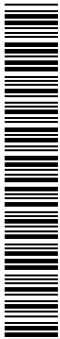


1 of an identity theft report you have filed with  
2 a law enforcement agency about unlawful use of  
3 your personal information by another person.

4 'The security freeze will prohibit a credit  
5 reporting agency from releasing any informa-  
6 tion in your consumer credit report without  
7 your express authorization. A security freeze  
8 must be requested in writing by certified mail.

9 'The security freeze is designed to prevent  
10 credit, loans, and services from being approved  
11 in your name without your consent. However,  
12 you should be aware that using a security  
13 freeze to take control over who gains access to  
14 the personal and financial information in your  
15 consumer credit report may delay, interfere  
16 with, or prohibit the timely approval of any sub-  
17 sequent request or application you make re-  
18 garding new loans, credit, mortgage, insurance,  
19 government services or payments, rental hous-  
20 ing, employment, investment, license, cellular  
21 phone, utilities, digital signature, internet credit  
22 card transaction, or other services, including an  
23 extension of credit at point of sale.

24 'When you place a security freeze on your  
25 consumer credit report, within 10 business days



1           you will be provided a personal identification  
2           number or password to use if you choose to re-  
3           move the freeze on your consumer credit report  
4           or authorize the release of your consumer credit  
5           report for a specific party, parties or period of  
6           time after the freeze is in place.

7           ‘To provide that authorization, you must  
8           contact the consumer reporting agency and pro-  
9           vide all of the following: (1) The unique per-  
10          sonal identification number or password pro-  
11          vided by the consumer reporting agency (2)  
12          Proper identification to verify your identity (3)  
13          The proper information regarding the third  
14          party or parties who are trying to receive the  
15          consumer credit report or the period of time for  
16          which the report shall be available to users of  
17          the consumer report.

18          ‘A consumer reporting agency that receives  
19          a request from a consumer to lift temporarily a  
20          freeze on a consumer credit report shall comply  
21          with the request no later than 3 days after re-  
22          ceiving the request.

23          ‘A security freeze does not apply to a per-  
24          son or entity, or its affiliates, or collection agen-  
25          cies acting on behalf of the person or entity



1 with which you have an existing account that  
2 requests information in your consumer credit  
3 report for the purposes of reviewing or col-  
4 lecting the account, if you have previously given  
5 your consent to this use of your consumer cred-  
6 it report. Reviewing the account includes activi-  
7 ties related to account maintenance, moni-  
8 toring, credit line increases, and account up-  
9 grades and enhancements.

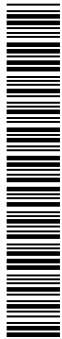
10 “If you are actively seeking credit, you  
11 should understand that the procedures involved  
12 in lifting a security freeze may slow your own  
13 applications for credit. You should plan ahead  
14 and lift a freeze, either completely or tempo-  
15 rarily if you are shopping around, or specifically  
16 for a certain creditor, a few days before actually  
17 applying for new credit.”.

18 “(j) COMPLIANCE WITH GLBA.—

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

23 “(A) subsection (a), if—

24 “(i) the person is obliged to imple-  
25 ment appropriate safeguards, with respect



1 to customer records and information, pur-  
2 suant to regulations, guidelines, or guid-  
3 ance prescribed by or issued by an agency  
4 or authority in accordance with such sub-  
5 section of the Gramm-Leach-Bliley Act;  
6 and

7 “(ii) the safeguards are being applied  
8 by the person with respect to sensitive fi-  
9 nancial personal information in the same  
10 manner.

11 “(B) subsection (b), if—

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

19 “(ii) the person conducts such inves-  
20 tigation with respect to sensitive financial  
21 personal information in the same manner;  
22 and

23 “(C) subsections (c), (e), and (f), if—

24 “(i) the person is obliged to provide  
25 notices, including consumer notices, of



1 breaches of data pursuant to regulations,  
2 guidelines, or guidance prescribed by or  
3 issued by an agency or authority in accord-  
4 ance with section 501 of the Gramm-  
5 Leach-Bliley Act; and

6 “(ii) the person provides notices with  
7 respect to sensitive financial personal in-  
8 formation in the same manner.

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

11 “(A) with respect to any requirement de-  
12 scribed in subparagraph (A)(i), (B)(i), or (C)(i)  
13 of paragraph (1) relating to sensitive financial  
14 personal information—

15 “(i) an enterprise (as defined in title  
16 XIII of the Housing and Community De-  
17 velopment Act of 1992) or a Federal home  
18 loan bank is required to comply with or-  
19 ders, guidance, or regulations issued by the  
20 appropriate functional regulatory agency  
21 described in subparagraph (F) or (H) of  
22 subsection (l)(1); and

23 “(ii) such orders, guidance, or regula-  
24 tions of such functional regulatory agency  
25 are substantially consistent with regula-



1           tions, guidelines, or guidance prescribed by  
2           or issued by an agency or authority in ac-  
3           cordance with section 501(b) of the  
4           Gramm-Leach-Bliley Act (without regard  
5           to whether such enterprise, Federal home  
6           loan bank, or functional regulatory agency  
7           is subject to such section 501(b)) that re-  
8           late to any requirement described in sub-  
9           paragraph (A)(i), (B)(i), or (C)(i) of para-  
10          graph (1); and

11          “(C) the enterprise or Federal home loan  
12          bank implements any such requirement with re-  
13          spect to sensitive financial personal information  
14          in the same manner as with other information  
15          subject to the regulations, guidelines, or guid-  
16          ance prescribed or issued by the appropriate  
17          functional regulatory agency described in sub-  
18          paragraph (F) or (H) of subsection (l)(1),  
19          the enterprise or Federal home loan bank shall be  
20          treated as a person subjection to section 501(b) of  
21          the Gramm-Leach-Bliley Act.

22          “(3) NO DUPLICATIVE REQUIREMENTS OR PEN-  
23          ALTIES.—An agency that determines a financial in-  
24          stitution is not in compliance with section 501(b) of  
25          the Gramm-Leach-Bliley Act shall not subject such

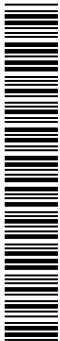


1 institution to any additional penalties pursuant to  
2 this section or penalties for any conduct that would  
3 not be required under this section but for the failure  
4 to comply with section 501(b).

5 “(4) HARMONIZATION OF GLBA.—

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

20 “(B) AGENCIES THAT HAVE NOT FULLY  
21 IMPLEMENTED TITLE V OF GLBA.—Any agency  
22 described in subsection (l) that has not issued  
23 or prescribed regulations, guidelines, or orders  
24 that are required or permitted under title V of  
25 the Gramm-Leach-Bliley Act and that set forth

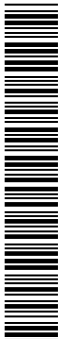


1 the requirements for compliance with such title,  
2 including with respect to providing notice of a  
3 breach of data security, shall prescribe such  
4 regulations, guidelines, or orders, as appro-  
5 priate, before the end of the 12-month period  
6 beginning on the date that the uniform stand-  
7 ards are issued pursuant to subsection (k)(1),  
8 in a manner that—

9 “(i) is consistent with this section;  
10 and

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

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



1 month period beginning on the date that the  
2 uniform standards are issued pursuant to sub-  
3 section (k)(1), in a manner that—

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

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

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

17 “(i) is consistent with this section;

18 “(ii) provides for notices that are uni-  
19 form, consistent, helpful to consumers, and  
20 easily understandable; and

21 “(iii) allows, to the extent practical,  
22 consistent standards across holding compa-  
23 nies with respect to compliance with this  
24 section and section 501(b) of the Gramm-



1 Leach-Bliley Act that is deemed compli-  
2 ance under this subsection.

3 “(k) UNIFORM DATA SECURITY SAFEGUARD REGU-  
4 LATIONS.—

5 “(1) UNIFORM STANDARDS.—The Secretary of  
6 the Treasury, the Board of Governors of the Federal  
7 Reserve System, and the Commission shall jointly  
8 develop appropriate standards using the guidelines  
9 issued under GLBA as a model but adding the addi-  
10 tional protections pursuant to this section and guide-  
11 lines to implement this section (other than sub-  
12 section (j)), including—

13 “(A) prescribing regulations requiring each  
14 consumer reporter to establish reasonable poli-  
15 cies and procedures implementing such stand-  
16 ards and using the guidelines issued under sec-  
17 tion subsection (j) and section 501(b) of title V  
18 of the Gramm-Leach-Bliley Act as a model but  
19 adding the additional protections pursuant to  
20 this section, and any regulations, guidelines, or  
21 orders issued or prescribed under such section;

22 “(B) prescribing specific standards with  
23 respect to subsection (g)(3) setting forth a rea-  
24 sonably unique and, pursuant to paragraph  
25 (2)(B), exclusive color and titling of the notice,



1 and standardized formatting of the notice con-  
2 tents described under such subsection to stand-  
3 ardize such communications and make them  
4 more likely to be reviewed, and understood by,  
5 and helpful to consumers, including to the ex-  
6 tent possible placing the critical information for  
7 consumers in an easily understood and promi-  
8 nent text box at the top of each notice;

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

12 “(i) has been satisfied with respect to  
13 any particular consumer, even if the con-  
14 sumer reporter is unable to contact the  
15 consumer, so long as the consumer re-  
16 porter has made reasonable efforts to ob-  
17 tain a current address or other current  
18 contact information with respect to such  
19 consumer;

20 “(ii) may be made by public notice in  
21 appropriate cases where such reasonable  
22 efforts have failed; and

23 “(iii) with respect to paragraph (3) of  
24 subsection (c), may be communicated to  
25 entities in addition to those specifically re-



1           quired under such paragraph through any  
2           reasonable means, such as through an elec-  
3           tronic transmission normally received by  
4           all of the consumer reporter's business cus-  
5           tomers; and

6           “(D) providing in such standards and  
7           guidelines elaboration on how to determine  
8           whether a technology is generally commercially  
9           available for the purposes of subsection (b), fo-  
10          cusing on the availability of such technology to  
11          persons who potentially could seek to breach the  
12          data security of the consumer reporter, and how  
13          to determine whether the information is likely  
14          to be usable under subsection (b)(4)(B);

15          “(E) providing for a reasonable and fair  
16          manner of providing required consumer notices  
17          where the entity that directly suffered the  
18          breach is unavailable to pay for such notices,  
19          because for example the entity is bankrupt, out-  
20          side of the jurisdiction of the United States, or  
21          otherwise can not be compelled to provide such  
22          notice;

23          “(F) providing for periodic instead of indi-  
24          vidual notices to regulators and law enforce-  
25          ment under subsection (c)(1) and (2) where the



1 consumer reporter determines that only a de  
2 minimus number of consumers are reasonably  
3 likely to be affected;

4 “(G) providing, to the extent appropriate,  
5 notice to the United States Secret Service, a  
6 consumer reporter’s functional regulator, and  
7 the entities described in paragraphs (1) through  
8 (3) of subsection (c), whenever the consumer  
9 reporter’s sensitive financial personal informa-  
10 tion has been lost or illegally obtained but such  
11 loss or acquisition does not result in a breach,  
12 for example because the information was suffi-  
13 ciently encrypted or otherwise unusable; and

14 “(H) establishing what types of accounts  
15 might be subject to unauthorized transactions  
16 after a breach involving sensitive financial ac-  
17 count information, for example because such ac-  
18 counts are open-end credit plans or are de-  
19 scribed in section903(2) of the Electronic Fund  
20 Transfer Act.

21 “(2) MODEL NOTICE FORMS.—

22 “(A) IN GENERAL.—The Secretary of the  
23 Treasury, Board of Governors of the Federal  
24 Reserve System, and the Commission shall  
25 jointly establish and publish model forms and



1 disclosure statements to facilitate compliance  
2 with the notice requirements of subsection (g)  
3 and to aid the consumer in understanding the  
4 information required to be disclosed relating to  
5 a breach of data security and the options and  
6 services available to the consumer for obtaining  
7 additional information, consumer reports, and  
8 credit monitoring services.

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

14 “(C) EFFECT OF USE.—A consumer re-  
15 porter that uses a model notice form or disclo-  
16 sure statement established under this para-  
17 graph shall be deemed to be in compliance with  
18 the requirement to provide the required disclo-  
19 sure to consumers to which the form or state-  
20 ment relates.

21 “(3) ENFORCEMENT.—

22 “(A) REGULATIONS.—Each of the func-  
23 tional regulatory agencies shall prescribe such  
24 regulations as may be necessary, consistent  
25 with the standards in paragraph (1), to ensure



1 compliance with this section with respect to the  
2 persons subject to the jurisdiction of such agen-  
3 cy under subsection (l).

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

15 “(4) PROCEDURES AND DEADLINE.—

16 “(A) PROCEDURES.—Standards and guide-  
17 lines issued under this subsection shall be  
18 issued in accordance with applicable require-  
19 ments of title 5, United States Code.

20 “(B) DEADLINE FOR INITIAL STANDARDS  
21 AND GUIDELINES.—The standards and guide-  
22 lines required to be issued under paragraph (1)  
23 shall be published in final form before the end  
24 of the 9-month period beginning on the date of



1 the enactment of the Financial Data Protection  
2 Act of 2006.

3 “(C) DEADLINE FOR ENFORCEMENT REG-  
4 ULATIONS.—The standards and guidelines re-  
5 quired to be issued under paragraph (2) shall  
6 be published in final form before the end of the  
7 6-month period beginning on the date standards  
8 and guidelines described in subparagraph (B)  
9 are published in final form.

10 “(D) AUTHORITY TO GRANT EXCEP-  
11 TIONS.—The regulations prescribed under para-  
12 graph (2) may include such additional excep-  
13 tions to this section as are deemed jointly by  
14 the functional regulatory agencies to be con-  
15 sistent with the purposes of this section if such  
16 exceptions are necessary because of some  
17 unique aspect of the entities regulated or laws  
18 governing such entities; and such exemptions  
19 are narrowly tailored to protect the purposes of  
20 this Act.

21 “(E) CONSULTATION AND COORDINA-  
22 TION.—The Secretary of the Treasury, the  
23 Board of Governors of the Federal Reserve Sys-  
24 tem, and the Commission shall consult and co-  
25 ordinate with the other functional regulatory



1 agencies to the extent appropriate in pre-  
2 scribing regulations under this subsection.

3 “(F) FAILURE TO MEET DEADLINE.—Any  
4 agency or authority required to publish stand-  
5 ards and guidelines or regulations under this  
6 subsection that fails to meet the deadline for  
7 such publishing shall submit a report to the  
8 Congress within 30 days of such deadline  
9 describing—

10 “(i) the reasons for the failure to  
11 meet such deadline;

12 “(ii) when the agency or authority ex-  
13 pects to complete the publication required;  
14 and

15 “(iii) the detriment such failure to  
16 publish by the required deadline will have  
17 on consumers and other affected parties.

18 “(G) UNIFORM IMPLEMENTATION AND IN-  
19 TERPRETATION.—It is the intention of the Con-  
20 gress that the agencies and authorities de-  
21 scribed in subsection (l)(1)(G) will implement  
22 and interpret their enforcement regulations, in-  
23 cluding any exceptions provided under subpara-  
24 graph (D), in a uniform manner.



1           “(5) APPROPRIATE EXEMPTIONS OR MODIFICA-  
2           TIONS.—The Secretary of the Treasury, the Board  
3           of Governors of the Federal Reserve System, and the  
4           Commission, in consultation with the Administrator  
5           of the Small Business Administration and the func-  
6           tional regulatory agencies, shall provide appropriate  
7           exemptions or modifications from requirements of  
8           this section relating to sensitive financial personal  
9           information for consumer reporters that do not  
10          maintain, service, or communicate a large quantity  
11          of such information, taking into account the degree  
12          of sensitivity of such information, the likelihood of  
13          misuse, and the degree of potential substantial harm  
14          or inconvenience to the related consumer.

15          “(1) ADMINISTRATIVE ENFORCEMENT.—

16               “(1) IN GENERAL.—Notwithstanding section  
17               616, 617, or 621, compliance with this section and  
18               the regulations prescribed under this section shall be  
19               enforced exclusively by the functional regulatory  
20               agencies with respect to financial institutions and  
21               other persons subject to the jurisdiction of each such  
22               agency under applicable law, as follows:

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



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

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

23 “(iii) banks insured by the Federal  
24 Deposit Insurance Corporation (other than  
25 members of the Federal Reserve System),



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

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

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

21 “(C) Under the Securities Exchange Act of  
22 1934, by the Securities and Exchange Commis-  
23 sion with respect to any broker, dealer, or  
24 nonbank transfer agent.

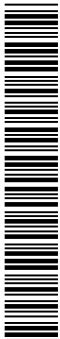


1           “(D) Under the Investment Company Act  
2 of 1940, by the Securities and Exchange Com-  
3 mission with respect to investment companies.

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

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

20           “(G) Under State insurance law, in the  
21 case of any person engaged in the business of  
22 insurance, by the applicable State insurance au-  
23 thority of the State in which the person is dom-  
24 icated.



1           “(H) Under the Federal Home Loan Bank  
2           Act, by the Federal Housing Finance Board  
3           (and any successor to such functional regu-  
4           latory agency) with respect to the Federal home  
5           loan banks and any other entity subject to the  
6           jurisdiction of such functional regulatory agen-  
7           cy, including any affiliate of any such bank.

8           “(I) Under the Federal Trade Commission  
9           Act, by the Commission for any other person  
10          that is not subject to the jurisdiction of any  
11          agency or authority under subparagraphs (A)  
12          through (G) of this subsection, except that for  
13          the purposes of this subparagraph a violation of  
14          this section shall be treated as an unfair and  
15          deceptive act or practice in violation of a regu-  
16          lation under section 18(a)(1)(B) of the Federal  
17          Trade Commission Act regarding unfair or de-  
18          ceptive acts or practices.

19          “(2) EXERCISE OF CERTAIN POWERS.—For the  
20          purpose of the exercise by any agency referred to in  
21          paragraph (1) of its powers under any Act referred  
22          to in such paragraph, a violation of any requirement  
23          imposed under this section shall be deemed to be a  
24          violation of a requirement imposed under that Act.  
25          In addition to its powers under any provision of law



1 specifically referred to in paragraph (1), each of the  
2 agencies referred to in that paragraph may exercise,  
3 for the purpose of enforcing compliance with any re-  
4 quirement imposed under this section, any other au-  
5 thority conferred on it by law.

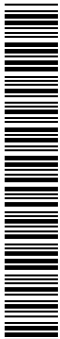
6 “(m) DEFINITIONS.—For purposes of this section,  
7 the following definitions shall apply:

8 “(1) BREACH OF DATA SECURITY.—The term  
9 ‘breach of data security’ or ‘data security breach’  
10 means any loss, unauthorized acquisition, or misuse  
11 of sensitive financial personal information handled  
12 by a consumer reporter that could be misused to  
13 commit financial fraud (such as identity theft or  
14 fraudulent transactions made on financial accounts)  
15 in a manner causing substantial harm or inconven-  
16 ience to a consumer.

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

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

21 “(A) CONSUMER FINANCIAL FILE AND  
22 CONSUMER REPORTS.—The term ‘consumer fi-  
23 nancial file and consumer reports’ includes any  
24 written, oral, or other communication of any in-  
25 formation by a consumer reporter bearing on a



1 consumer's credit worthiness, credit standing,  
2 credit capacity, character, general reputation,  
3 personal characteristics, personal identifiers, fi-  
4 nancial account information, or mode of living.

5 “(B) CONSUMER REPORTER.—The term  
6 ‘consumer reporter’ means any consumer re-  
7 porting agency or financial institution, or any  
8 person which, for monetary fees, dues, on a co-  
9 operative nonprofit basis, or otherwise regularly  
10 engages in whole or in part in the practice of  
11 assembling or evaluating consumer financial file  
12 and consumer reports, consumer credit informa-  
13 tion, or other information on consumers, for the  
14 purpose of furnishing consumer reports to third  
15 parties or to provide or collect payment for or  
16 market products and services, or for employ-  
17 ment purposes, and which uses any means or  
18 facility of interstate commerce for such pur-  
19 poses.

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

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



1           “(B) any entity that is primarily engaged  
2           in activities that are subject to the Fair Credit  
3           Reporting Act; and

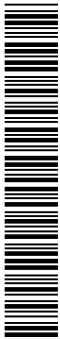
4           “(C) any person that is maintaining, re-  
5           ceiving, or communicating sensitive financial  
6           personal information on an ongoing basis for  
7           the purposes of engaging in interstate com-  
8           merce.

9           “(5) FUNCTIONAL REGULATORY AGENCY.—The  
10          term ‘functional regulatory agency’ means any agen-  
11          cy described in subsection (j) with respect to the fi-  
12          nancial institutions and other persons subject to the  
13          jurisdiction of such agency.

14          “(6) HANDLED BY.—The term ‘handled by’ in-  
15          cludes with respect to sensitive financial personal in-  
16          formation, any access to or generation, maintenance,  
17          servicing, or ownership of such information, as well  
18          as any transfer to or allowed access to or similar  
19          sharing or servicing of such information by or with  
20          a third party on a consumer reporter’s behalf.

21          “(7) NATIONWIDE CONSUMER REPORTING  
22          AGENCY.—The term ‘nationwide consumer reporting  
23          agency’ means—

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

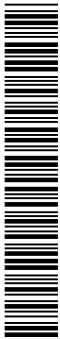


1           “(B) any person who notifies the Commis-  
2           sion that the person reasonably expects to be-  
3           come a consumer reporting agency described in  
4           section 603(p) within a reasonable time; and

5           “(C) a consumer reporting agency de-  
6           scribed in section 603(w) that notifies the Com-  
7           mission that the person wishes to receive breach  
8           of data security notices under this section that  
9           involve information of the type maintained by  
10          such agency.

11          “(8) NEURAL NETWORK.—The term ‘neural  
12          network’ means an information security program  
13          that monitors financial account transactions for po-  
14          tential fraud, using historical patterns to analyze  
15          and identify suspicious financial account trans-  
16          actions.

17          “(9) SENSITIVE FINANCIAL ACCOUNT INFORMA-  
18          TION.—The term ‘sensitive financial account infor-  
19          mation’ means a financial account number of a con-  
20          sumer, such as a credit card number or debit card  
21          number, in combination with any required security  
22          code, access code, biometric code, password, or other  
23          personal identification information that would allow  
24          access to the financial account.



1           “(10) SENSITIVE FINANCIAL IDENTITY INFOR-  
2           MATION.—The term ‘sensitive financial identity in-  
3           formation’ means the first and last name, the ad-  
4           dress, or the telephone number of a consumer, in  
5           combination with any of the following of the con-  
6           sumer:

7                   “(A) Social Security number.

8                   “(B) Driver’s license number or equivalent  
9           State identification number.

10                  “(C) IRS Individual Taxpayer Identifica-  
11           tion Number.

12                  “(D) IRS Adoption Taxpayer Identifica-  
13           tion Number.

14                  “(E) The consumer’s deoxyribonucleic acid  
15           profile or other unique biometric data, including  
16           fingerprint, voice print, retina or iris image, or  
17           any other unique physical representation.

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

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



1       nancial loss to or civil or criminal penalties imposed  
2       on the consumer or the need for the consumer to ex-  
3       pend significant time and effort to correct erroneous  
4       information relating to the consumer, including in-  
5       formation maintained by consumer reporting agen-  
6       cies, financial institutions, or government entities, in  
7       order to avoid material financial loss or increased  
8       costs or civil or criminal penalties, due to unauthor-  
9       ized use of sensitive financial personal information  
10      relating to such consumer.

11      “(n) RELATION TO STATE LAWS.—

12           “(1) IN GENERAL.—No requirement or prohibi-  
13      tion may be imposed under the laws of any State  
14      with respect to the responsibilities of any consumer  
15      reporter or the functional equivalent of such  
16      responsibilities—

17           “(A) to protect the security or confiden-  
18      tiality of information on consumers maintained  
19      by or on behalf of the person;

20           “(B) to safeguard such information from  
21      potential misuse;

22           “(C) to investigate or provide notices of  
23      any unauthorized access to information con-  
24      cerning the consumer, or the potential misuse  
25      of such information, for fraudulent purposes;



1 “(D) to mitigate any loss or harm result-  
2 ing from such unauthorized access or misuse; or

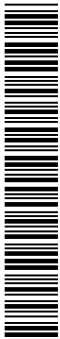
3 “(E) involving restricting credit reports  
4 from being provided, or imposing any require-  
5 ment on such provision, for a permissible pur-  
6 pose pursuant to section 604, such as—

7 “(i) the responsibilities of a consumer  
8 reporting agency to honor a request, or  
9 withdrawal of such a request, to prohibit  
10 the consumer reporting agency from re-  
11 leasing any type of information from the  
12 file of a consumer;

13 “(ii) the process by which such a re-  
14 quest or withdrawal of such a request is  
15 made, honored, or denied;

16 “(iii) any notice that is required to be  
17 provided to the consumer in connection  
18 with such a request or withdrawal of such  
19 a request; or

20 “(iv) the ability of a consumer report-  
21 ing agency to update or change informa-  
22 tion in a consumer’s file as a result of such  
23 a request or withdrawal of such a request;  
24 or



1 “(v) the responsibilities of third par-  
2 ties if information from a consumer’s file  
3 is unavailable as a result of such a request.

4 “(2) EXCEPTION FOR CERTAIN STATE LAWS.—  
5 Paragraph (1) shall not apply with respect to—

6 “(A) State laws governing professional  
7 confidentiality; or

8 “(B) State privacy laws limiting the pur-  
9 poses for which information may be disclosed.

10 “(3) EXCEPTION FOR CERTAIN COVERED ENTI-  
11 TIES.—Paragraph (1) shall not apply with respect to  
12 the entities described in subsection (l)(1)(G) to the  
13 extent that such entities are acting in accordance  
14 with subsection (j)(4) and (k)(3)(G) in a manner  
15 that is consistent with this section and the imple-  
16 mentation of this section by the regulators described  
17 in subsection (k)(1).”.

18 (b) CLERICAL AMENDMENT.—The table of sections  
19 for the Fair Credit Reporting Act is amended by inserting  
20 after the item relating to section 629 the following new  
21 item:

“630. Data security safeguards.”.

22 (c) EFFECTIVE DATE.—The provisions of section 630  
23 of the Fair Credit Reporting Act (as added by this sec-  
24 tion), other than subsection (h) of such section, shall take  
25 effect on the date of publication of the regulations re-



1 quired under paragraph (3) of such subsection, with re-  
2 spect to any person under the jurisdiction of each regu-  
3 latory agency publishing such regulations.

