

**AMENDMENT TO H. R. 10, AS REPORTED
OFFERED BY MR. OXLEY, MS. PRYCE OF OHIO,
OR MRS. ROUKEMA**

[Privacy]

Page 378, beginning on line 16, strike subtitle A of title V and insert the following (and conform the table of contents accordingly):

1 **Subtitle A—Disclosure of**
2 **Nonpublic Personal Information**
3 **SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFOR-**
4 **MATION.**

5 (a) PRIVACY OBLIGATION POLICY.—It is the policy
6 of the Congress that each financial institution has an af-
7 firmative and continuing obligation to respect the privacy
8 of its customers and to protect the security and confiden-
9 tiality of those customers' nonpublic personal information.
10 (b) FINANCIAL INSTITUTIONS SAFEGUARDS.—In fur-
11 therance of the policy in subsection (a), each agency or
12 authority described in section 505(a) shall establish appro-
13 priate standards for the financial institutions subject to

1 their jurisdiction relating to administrative, technical, and
2 physical safeguards—

3 (1) to insure the security and confidentiality of
4 customer records and information;

5 (2) to protect against any anticipated threats or
6 hazards to the security or integrity of such records;
7 and

8 (3) to protect against unauthorized access to or
9 use of such records or information which could re-
10 sult in substantial harm or inconvenience to any cus-
11 tomer.

12 **SEC. 502. OBLIGATIONS WITH RESPECT TO DISCLOSURES**
13 **OF PERSONAL INFORMATION.**

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

20 (b) OPT OUT.—

21 (1) IN GENERAL.—A financial institution may
22 not disclose nonpublic personal information to non-
23 affiliated third parties unless—

24 (A) such financial institution clearly and
25 conspicuously discloses to the consumer, in

1 writing or in electronic form (or other form per-
2 mitted by the regulations prescribed under sec-
3 tion 504), that such information may be dis-
4 closed to such third parties;

5 (B) the consumer is given the opportunity,
6 before the time that such information is initially
7 disclosed, to direct that such information not be
8 disclosed to such third parties; and

9 (C) the consumer is given an explanation
10 of how the consumer can exercise that non-
11 disclosure option.

12 (2) EXCEPTION.—This subsection shall not pre-
13 vent a financial institution from providing nonpublic
14 personal information to a nonaffiliated third party to
15 perform services or functions on behalf of the finan-
16 cial institution, including marketing of the financial
17 institution's own products or services or financial
18 products or services offered pursuant to joint agree-
19 ments between two or more financial institutions
20 that comply with the requirements imposed by the
21 regulations prescribed under section 504, if the fi-
22 nancial institution fully discloses the providing of
23 such information and enters into a contractual
24 agreement with the third party that requires the

1 third party to maintain the confidentiality of such
2 information.

3 (c) LIMITS ON REUSE OF INFORMATION.—Except as
4 otherwise provided in this subtitle, a nonaffiliated third
5 party that receives from a financial institution nonpublic
6 personal information under this section shall not, directly
7 or through an affiliate of such receiving third party, dis-
8 close such information to any other person that is a non-
9 affiliated third party of both the financial institution and
10 such receiving third party, unless such disclosure would
11 be lawful if made directly to such other person by the fi-
12 nancial institution.

13 (d) LIMITATIONS ON THE SHARING OF ACCOUNT
14 NUMBER INFORMATION FOR MARKETING PURPOSES.—A
15 financial institution shall not disclose an account number
16 or similar form of access number or access code for a cred-
17 it card account, deposit account, or transaction account
18 of a consumer to any nonaffiliated third party for use in
19 telemarketing, direct mail marketing, or other marketing
20 through electronic mail to the consumer.

21 (e) GENERAL EXCEPTIONS.—Subsections (a) and (b)
22 shall not prohibit the disclosure of nonpublic personal
23 information—

1 (1) as necessary to effect, administer, or en-
2 force a transaction requested or authorized by the
3 consumer, or in connection with—

4 (A) servicing or processing a financial
5 product or service requested or authorized by
6 the consumer;

7 (B) maintaining or servicing the con-
8 sumer's account with the financial institution;
9 or

10 (C) a proposed or actual securitization,
11 secondary market sale (including sales of serv-
12 icing rights), or similar transaction related to a
13 transaction of the consumer;

14 (2) with the consent or at the direction of the
15 consumer;

16 (3) to protect the confidentiality or security of
17 its records pertaining to the consumer, the service or
18 product, or the transaction therein, or to protect
19 against or prevent actual or potential fraud, unau-
20 thorized transactions, claims, or other liability, for
21 required institutional risk control, or for resolving
22 customer disputes or inquiries, or to persons holding
23 a beneficial interest relating to the consumer, or to
24 persons acting in a fiduciary capacity on behalf of
25 the consumer;

1 (4) to provide information to insurance rate ad-
2 visory organizations, guaranty funds or agencies, ap-
3 plicable rating agencies of the financial institution,
4 persons assessing the institution's compliance with
5 industry standards, and the institution's attorneys,
6 accountants, and auditors;

7 (5) to the extent specifically permitted or re-
8 quired under other provisions of law and in accord-
9 ance with the Right to Financial Privacy Act of
10 1978, to law enforcement agencies (including a Fed-
11 eral functional regulator, a State insurance author-
12 ity, or the Federal Trade Commission), self-regu-
13 latory organizations, or for an investigation on a
14 matter related to public safety;

15 (6) to a consumer reporting agency in accord-
16 ance with the Fair Credit Reporting Act, or in ac-
17 cordance with interpretations of such Act by the
18 Board of Governors of the Federal Reserve System
19 or the Federal Trade Commission, including inter-
20 pretations published as commentary (16 C.F.R. 601-
21 622);

22 (7) in connection with a proposed or actual
23 sale, merger, transfer, or exchange of all or a por-
24 tion of a business or operating unit if the disclosure

1 of nonpublic personal information concerns solely
2 consumers of such business or unit; or

3 (8) to comply with Federal, State, or local laws,
4 rules, and other applicable legal requirements; to
5 comply with a properly authorized civil, criminal, or
6 regulatory investigation or subpoena by Federal,
7 State, or local authorities; or to respond to judicial
8 process or government regulatory authorities having
9 jurisdiction over the financial institution for exam-
10 ination, compliance, or other purposes as authorized
11 by law.

12 **SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.**

13 (a) DISCLOSURE REQUIRED.—A financial institution
14 shall clearly and conspicuously disclose to each consumer,
15 at the time of establishing the customer relationship with
16 the consumer and not less than annually, in writing or
17 in electronic form (or other form permitted by the regula-
18 tions prescribed under section 504), its policies and prac-
19 tices with respect to protecting the nonpublic personal in-
20 formation of consumers in accordance with the rules pre-
21 scribed under section 504.

22 (b) INFORMATION TO BE INCLUDED.—The disclosure
23 required by subsection (a) shall include—

24 (1) the policy and practices of the institution
25 with respect to disclosing nonpublic personal infor-

1 mation to nonaffiliated third parties, other than
2 agents of the institution, consistent with section 502
3 of this subtitle, and including—

4 (A) the categories of persons to whom the
5 information is or may be disclosed, other than
6 the persons to whom the information may be
7 provided pursuant to section 502(e); and

8 (B) the practices and policies of the insti-
9 tution with respect to disclosing of nonpublic
10 personal information of persons who have
11 ceased to be customers of the financial institu-
12 tion;

13 (2) the categories of nonpublic personal infor-
14 mation that are collected by the financial institution;

15 (3) the policies that the institution maintains to
16 protect the confidentiality and security of nonpublic
17 personal information in accordance with section 501;
18 and

19 (4) the disclosures required, if any, under sec-
20 tion 603(d)(2)(A)(iii) of the Fair Credit Reporting
21 Act.

22 **SEC. 504. RULEMAKING.**

23 (a) **REGULATORY AUTHORITY.**—The Federal bank-
24 ing agencies, the National Credit Union Association, the
25 Secretary of the Treasury, and the Securities and Ex-

1 change Commission, shall jointly prescribe, after consulta-
2 tion with the Federal Trade Commission, and representa-
3 tives of State insurance authorities designated by the Na-
4 tional Association of Insurance Commissioners, such regu-
5 lations as may be necessary to carry out the purposes of
6 this subtitle. Such regulations shall be prescribed in ac-
7 cordance with applicable requirements of the title 5,
8 United States Code, and shall be issued in final form with-
9 in 6 months after the date of enactment of this Act.

10 (b) **AUTHORITY TO GRANT EXCEPTIONS.**—The regu-
11 lations prescribed under subsection (a) may include such
12 additional exceptions to subsections (a) and (b) of section
13 502 as are deemed consistent with the purposes of this
14 subtitle.

15 **SEC. 505. ENFORCEMENT.**

16 (a) **IN GENERAL.**—This subtitle and the rules pre-
17 scribed thereunder shall be enforced by the Federal func-
18 tional regulators, the State insurance authorities, and the
19 Federal Trade Commission with respect to financial insti-
20 tutions subject to their jurisdiction under applicable law,
21 as follows:

22 (1) Under section 8 of the Federal Deposit In-
23 surance Act, in the case of—

24 (A) national banks, Federal branches and
25 Federal agencies of foreign banks, and any sub-

1 subsidiaries of such entities, by the Office of the
2 Comptroller of the Currency;

3 (B) member banks of the Federal Reserve
4 System (other than national banks), branches
5 and agencies of foreign banks (other than Fed-
6 eral branches, Federal agencies, and insured
7 State branches of foreign banks), commercial
8 lending companies owned or controlled by for-
9 eign banks, organizations operating under sec-
10 tion 25 or 25A of the Federal Reserve Act,
11 bank holding companies and their nonbank sub-
12 sidiaries or affiliates (except broker-dealers, af-
13 filiates providing insurance, investment compa-
14 nies, and investment advisers), by the Board of
15 Governors of the Federal Reserve System;

16 (C) banks insured by the Federal Deposit
17 Insurance Corporation (other than members of
18 the Federal Reserve System), insured State
19 branches of foreign banks, and any subsidiaries
20 of such entities, by the Board of Directors of
21 the Federal Deposit Insurance Corporation; and

22 (D) savings association the deposits of
23 which are insured by the Federal Deposit In-
24 surance Corporation, and any subsidiaries of

1 such a savings association, by the Director of
2 the Office of Thrift Supervision.

3 (2) Under the Federal Credit Union Act, by the
4 Administrator of the National Credit Union Admin-
5 istration with respect to any Federal or state char-
6 tered credit union, and any subsidiaries of such an
7 entity.

8 (3) Under the Farm Credit Act of 1971, by the
9 Farm Credit Administration with respect to the
10 Federal Agricultural Mortgage Corporation, any
11 Federal land bank, Federal land bank association,
12 Federal intermediate credit bank, or production
13 credit association.

14 (4) Under the Securities Exchange Act of 1934,
15 by the Securities and Exchange Commission with re-
16 spect to any broker-dealer.

17 (5) Under the Investment Company Act of
18 1940, by the Securities and Exchange Commission
19 with respect to investment companies.

20 (6) Under the Investment Advisers Act of 1940,
21 by the Securities and Exchange Commission with re-
22 spect to investment advisers registered with the
23 Commission under such Act.

24 (7) Under Federal Housing Enterprises Finan-
25 cial Safety and Soundness Act of 1992 (12 U. S. C.

1 4501 et seq.), by the Office of Federal Housing En-
2 terprise Oversight with respect to the Federal Na-
3 tional Mortgage Association and the Federal Home
4 Loan Mortgage Corporation.

5 (8) Under the Federal Home Loan Bank Act,
6 by the Federal Housing Finance Board with respect
7 to Federal home loan banks.

8 (9) Under State insurance law, in the case of
9 any person engaged in providing insurance, by the
10 State insurance authority of the State in which the
11 person is domiciled, subject to section 104 of this
12 Act.

13 (10) Under the Federal Trade Commission Act,
14 by the Federal Trade Commission for any other fi-
15 nancial institution that is not subject to the jurisdic-
16 tion of any agency or authority under paragraphs
17 (1) through (9) of this subsection.

18 (b) ENFORCEMENT OF SECTION 501.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), the agencies and authorities described in
21 subsection (a) shall implement the standards pre-
22 scribed under section 501(b) in the same manner, to
23 the extent practicable, as standards prescribed pur-
24 suant to subsection (a) of section 39 of the Federal

1 Deposit Insurance Act are implemented pursuant to
2 such section.

3 (2) EXCEPTION.—The agencies and authorities
4 described in paragraphs (4), (5), (6), (9), and (10)
5 of subsection (a) shall implement the standards pre-
6 scribed under section 501(b) by rule with respect to
7 the financial institutions subject to their respective
8 jurisdictions under subsection (a).

9 (c) DEFINITIONS.—The terms used in subsection
10 (a)(1) that are not defined in this subtitle or otherwise
11 defined in section 3(s) of the Federal Deposit Insurance
12 Act shall have the meaning given to them in section 1(b)
13 of the International Banking Act of 1978.

14 **SEC. 506. FAIR CREDIT REPORTING ACT AMENDMENT.**

15 (a) AMENDMENT.—Section 621 of the Fair Credit
16 Reporting Act (15 U.S.C. 1681s) is amended—

17 (1) in subsection (d), by striking everything fol-
18 lowing the end of the second sentence; and

19 (2) by striking subsection “(e)” and inserting in
20 lieu thereof the following:

21 “(e) REGULATORY AUTHORITY.—

22 “(1) The Federal banking agencies referred to
23 in paragraphs (1) and (2) of subsection (b) shall
24 jointly prescribe such regulations as necessary to
25 carry out the purposes of this Act with respect to

1 any persons identified under paragraphs (1) and (2)
2 of subsection (b), or to the holding companies and
3 affiliates of such persons.

4 “(2) The Administrator of the National Credit
5 Union Administration shall prescribe such regula-
6 tions as necessary to carry out the purposes of this
7 Act with respect to any persons identified under
8 paragraph (3) of subsection (b).”.

9 (b) CONFORMING AMENDMENT.—Section 621(a) of
10 the Fair Credit Reporting Act (15 U.S.C. 1681s(a)) is
11 amended by striking paragraph (4).

12 **SEC. 507. RELATION TO OTHER PROVISIONS.**

13 This subtitle shall not apply to any information to
14 which subtitle D of title III applies.

15 **SEC. 508. STUDY OF INFORMATION SHARING AMONG FI-**
16 **NANCIAL AFFILIATES.**

17 (a) IN GENERAL.—The Secretary of the Treasury, in
18 conjunction with the Federal functional regulators and the
19 Federal Trade Commission, shall conduct a study of infor-
20 mation sharing practices among financial institutions and
21 their affiliates. Such study shall include—

22 (1) the purposes for the sharing of confidential
23 customer information with affiliates or with non-
24 affiliated third parties;

1 (2) the extent and adequacy of security protec-
2 tions for such information;

3 (3) the potential risks for customer privacy of
4 such sharing of information;

5 (4) the potential benefits for financial institu-
6 tions and affiliates of such sharing of information;

7 (5) the potential benefits for customers of such
8 sharing of information;

9 (6) the adequacy of existing laws to protect cus-
10 tomer privacy;

11 (7) the adequacy of financial institution privacy
12 policy and privacy rights disclosure under existing
13 law;

14 (8) the feasibility of different approaches, in-
15 cluding opt-out and opt-in, to permit customers to
16 direct that confidential information not be shared
17 with affiliates and nonaffiliated third parties; and

18 (9) the feasibility of restricting sharing of infor-
19 mation for specific uses or of permitting customers
20 to direct the uses for which information may be
21 shared.

22 (b) CONSULTATION.—The Secretary shall consult
23 with representatives of State insurance authorities des-
24 ignated by the National Association of Insurance Commis-
25 sioners, and also with financial services industry, con-

1 sumer organizations and privacy groups, and other rep-
2 resentatives of the general public, in formulating and con-
3 ducting the study required by subsection (a).

4 (c) REPORT.—Before the end of the 6-month period
5 beginning on the date of the enactment of this Act, the
6 Secretary shall submit a report to the Congress containing
7 the findings and conclusions of the study required under
8 subsection (a), together with such recommendations for
9 legislative or administrative action as may be appropriate.

10 **Sec. 509. DEFINITIONS.**

11 As used in this subtitle:

12 (1) FEDERAL BANKING AGENCY.—The term
13 “Federal banking agency” has the meanings given
14 to such terms in section 3 of the Federal Deposit In-
15 surance Act.

16 (2) FEDERAL FUNCTIONAL REGULATOR.—The
17 term “Federal functional regulator” means—

18 (A) the Board of Governors of the Federal
19 Reserve System;

20 (B) the Office of the Comptroller of the
21 Currency;

22 (C) the Board of Directors of the Federal
23 Deposit Insurance Corporation;

24 (D) the Director of the Office of Thrift
25 Supervision;

1 (E) the National Credit Union Administra-
2 tion Board;

3 (F) the Farm Credit Administration; and

4 (G) the Securities and Exchange Commis-
5 sion.

6 (3) FINANCIAL INSTITUTION.—The term “fi-
7 nancial institution” means any institution the busi-
8 ness of which is engaging in financial activities or
9 activities that are incidental to financial activities, as
10 described in section 6(c) of the Bank Holding Com-
11 pany Act of 1956.

12 (4) NONPUBLIC PERSONAL INFORMATION.—

13 (A) The term “nonpublic personal informa-
14 tion” means personally identifiable financial
15 information—

16 (i) provided by a consumer to a finan-
17 cial institution;

18 (ii) resulting from any transaction
19 with the consumer or the service performed
20 for the consumer; or

21 (iii) otherwise obtained by the finan-
22 cial institution.

23 (B) Such term does not include publicly
24 available information, as such term is defined
25 by the regulations prescribed under section 504.

1 (C) Notwithstanding subparagraph (B),
2 such term shall include any list, description, or
3 other grouping of consumers (and publicly
4 available information pertaining to them) that
5 is derived using any personally identifiable in-
6 formation other than publicly available informa-
7 tion.

8 (5) NONAFFILIATED THIRD PARTIES.—The
9 term “nonaffiliated third parties” means any entity
10 that is not an affiliate of, or related by common
11 ownership or affiliated by corporate control with, the
12 financial institution, but does not include a joint em-
13 ployee of such institution.

14 (6) AFFILIATE.—The term “affiliate” means
15 any company that controls, is controlled by, or is
16 under common control with another company.

17 (7) NECESSARY TO EFFECT, ADMINISTER, OR
18 ENFORCE.—The term “as necessary to effect, ad-
19 minister or enforce the transaction” means—

20 (A) the disclosure is required, or is a
21 usual, appropriate or acceptable method, to
22 carry out the transaction or the product or
23 service business of which the transaction is a
24 part, and record or service or maintain the con-
25 sumer’s account in the ordinary course of pro-

1 viding the financial service or financial product,
2 or to administer or service benefits or claims re-
3 lating to the transaction or the product or serv-
4 ice business of which it is a part, and
5 includes—

6 (i) providing the consumer or the con-
7 sumer's agent or broker with a confirma-
8 tion, statement, or other record of the
9 transaction, or information on the status
10 or value of the financial service or financial
11 product; and

12 (ii) the accrual or recognition of in-
13 centives or bonuses associated with the
14 transaction that are provided by the finan-
15 cial institution or any other party;

16 (B) the disclosure is required, or is one of
17 the lawful or appropriate methods, to enforce
18 the rights of the financial institution or of other
19 persons engaged in carrying out the financial
20 transaction, or providing the product or service;

21 (C) the disclosure is required, or is a
22 usual, appropriate, or acceptable method, for
23 insurance underwriting at the consumer's re-
24 quest or for reinsurance purposes, or for any of
25 the following purposes as they relate to a con-

1 sumer’s insurance: account administration, re-
2 porting, investigating, or preventing fraud or
3 material misrepresentation, processing premium
4 payments, processing insurance claims, admin-
5 istering insurance benefits (including utilization
6 review activities), participating in research
7 projects, or as otherwise required or specifically
8 permitted by Federal or State law; or

9 (D) the disclosure is required, or is a
10 usual, appropriate or acceptable method, in con-
11 nection with—

12 (i) the authorization, settlement, bill-
13 ing, processing, clearing, transferring, rec-
14 onciling, or collection of amounts charged,
15 debited, or otherwise paid using a debit,
16 credit or other payment card, check, or ac-
17 count number, or by other payment means;

18 (ii) the transfer of receivables, ac-
19 counts or interests therein; or

20 (iii) the audit of debit, credit or other
21 payment information.

22 (8) STATE INSURANCE AUTHORITY.—The term
23 “State insurance authority” means, in the case of
24 any person engaged in providing insurance, the

1 State insurance authority of the State in which the
2 person is domiciled.

3 (9) CONSUMER.—The term “consumer” means
4 an individual who obtains, from a financial institu-
5 tion, financial products or services which are to be
6 used primarily for personal, family, or household
7 purposes, and also means the legal representative of
8 such an individual.

9 (10) JOINT AGREEMENT.—The term “joint
10 agreement” means a formal written contract pursu-
11 ant to which two or more financial institutions joint-
12 ly offer, endorse, or sponsor a financial product or
13 service, and any payments between the parties are
14 based on business or profit generated.

15 **SEC. 510. EFFECTIVE DATE.**

16 This subtitle shall take effect 6 months after the date
17 on which the rules under section 503 are promulgated,
18 except—

19 (1) to the extent that a later date is specified
20 in such rules; and

21 (2) that section 506 shall be effective upon en-
22 actment.