105TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 105–701
2d Session } { Part 1

FINANCIAL INFORMATION PRIVACY ACT OF 1998

AUGUST 21, 1998.—Ordered to be printed

Mr. LEACH, from the Committee on Banking and Financial Service, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 4321]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking and Financial Services, to whom was referred the bill (H.R. 4321) to protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1, SHORT TITLE.

This Act may be cited as the "Financial Information Privacy Act of 1998".

SEC. 2. FINANCIAL INFORMATION PRIVACY.

(a) IN GENERAL.—The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following:

"TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION

"Sec.
"1001. Short title.
"1002. Definitions.
"1003. Privacy protection for customer information of financial institutions.
"1004. Administrative enforcement.
"1005. Civil liability.
"1006. Criminal penalty.
"1007. Relation to State laws.
"1008. Agency guidance.

"§ 1001. Short title

"This title may be cited as the 'Financial Information Privacy Act'.

"§ 1002. Definitions.

"For purposes of this title, the following definitions shall apply:

"(1) CUSTOMER.—The term 'customer' means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

"(2) CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.—The term 'customer information of a financial institution' means any information maintained by a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

"(3) DOCUMENT.—The term 'document' means any information in any form.

"(4) FINANCIAL INSTITUTION.—

"(A) IN GENERAL.—The term 'financial institution' means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

"(B) CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.—The term 'financial institution' includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).

"(C) FURTHER DEFINITION BY REGULATION.—The Board of Governors of the Federal Reserve System may prescribe regulations further defining the term 'financial institution', in accordance with subparagraph (A), for purposes of this title.

"§ 1003. Privacy protection for customer information of financial institutions

"(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.—It shall be a violation of this title for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

"(1) by knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the customer information;

"(2) by knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution with the intent to deceive the customer into relying on that statement or representation for purposes of releasing the customer information or authorizing the release of such information; or

"(3) by knowingly providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent into relying on that document for purposes of releasing the customer information.

"(b) PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES.—It shall be a violation of this title to request a person to obtain customer information of a financial institution, knowing or consciously avoiding knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

"(c) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

"(d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.—No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

"(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

"(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

"(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

"(e) NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial instution that otherwise is available as a public record filed pursuant to he securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

"§ 1004. Administrative enforcement

"(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—Except as provided in subsection (b), compliance with this title shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the title VIII , the Fair Debt Collection Practices Act, to enforce compliance with such title.

"(b) ENFORCEMENT BY OTHER AGENCIES IN CERTAIN CASES.—

"(1) IN GENERAL.—Compliance with this title shall be enforced under—

"(A) section 8 of the Federal Deposit Insurance Act, in the case of—

"(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;

"(iii) banks insured by the Federal Deposit Issuance Corporation (other than members of the Federal Reserve System and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

"(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

"(B) the Federal Credit Union Act, by the Administrator or the National Credit Union Administration with respect to any Federal credit union.

"(2) VIOLATIONS OF THE TITLE TREATED AS VIOLATIONS OF OTHER LAWS.—For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this title, any other authority conferred on such agency by law.

"(c) STATE ACTION FOR VIOLATIONS.—

"(1) AUTHORITY OF STATES.—In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State—

"(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

"(B) may bring an action on behalf of the residents of the State to recover damages of not more than $1,000 for each violation; and

"(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the cost of the action and reasonable attorney fees as determined by the court.

"(2) RIGHTS OF FEDERAL REGULATIONS.—

"(A) PRIOR NOTICE. The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission, and, in the case of an action which involves a financial institution described in section 1004(b)(1), the agency referred to in such section with respect to such institution and provide the Federal Trade Commission and any such agency with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

"(B) RIGHT TO INTERVENE.—The Federal Trade Commission or an agency described in subsection (b) shall have the right—

"(i) to intervene in an action under paragraph (1);

"(ii) upon so intervening, to be heard on all matters arising therein;

"(iii) to remove the action to the appropriate United States district court; and

"(iv) to file petitions for appeal.

"(3) INVESTIGATORY POWERS.—For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

"(4) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission or any agency described in subsection (b) has instituted a civil action for a violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Federal Trade Commission or such agency for any violation of this title that is alleged in that complaint.

"§ 1005. Civil liability

"Any person, other than a financial institution, who fails to comply with any provision of this title with respect to any financial institution or any customer information of a financial institution shall be liable to such financial institution or the customer to whom such information relates in an amount equal to the sum of the amounts determined under each of the following paragraphs:

"(1) ACTUAL DAMAGES.—The greater of—

"(A) the amount of any actual damage sustained by the financial institution or customer as a result of such failure; or

"(B) any amount received by the person who failed to comply with this title, including an amount equal to the value of any nonmonetary consideration, as a result of the action which constitutes such failure.

"(2) ADDITIONAL DAMAGES.—Such additional amount as the court may allow.

"(3) ATTORNEYS' FEES.—In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.

"§ 1006. Criminal penalty

"(a) IN GENERAL.—Whoever violates, or attempts to violate, section 1003 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

"(b) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates, or attempts to violate, section 1003 while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States code, imprisoned for not more than 10 years, or both.

"§ 1007. Relation to State laws

"(a) IN GENERAL.—This title shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

"(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this title.

"§ 1008. Agency guidance

"In furtherance of the objectives of this title, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) shall issue advisories to depository institutions under the jurisdiction of the agency, in order to assist such depository institutions in deterring and detecting activities proscribed under section 1003.".

(b) REPORT TO THE CONGRESS.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, and appropriate

Federal law enforcement agencies, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in the amendments made by subsection (a) in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

PURPOSE AND SUMMARY

The purpose of H.R. 4321 is to protect consumers by preserving the confidentiality of customer information maintained by banks and other financial institutions. The legislation attempts to address the significant threat to financial privacy posed by an emerging industry of so-called "information brokers," who use deception and false pretenses to collect personal financial information for their clients.

H.R. 4321, as amended by the Committee, makes it a federal crime to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed, customer information of a financial institution through fraudulent or deceptive means, such as by misrepresenting the identity of the person requesting the information or otherwise tricking an institution or customer into making unwitting disclosures of such information. The legislation also makes it unlawful to request that customer financial information be obtained, knowing or consciously avoiding knowing that the information will be collected in a fraudulent or deceptive manner. Exempted from coverage are law enforcement agencies that acquire customer information of a financial institution in carrying out their official duties, as well as financial institutions engaged in efforts to combat fraud, such as tests of security systems for maintaining the confidentiality of customer information and investigations of allegations of employee misconduct.

The legislation authorizes the Federal Trade Commission to enforce the provisions of the Act over entities that come under its jurisdiction through the imposition of civil penalties and other administrative and equitable remedies available under the Federal Trade Commission Act. In instances where depository institutions engage in activities proscribed by the Act, the appropriate Federal banking agencies are given enforcement authority. The Federal banking agencies are also directed to issue advisories to depository institutions under their jurisdiction to assist those institutions in deterring and detecting the activities prohibited by the legislation.

H.R. 4321 creates other mechanisms for enforcing the Act's prohibitions, including (1) State actions for injunctive relief or to recover damages of not more than $1,000 per violation; (2) civil lawsuits by financial institutions or customers whose information has been obtained unlawfully; and (3) criminal sanctions, including up to five years in prison and substantial fines (up to $250,000 in the case of an individual or $500,000 in the case of a corporation), with penalties doubled for aggravated offenses. The legislation preempts State laws only to the extent that they are inconsistent with its provisions.

BACKGROUND AND NEED FOR THE LEGISLATION

No issue is of more pressing concern to customers of banks and other financial institutions than that of financial privacy. The unprecedented technological advances of the past several decades—and an ever-increasing demand by businesses and private litigants for financial information that can only be derived from non-public sources—have undermined consumers' expectation of privacy in conducting their financial affairs. Criminal elements have also sought to exploit opportunities created by the explosion of information available on individual consumers to commit fraud and other financial crimes.

In response to these growing threats to financial privacy, the Committee has conducted extensive oversight in the last two Congresses, designed to educate consumers and providers of financial services regarding the nature of the threats, and to encourage the development of legislative solutions to address them.[1] As part of its oversight efforts in this area, the Committee became aware earlier this year of a rapid growth in the number of information brokers specializing in the collection and dissemination of personal financial information. Advertising their services in legal and investigative trade journals and over the Internet, these companies tout their ability to gain access to a wide array of confidential information maintained by financial institutions on their customers, including bank account numbers and balances; stock, bond and mutual fund holdings; credit card information, including account numbers, credit lines, and specific transactions; and the contents of safe-deposit boxes.

According to testimony elicited by the Committee from law enforcement authorities and industry participants, the primary method used to collect this information involves a form of what is known in the private investigative trade as "pretexting," in which an information broker impersonates the individual whose account information is sought or engages in other ruses designed to trick a financial institution into disclosing the information. The successful "pretexter" has usually obtained identifying information about a consumer (such as social security number, date of birth, or mother's maiden name) from some other source before approaching the financial institution from which additional information is sought. By citing this previously gathered information correctly, the information broker attempts to mislead a customer service representative at the targeted financial institution into believing that he is processing a legitimate inquiry from one of the institution's customers, and that release of the requested information is therefore appropriate.

Once obtained, the information can be combined with other information gathered by the broker to compile an "asset profile" of his subject for a business competitor; an adversary in litigation or other commercial or personal dispute; or an individual simply seek-

[1] See, e.g., Organized Crime and Banking: Hearing before the House Comm. on Banking and Financial Services, 104th Cong., 2d Sess. (1996), Serial No. 104–47; Personal Banking Fraud: Hearing before the House Comm. on Banking and Financial Services, 104th Cong., 2d Sess. (1996), Serial No. 104–54; Consumer Financial Privacy: Hearing before the Subcomm. on Financial Institutions and Consumer Credit of the House Comm. on Banking and Financial Services, 105th Cong., 1st Sess. (1997), Serial No. 105–33.

ing to satisfy personal curiosity. Personal financial information collected by false pretenses can also be used to commit "identity theft," whereby criminals essentially assume the identities of their victims to gain control over or open new bank or credit card accounts, apply for loans, or incur other forms of debt, all with devastating consequences for the credit rating and personal finances of the targeted individual.

Perhaps the most compelling evidence of the nature and scope of the threat to financial privacy presented by unscrupulous information brokers was developed in a recent investigation conducted by the Massachusetts Attorney General's office. In 1993, officials in the security department of Bank Boston became aware that a Massachusetts company was advertising "asset search and information services" that included a "system" for obtaining complete bank account information, including balances, without the knowledge or authorization of the account holder. As a way of testing its internal controls for protecting the confidentiality of customer account information—and also gaining a better understanding of the nature of the activities conducted by information brokers—BankBoston undertook a lengthy investigation of the firm which had advertised this service. It later supplied the results of its inquiry to the Massachusetts Attorney General's office, which launched a broader probe of the information brokering industry that has, to date, yielded some $275,000 in civil penalties against nine firms in five different states.

The Massachusetts Attorney General's office brought its cases against information brokers pursuant to Massachusetts' unfair and deceptive trade practices law, which is patterned after the Federal Trade Commission Act and similar to statutes adopted in many other jurisdictions. Only three states (Connecticut, Illinois and Maine) have enacted laws making it unlawful to knowingly and willfully induce or attempt to induce an employee or officer of a financial institution to disclose another person's records. While it has been suggested that the use of false or deceptive methods to procure confidential financial information may also constitute wire fraud, prosecutable under title 18, United States Code, there are no reported instances of such cases being brought against information brokers. Federal regulators and experts on information brokering have told the Committee that the absence of a Federal statute directly prohibiting the retrieval of customer information from financial institutions under false pretenses has allowed information brokers and their clients to argue that the use of "pretexting" to collect such information is permissible under current law.

Regardless of the legal merits of that position, the paucity of reported Federal or State actions against information brokers indicates that existing enforcement mechanisms may be insufficient to deter the fundamentally deceptive practices disclosed during the Committee's examination of the information brokering industry. By specifically and directly targeting these practices, H.R. 4321 is intended to send a signal to information brokers and those who retain their services that they are no longer operating in a "gray area" of the law, but are instead engaged in conduct that is explicitly proscribed and punishable both by civil penalties and strong criminal sanctions.

The legislation has been drafted with an eye toward preserving the easy and immediate access to personal account information that most consumers of financial services have come to expect. Thus, H.R. 4321 imposes no regulatory mandates or legal requirements that could cause financial institutions to restrict or limit the access to account information they offer their legitimate customers. This approach recognizes that financial institutions, like the customers whose information they are charged with safeguarding, are victims of the fraud perpetrated by those who, through deceptive methods, seek unauthorized access to that information. Indeed, the Supreme Court has recognized that account information maintained by a bank constitutes the "business records" of that institution, giving rise to a property interest in that information that is arguably violated by anyone who seeks to access it by false pretenses. See *United States* v. *Miller,* 425 U.S. 435, 440–41 (1976).

The legislation includes several "savings clauses" designed to avoid the unintended consequences that might ensure from application of its provisions to anti-fraud initiatives undertaken by law enforcement authorities of financial institutions themselves. Thus, for example, a Federal, State or local government agency attempting to enforce child support obligations would not be precluded from employing a form of "pretexting" to locate the assets of a delinquent parent. Nor would a financial institution seeking to root out possible corruption among its employees or achieve some other anti-fraud objective be prohibited from engaging in certain activities that might, in some other context, run afoul of the Act.

During the markup, Mr. Royce and Mrs. Roukema expressed concern about the impact of the legislation on the ability of individuals involved in domestic disputes to obtain information regarding the location of financial assets. The Committee intends to work with Mr. Royce and Mrs. Roukema to address this concern when H.R. 4321 is considered on the Floor.

HEARINGS

On July 23, 1998, Chairman Leach introduced H.R. 4321, the Financial Information Privacy Act. The Committee held a hearing on the legislation on July 28, 1998. Testifying at the hearing were Al Schweitzer, President, Al Schweitzer Investigations; Robert Douglas, President, Douglas Investigations; Julie L. Williams, Acting Comptroller of the Currency; Mozelle W. Thompson, Commissioner, Federal Trade Commission; Jeffrey D. Clements, Assistant Attorney General, Commonwealth of Massachusetts; Boris F. Melnikoff, Senior Vice President, Wachovia Corporation, who appeared on behalf of the American Bankers Association; Eddy L. McClain, Chairman, Krout and Schneider, Inc., who appeared on behalf of the National Council of Investigation and Security Services; Robert Glass, Vice President, LEXIS-NEXIS, who appeared on behalf of the Individual Reference Services Group; Evan Hendricks, Editor and Publisher, Privacy Times; and Russell Schrader, Senior Vice President, VISA U.S.A., Inc.

COMMITTEE CONSIDERATION AND VOTES

On August 5, 1998, the full Committee met in open session to mark up H.R. 4321, the Financial Information Privacy Act of 1998. The Committee called up H.R. 4321 as original text for purposes of amendment.

During the mark up, a Manager's Amendment and seven other amendments were offered. The Manager's Amendment and two amendments were adopted.

Amendments that were adopted

1. The Manager's Amendment as adopted by voice vote would do the following:

Remove from the list of specific entities included in the definition of a financial institution "any broker or dealer in investment securities, any insurance company, and any investment adviser or investment company";

Authorize the Federal Reserve Board of Governors instead of the Federal Trade Commission to promulgate regulations further defining the types of institutions to be treated as "financial institutions" under the title;

Clarify that the prohibition on obtaining customer information by false pretenses applies only to instances in which a person seeks customer information of another;

Modify the prohibition on obtaining customer information by false, fictitious or fraudulent means by providing that such conduct must be carried out with the intent to deceive another person into relying on the false or fraudulent statement or represtation for purposes of releasing the customer information;

Provide that it is unlawful to request a person to obtain customer information of a financial institution, knowing or consciously avoiding knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in section 1003(a);

Clarify that the prohibitions on obtaining or receiving customer information by false pretenses do not apply to situations in which a financial institution is (1) testing its procedures for maintaining the confidentiality of customer information, (2) investigating allegations of misconduct or negligence on the part of one of its employees or agents, or (3) attempting to recover customer information obtained or received by another person in any manner described in Section 1003(a) or (b); or to situations in which a person seeks to obtain information that is otherwise available as a public record filed pursuant to the Federal securities laws;

Delete reference to the Farm Credit Act of 1971 under the administrative enforcement section for appropriate Federal banking agencies;

Eliminate the requirement that the Federal Trade Commission make determinations as to whether specific state statutes, regulations, orders, or interpretations are inconsistent with this statute;

Require Federal banking agencies to issue advisories to depository institutions under their jurisdiction, in order to assist those institutions in deterring and detecting activities proscribed by this legislation; and

Make other technical and grammatical modifications.

2. An amendment offered by Mrs. Roukema was adopted by voice vote to give financial institutions the right to bring a cause of action and to recover damages against those persons who have violated the title. The amendment was amended by Mr. LaFalce to allow the financial institutions to recover such additional damages as a court may allow in addition to actual damages sustained.

3. An amendment offered by Mr. LaFalce and Mrs. Kelly was adopted by voice vote to give customers of financial institutions the right to bring a cause of action and to recover damages from any person, other than a financial institution, who fails to comply with the title.

Amendment that was defeated

1. An amendment offered by Mr. Hinchey to restrict the ability of financial institutions to use or disclose nonpublic customer information for marketing purposes unless the institution receives prior written consent from the customer was defeated by a vote of 7–23.

AYES	NAYS
Mr. LaFalce	Mr. Leach
Mr. Kennedy	Mr. McCollum
Mr. Sanders	Mrs. Roukema
Ms. Roybal-Allard	Mr. Bereuter
Ms. Velázquez	Mr. Baker
Mr. Hinchey	Mr. Lazio
Mr. Lee	Mr. Bachus
	Mr. Castle
	Mr. Royce
	Mr. Lucas
	Mrs. Kelly
	Dr. Paul
	Dr. Weldon
	Mr. Ryun
	Mr. Snowbarger
	Mr. Riley
	Mr. Sessions
	Mr. Redmond
	Mr. Vento
	Mr. Bensten
	Mr. Maloney
	Mr. Sherman
	Mr. Goode

With a quorum being present, the Committee adopted by voice vote H.R. 4321, as amended, for final passage and to be favorably reported to the full House of Representatives for consideration. Also, the Committee adopted, by voice vote, a motion to authorize the Chairman to offer such motions as may be necessary in the House of Representatives to go to conference with the Senate on a similar bill.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings and recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of the Representatives, the constitutional authority for Congress to enact this legislation is derived from the interstate commerce clause (Clause 3, Section 8, Article I). In addition, the power "to coin money" and "regulate the value thereof" (Clause 5, Section 8, Article I) has been broadly construed to allow for the Federal regulation of the provision of credit.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority of increased tax expenditures.

ADVISORY COMMITTEE STATEMENT

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

CONGRESSIONAL ACCOUNTABILITY ACT

The reporting requirement under section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1) is inapplicable because this legislation does not relate to terms and conditions of employment or access to public services or accommodations.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE AND UNFUNDED MANDATES ANALYSIS

The CBO cost estimate and unfunded mandates analysis for the bill is attached.

H.R. 4321—Financial Information Privacy Act of 1998

Summary: H.R. 4321 would prohibit obtaining or requesting a customer's personal financial information from a financial institution under false pretenses. For most purposes, the bill would be enforced by the Federal Trade Commission (FTC). The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) would enforce H.R.

4321 as it applies to the financial institutions that those agencies regulate. The Federal Reserve System would issue regulations defining the phrase "financial institution" as directed by the bill. Finally, H.R. 4321 would allow states to bring legal actions in federal district court against violators of the bill.

CBO estimates that implementing H.R. 4321 would increase discretionary spending by less than $500,000 a year over the 1999–2003 period. Such costs would be subject to the availability of appropriated funds. H.R. 4321 could affect direct spending and revenues; therefore, pay-as-you-go procedures would apply, but CBO estimates that any such effects would be less than $500,000 in a year over the 1999–2003 period.

H.R. 4321 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: H.R. 4321 would make it a federal crime to obtain or request a customer's personal financial information from a financial institution under false pretenses. Subject to the availability of appropriated funds, CBO estimates that implementing H.R. 4321 would increase the costs of the FTC and the NCUA by less than $500,000 a year over the 1999–2003 period. Violators would be subject to imprisonment and fines. As a result, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that the government probably would not pursue many such cases, so we estimate that any increase in federal costs for law enforcement court proceedings, or prison operations would not be significant. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 4321 could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in the following year. CBO expects that any additional collections from enacting H.R. 4321 would be negligible, however, because of the small number of cases likely to be involved. Because any increase in direct spending would equal the fines collected with a one-year lag, the additional direct spending also would be negligible.

Both the OTS and the OCC charge fees to cover all their administrative costs; therefore, any additional spending by these agencies would have no net budget effect. That is not the case with the FDIC, however, which uses deposit insurance premiums paid by all banks to cover the expenses it incurs to supervise state-chartered banks. The bill would cause a small increase in FDIC spending, but would probably not affect its premium income. In any case, CBO estimates that H.R. 4321 would increase direct spending and offsetting receipts for those agencies by less than $500,000 a year over the 1999–2003 period.

Budgetary effects on the Federal Reserve are recorded as changes in revenues. Based on information from the Federal Reserve, CBO estimates that enacting H.R. 4321 would reduce revenues by less than $500,000 a year over the 1999–2003 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting H.R. 4321 would affect direct spending and governmental receipts but that there would be no significant impact in any year.

Intergovernmental and private-sector impact: H.R. 4321 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Mark Hadley; Revenues: Carolyn Lynch.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This Act may be cited as the "Financial Information Privacy Act of 1998."

SECTION 2. FINANCIAL INFORMATION PRIVACY

This section amends the Consumer Credit Protection Act by adding a new title to be cited as "Title X—The Financial Information Privacy Act." The new title is comprised of eight sections:

Section 1001. Short title

"Financial Information Privacy Act."

Section 1002. Definitions

The term "customer" is defined as any person to whom the financial institution provides a product or service, including that of acting as a fiduciary. The term "customer information of a financial institution" is defined as any information maintained by a financial institution which is derived from the relationship between the financial institution and its customer and is identified with the customer. The term "financial institution" is defined as any institution engaged in the business of providing financial services to customers who maintained a credit, deposit, trust, or other financial account or relationship with the institution, including but not limited to depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act); loan or finance companies; credit card issuers; operators of credit card systems; and consumer reporting agencies. The Federal Reserve Board is authorized to prescribe regulations further defining the types of institutions which shall be treated as "financial institutions" for purposes of this title.

Section 1003. Privacy protection for customer information of financial institutions

This section makes it unlawful for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person by (1) knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution with the intent to deceive

the officer, employee, or agent into relying on that statement or representation for purposes of releasing the customer information; (2) knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution with the intent to deceive the customer into relying on that statement or representation for purposes of releasing the customer information or authorizing the release of such information; or (3) providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent into relying on that document for purposes of releasing the customer information. This section makes it unlawful to request a person to obtain customer information of a financial institution knowing or consciously avoiding knowing that it was obtained through any of the three methods described in this section.

The prohibitions specified in this section do not apply to any action by a law enforcement agency to obtain customer information of a financial institution in the performance of its official duties. For purposes of this section, the term "law enforcement agency" is intended to include Federal, State and local agencies, and specifically encompasses those agencies responsible for enforcing child-support obligations.

This section's prohibitions do not apply to instances in which a financial institution or its officers, employees, or agents, obtain customer information of such financial institution in the course of (1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information; (2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or (3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in this section. Thus, for example, when a fraud prevention unit of a financial institution succeeds in retrieving from an information broker that has been obtained through fraud or deceit, the financial institution is not in violation of this statute. This "safe harbor" extends to agents or contractors retained by a financial institution to implement anti-fraud or self-testing programs.

This section also does not apply to the obtaining of customer information of a financial institution that is otherwise available as a public record filed pursuant to the federal securities laws.

Nothing in this section should be construed as limiting or in any way interfering with the sharing of information among affiliates or subsidiaries within a single bank or bank holding company structure, as permitted under the Fair Credit Reporting Act.

Section 1004. Administrative enforcement

This section assigns enforcement authority to the Federal Trade Commission (FTC) and the Federal banking agencies according to their respective jurisdictions. The enforcement authority exercised by the FTC under this title is coextensive with its authority under the Fair Debt Collection Practices Act. In instances where depository institutions are implicated in obtaining information through

fraudulent means, or requesting that such information be obtained knowing or consciously avoiding knowing that fraudulent or deceptive methods will be used to collect it, the appropriate Federal banking agencies have the authority to enforce this Act.

This section further provides that in addition to such other remedies as are available under State law, the States have the authority to enforce this Act, through actions to enjoin violations or recover damages of not more than $1,000 for each violation. The FTC and the other Federal agencies with enforcement authority under this section have the right to intervene in any action by a State to enforce this Act. Where the FTC or any other Federal agency with enforcement authority under this section has instituted a civil action to enforce this Act, no State may, during the pendency of that action, bring its own action under this section against any defendant named in the Federal complaint for any act alleged in that complaint.

Section 1005. Civil liability

This section provides that any person which is not a financial institution may be held civilly liable for violating this Act by a financial institution or a customer whose financial information was obtained unlawfully. The Act authorizes the recovery of (A) actual damages (1) in the amount sustained by the financial institution or customer as a result of the violation, or (2) in the amount of any compensation received by the defendant, including the value of any nonmonetary compensation, as a result of the violation, whichever is greater; (B) such additional damages as the court may allow; and (C) in the case of a successful action the costs of the action including reasonable attorneys' fees.

The purpose of this section is to permit consumers and financial institutions who have been victimized by unscrupulous information brokers and others who traffic in fraudulently obtained financial information to hold those parties accountable. Affording injured private parties a right of action increases the likelihood that the Act's prohibitions will be vigorously enforced. For example, a financial institution will, in some instances, have a stronger incentive to proceed against an information broker or his client than a law enforcement agency or prosecutor operating with limited resources and forced to juggle competing priorities, particularly in those cases where the amount of monetary damages is minimal.

This section does not give rise to a private right of action against a financial institution from which customer information has been obtained in a manner proscribed by section 1003.

Section 1006. Criminal penalties

Whoever violates this Act or attempts to violate this Act shall be fined in accordance with title 18, United States Code (up to $250,000 in the case of an individual or $500,000 in the case of a corporation) or imprisoned for not more than 5 years, or both. Whoever violates this Act while violating or attempting to violate other laws, as part of a pattern of illegal activity involving more than $100,000 in a 12 month period shall have their fines doubled or be imprisoned for not more than 10 years, or both.

Section 1007. Relation to State laws

This Act does not supersede any State statutes, regulations, orders, or interpretations, except to the extent that they are inconsistent with the provisions of this Act, and then only to the extent of the inconsistency. A State statute, regulation, order, or interpretation is not inconsistent with the provisions of this Act if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this Act.

Section 1008. Agency guidance

This section requires the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act) to issue advisories to depository institutions under their jurisdiction to assist those institutions in deterring and detecting activities proscribed in this Act.

Finally, the legislation requires the General Accounting Office, in consultation with the FTC, Federal banking agencies, and appropriate Federal law enforcement agencies, to submit a report to Congress within 18 months of the date of enactment on (1) of efficiency and adequacy of this legislation in addressing attempts to obtain financial information by fraudulent means and false pretenses; and (2) any recommendations regarding additional legislation or regulations necessary to address threats to the privacy of financial information.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of the rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic):

TITLE X OF THE CONSUMER CREDIT PROTECTION ACT

TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION

Sec.
1001. Short title.
1002. Definitions.
1003. Privacy protection for customer information of financial institutions.
1004. Administrative enforcement.
1005. Civil liability.
1006. Criminal penalty.
1007. Relation to State laws.
1008. Agency guidance.

§ 1001. Short title

This title may be cited as the "Financial Information Privacy Act".

§ 1002. Definitions

For purposes of this title, the following definitions shall apply:

(1) CUSTOMER.—The term "customer" means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of action as a fiduciary.

(2) CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.—The term "customer information of a financial institution" means any information maintained by a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) DOCUMENT.—The term "document" means any information in any form.

(4) FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term "financial institution" means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.—The term "financial institution" includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any loan or finance company, any credit card issuer or operator of a credit card system, and credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).

(C) FURTHER DEFINITION BY REGULATION.—The Board of Governors of the Federal Reserve System may prescribe regulations further defining the term "financial institution", in accordance with subparagraph (A), for purposes of this title.

§ 1003. Privacy protection for customer information of financial institutions

(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.—It shall be a violation of this title for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the customer information;

(2) by knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution with the intent to deceive the customer into relying on that statement or representation for purposes of releasing the customer information or authorizing the release of such information; or

(3) by knowingly providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent into relying on that document for purposes of releasing the customer information.

(b) PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES.—It shall be a violation of this title to request a person to obtain customer information of a financial institution, knowing or consciously avoiding knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.—No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

§ 1004. Administrative enforcement

(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—Except as provided in subsection (b), compliance with this title shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the title VIII, the Fair Debt Collection Practices Act, to enforce compliance with such title.

(b) ENFORCEMENT BY OTHER AGENCIES IN CERTAIN CASES.—

(1) IN GENERAL.—Compliance with this title shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act, in the case of—

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by

foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

(B) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(2) VIOLATIONS OF THIS TITLE TREATED AS VIOLATIONS OF OTHER LAWS.—For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its power under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this title, any other authority conferred on such agency by law.

(c) STATE ACTION FOR VIOLATIONS.—

(1) AUTHORITY OF STATES.—In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State—

(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(B) may bring an action on behalf of the residents of the State to recover damages of not more than $1,000 for each violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) RIGHTS OF FEDERAL REGULATORS.—

(A) PRIOR NOTICE.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission and, in the case of an action which involves a financial institution described in section 1004(b)(1), the agency referred to in such section with respect to such institution and provide the Federal Trade Commission and any such agency with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

(B) RIGHT TO INTERVENE.—The Federal Trade Commission or an agency described in subsection (b) shall have the right—

(i) to intervene in an action under paragraph (1);

(ii) upon so intervening, to be heard on all matters arising therein;

(iii) to remove the action to the appropriate United States district court; and

(iv) to file petitions for appeal.

(3) INVESTIGATORY POWERS.—For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission or any agency described in subsection (b) has instituted a civil action for a violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the compliant of the Federal Trade Commission or such agency for any violation of this title that is alleged in that complaint.

§ 1005. Civil liability

Any person, other than a financial institution, who fails to comply with any provision of this title with respect to any financial institution or any customer information of a financial institution shall be liable to such financial institution or the customer to whom such information relates in an amount equal to the sum of the amounts determined under each of the following paragraphs:

(1) ACTUAL DAMAGES.—The greater of—

(A) the amount of any actual damage sustained by the financial institution or customer as a result of such failure; or

(B) any amount received by the person who failed to comply with this title, including an amount equal to the value of any nonmonetary consideration, as a result of the action which constitutes such failure.

(2) ADDITIONAL DAMAGES.—Such additional amount as the court may allow.

(3) ATTORNEYS' FEES.—In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorney's fees.

§ 1006. Criminal penalty

(a) IN GENERAL.—Whoever violates, or attempts to violate, section 1003 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

(b) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates or attempts to violate, section 1003 while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case

may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

§ 1007. Relation to State laws

(a) IN GENERAL.—This title shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this title.

§ 1008. Agency guidance

In furtherance of the objectives of this title, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) shall issue advisories to depository institutions under the jurisdiction of the agency, in order to assist such depository institutions in deterring and detecting activities proscribed under section 1003.

ADDITIONAL VIEWS

As an original co-sponsor of the Financial Information Privacy Act, I fully support its goal of punishing unscrupulous "information brokers" who use fraud and misrepresentation to obtain confidential financial information from banks. My strong support for this bill is based on the belief that it will not be the Committee's last effort in this area, but rather that it is just the beginning of a broad review of financial privacy issues.

Privacy in the information age presents policymakers with a number of challenges that this relatively narrow bill does not even begin to tackle. For instance, the bill does not address the apparent lack of internal controls that makes it so easy for information brokers to obtain confidential data from financial institutions in the first place. At the very least, the Banking Committee should have insisted that banks establish written policies and procedures that set out very clearly their obligations to safeguard customers' information.

Financial institutions, unlike information brokers, have a relationship with their customers. As the custodian of our financial assets, we expect a measure of security from our banks; hence the vaults, window bars, bullet proof glass, armored cars, safe deposit boxes, and elaborate security systems in place to protect the physical assets.

When it comes to safeguarding the information connected with those physical assets—account numbers, PIN numbers, balances, transaction records, and credit data—banks' security systems are not nearly as strong. The Banking Committee heard testimony on July 28, 1998 from two information brokers on the ease with which this data can be obtained over the telephone.

While it is appropriate that the Committee address the practices of information brokers, they are only one side of the issue. The OCC's testimony at the July 28 hearing highlighted the need to address the other side—by looking at what banks are doing to protect their customers' privacy. Acting Comptroller Julie Williams told us:

> Consumers want adequate disclosures about a company's information collection and use policies—[They] are concerned about possible secondary uses of their information beyond that needed for the original transaction—Yet there are no privacy laws that afford consumers comprehensive protection in the private sector uses of their personal information, or even in the disclosures of the uses of that information.

She said that the industry has dealt with these concerns through largely self-regulatory measures. She noted, however, that such measures have been grossly inadequate to date, as there is little evidence that individual institutions have adopted comprehensive

or meaningful privacy policies. For example, in the area of on-line privacy, and FTC survey of 1,400 commercial we sites—including financial institutions—found that only 14 percent of the sites that collected personal information provided any form of notice and that only 2 percent had a comprehensive privacy policy.

To address H.R. 4321's shortcomings, I offered an amendment at the Banking Committee's August 5 mark up that would have prohibited banks from disclosing any non-public customer information without the customer's prior written consent. By requiring the customer to "opt in" to information sharing arrangements, the provision would have prevented the indiscriminate release of financial data.

The Fair Credit Reporting Act currently allows consumers to "opt out" of information sharing arrangements, but again Ms. Williams testified that this process is not working as it was intended. She described how "opt out" disclosures are:

> buried in the middle or near the end of a multi-page account agreement. For existing accounts, some institutions have been known to reduce the opt out disclosures to the fine print along with a long list of other required disclosures. Under these circumstances, few consumers will even notice the opt-out disclosures, let alone take the time to write the opt out letter.

My amendment would have shifted the burden for protecting customers privacy from the consumer—to whom this information belongs in the first place—and placed it on financial institution. It is perfectly complementary to the objectives of the Financial Information Privacy Act to give individuals a measure of control over how their bank handles their confidential financial records. In intend to pursue this and other consumer privacy protections in the appropriate context.

MAURICE D. HINCHEY.

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