

From Senate Banking Committee:

STATEMENT OF MANAGERS SUMMARY OF MAJOR PROVISIONS

Released Monday, November 1, 1999

"TITLE V - PRIVACY

SUBTITLE A - DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

Senate Position: No provision.

House Position: The House bill contained important provisions providing consumers with new protections with respect to the transfer and use of their nonpublic personal information by financial institutions.

Among other things, the House bill directed relevant regulators to establish comprehensive standards for ensuring the security and confidentiality of consumers' personal information maintained by financial institutions; allowed customers of financial institutions to "opt out" of having their personal financial information shared with nonaffiliated third parties, subject to certain exceptions; barred financial institutions from disclosing customer account numbers or similar forms of access codes to nonaffiliated third parties for telemarketing or other direct marketing purposes; and mandated annual disclosure - in clear and conspicuous terms - of a financial institution's policies and procedures for protecting customers' nonpublic personal information.

Conference Substitute: The Senate receded to the House with an amendment.

The amendment modified the House position in the following ways:

1. The Federal functional regulators, the Secretary of the Treasury, and the FTC, in consultation with State insurance authorities, are directed to prescribe such regulations as may be necessary to carry out the purposes of the privacy subtitle. The House bill had called for a joint rulemaking. The relevant agencies are required to consult and coordinate with one another in order to assure to the maximum extent possible that the regulations each prescribes are consistent and comparable with those prescribed by the other agencies. It is the hope of the Conferees that State insurance authorities would implement regulations necessary to carry out the purposes of this title and enforce such regulations as provided in this title.
2. To address the concern that the House bill failed to provide a mechanism for enforcing the subtitle's provisions against non-financial institutions, the Conferees agreed to clarify that the FTC's enforcement authority extends to such entities.
3. The Conferees agreed to clarify the relation between Title V's privacy provisions and other consumer protections already in law, by stating that nothing in the title shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act, and no inference shall be drawn on the basis of the provisions of the title regarding whether information is transaction or experience information under section 603 of that Act.
4. At the request of the Conferees from the Committee on Agriculture, the Conferees agreed to exclude from the scope of the privacy title any person or

entity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, as well as the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971. The Conferees also excluded from this subtitle institutions chartered by Congress specifically to engage in securitization or secondary market transactions, so long as such institutions do not sell or transfer nonpublic personal information to nonaffiliated third parties. The Conferees granted the exception based on the understanding that the covered entities do not market products directly to consumers.

5. The Conferees agreed to clarify that a financial institution's annual disclosure of its privacy policy to its customers must include a statement of the institution's policies and practices regarding the sharing of nonpublic personal information with affiliated entities, as well as with nonaffiliated third parties.

6. The Conferees agreed to provide that the disclosure of nonpublic personal information contained in a consumer report reported by a consumer reporting agency does not fall within section 502's notice and opt out requirements.

7. The Conferees agreed to modify the statutory definition of "nonpublic personal information" by clarifying that such term does not encompass any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.

8. The Conferees agreed to exclude disclosures to consumer reporting agencies from section 502(d)'s limitations on the sharing of account number information.

9. The Conferees agreed to give the relevant regulatory agencies the authority to prescribe exceptions to subsections (a) through (d) of section 502, rather than just sections 502(a) and (b), as provided for in the House bill.

10. The Conferees inserted language stating that the privacy provisions in the subtitle do not supersede any State statutes, regulations, orders, or interpretations, except to the extent that such State provisions are inconsistent with the provisions of the subtitle, and then only to the extent of the inconsistency. The amendment provides that a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this subtitle, as determined by the FTC in consultation with the agency or authority with jurisdiction under section 505(a) over either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

11. Section 506 authorizes the Federal banking agencies and the National Credit Union Administration to prescribe joint regulations governing the institutions under their jurisdiction with respect to the Fair Credit Reporting Act; the Conferees agreed to an amendment giving the Board of Governors of the Federal Reserve the authority to prescribe FCRA regulations governing bank holding companies and their affiliates.

12. The Conferees agreed to modify section 502(e)(5), to include the Secretary of the Treasury as a "law enforcement agency" for the purposes of the Bank Secrecy Act, to avoid unintended interference with the existing functions of the

Treasury's anti-money laundering unit, the Financial Crimes Enforcement Network ("FinCEN").

The Conferees wish to ensure that smaller financial institutions are not placed at a competitive disadvantage by a statutory regime that permits certain information to be shared freely within an affiliate structure while limiting the ability to share that same information with nonaffiliated third parties. Accordingly, in prescribing regulations pursuant to this subtitle, the agencies and authorities described in section 504(a)(1) should take into consideration any adverse competitive effects upon small commercial banks, thrifts, and credit unions. In issuing regulations under section 503, the regulators should take into account the degree of consumer access to disclosure by electronic means.

In exercising their authority under section 504(b), the agencies and authorities described in section 504(a)(1) may consider it consistent with the purposes of this subtitle to permit the disclosure of customer account numbers or similar forms of access numbers or access codes in an encrypted, scrambled, or similarly coded form, where the disclosure is expressly authorized by the customer and is necessary to service or process a transaction expressly requested or authorized by the customer.

The Conferees recognize the need to foster technological innovation in the financial services and related industries. The Conferees believe that the development of new technologies that facilitate consumers' access to the broad range of products and services available through online media should be encouraged, provided that such technologies continue to incorporate safeguards for consumer privacy.

#### SUBTITLE B - FRAUDULENT ACCESS TO FINANCIAL INFORMATION

Senate Position: The Senate bill contained provisions making it a Federal crime - punishable by up to five years in prison - 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 misleading an institution or customer into making unwitting disclosures of such information. In addition, it provided for a private right of action and enforcement by state attorneys general.

House Position: Similar provisions, with no private right of action or enforcement by State Attorneys General.

Conference Substitute: The Senate receded to the House with an amendment.

The amendment provided that authority for enforcing the subtitle would be placed in the FTC, the Federal banking agencies and the National Credit Union Administration (for enforcement of these provisions with respect to compliance by depository institutions within their jurisdiction)."

[From <http://www.senate.gov/~banking/conf/somfinal.htm> on 11 NOV 1999]