

107TH CONGRESS
1ST SESSION

H. R. 1408

AN ACT

To safeguard the public from fraud in the financial services industry, to streamline and facilitate the antifraud information-sharing efforts of Federal and State regulators, and for other purposes.

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To safeguard the public from fraud in the financial services industry, to streamline and facilitate the antifraud information-sharing efforts of Federal and State regulators, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Financial Services Antifraud Network Act of 2001”.

4 (b) **TABLE OF CONTENTS.**—The table of contents of
 5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

TITLE I—ANTIFRAUD NETWORK

Subtitle A—Direction to Financial Regulators

Sec. 100. Creation and operation of the network.

Subtitle B—Potential Establishment of Antifraud Subcommittee

Sec. 101. Establishment.

Sec. 102. Purposes of the Subcommittee.

Sec. 103. Chairperson; term of chairperson; meetings; officers and staff.

Sec. 104. Nonagency status.

Sec. 105. Powers of the Subcommittee.

Sec. 106. Agreement on cost structure.

Subtitle C—Regulatory Provisions

Sec. 111. Agency supervisory privilege.

Sec. 112. Confidentiality of information.

Sec. 113. Liability provisions.

Sec. 114. Authorization for identification and criminal background check.

Sec. 115. Definitions.

Sec. 116. Technical and conforming amendments to other acts.

Sec. 117. Audit of State insurance regulators.

Subtitle D—Anti-Terrorism

Sec. 121. Preventing international terrorism.

TITLE II—SECURITIES INDUSTRY COORDINATION

Subtitle A—Disciplinary Information

Sec. 201. Investment Advisers Act of 1940.

Sec. 202. Securities Exchange Act of 1934.

**Subtitle B—Preventing Migration of Rogue Financial Professionals to the
 Securities Industry**

Sec. 211. Securities Exchange Act of 1934.

Sec. 212. Investment Advisers Act of 1940.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to safeguard the public from fraud in the fi-
4 nancial services industry;

5 (2) to streamline the antifraud coordination ef-
6 forts of Federal and State regulators and prevent
7 failure to communicate essential information;

8 (3) to reduce duplicative information requests
9 and other inefficiencies of financial services regula-
10 tion;

11 (4) to assist financial regulators in detecting
12 patterns of fraud, particularly patterns that only be-
13 come apparent when viewed across the full spectrum
14 of the financial services industry; and

15 (5) to take advantage of Internet technology
16 and other advanced data-sharing technology to mod-
17 ernize the fight against fraud in all of its evolving
18 manifestations and permutations.

19 **TITLE I—ANTIFRAUD NETWORK**
20 **Subtitle A—Direction to Financial**
21 **Regulators**

22 **SEC. 100. CREATION AND OPERATION OF THE NETWORK.**

23 (a) SHARING OF PUBLIC INFORMATION.—The finan-
24 cial regulators shall, to the extent practicable and appro-
25 priate and in consultation with other relevant and appro-
26 priate agencies and parties—

1 (1) develop procedures to provide for a network
2 for the sharing of antifraud information; and

3 (2) coordinate to further improve upon the anti-
4 fraud efforts of the participants in the network as
5 such participants deem appropriate over time.

6 (b) MINIMUM REQUIREMENTS.—The procedures de-
7 scribed in subsection (a) shall—

8 (1) provide for the sharing of public final dis-
9 ciplinary and formal enforcement actions taken by
10 the financial regulators that are accessible electroni-
11 cally relating to the conduct of persons engaged in
12 the business of conducting financial activities that is
13 fraudulent, dishonest, or involves a breach of trust
14 or relates to the failure to register with the appro-
15 priate financial regulator as required by law;

16 (2) include a plan for considering the sharing
17 among the participants of other relevant and useful
18 antifraud information relating to companies and
19 other persons engaged in conducting financial activi-
20 ties, to the extent practicable and appropriate when
21 adequate privacy, confidentiality, and security safe-
22 guards governing access to, and the use of, such in-
23 formation have been developed that—

24 (A) is accessible by the public; or

1 (B) consists of information, that does not
2 include personally identifiable information on
3 consumers, on—

4 (i) licenses and applications, financial
5 affiliations and name-relationships, aggregate
6 trend data, appraisals, or reports filed
7 by a regulated entity with a participant; or

8 (ii) similar information generated by
9 or for a participant if—

10 (I) such information is being
11 shared for the purpose of verifying an
12 application or other report filed by a
13 regulated entity; and

14 (II) the participant determines
15 such information is factual and sub-
16 stantiated; and

17 (3) provide that, if a financial regulator takes
18 an adverse action against a person engaged in the
19 business of conducting financial activities on the
20 basis of information described in paragraph (1) or
21 (2) that was received from another participant
22 through the network, the regulator shall—

23 (A) notify the person of the identity of the
24 participant from whom such information was
25 received;

1 (B) provide the person with a specific and
2 detailed description of the information that was
3 received from the other participant through the
4 network and would be relied on in taking the
5 adverse action; and

6 (C) notify the person of the right to a rea-
7 sonable opportunity to respond to such informa-
8 tion.

9 (c) PROVISIONS RELATING TO REQUIREMENTS.—

10 (1) TIME OF NOTICE.—The notice to any per-
11 son, and the opportunity to respond, under sub-
12 section (b)(3) shall be provided to the person a rea-
13 sonable period of time before any final action
14 against the person which is based on information re-
15 ferred to in such paragraph is completed, unless the
16 financial regulator determines that such advance no-
17 tice and opportunity to respond is impracticable or
18 inappropriate, in which case the notice and oppor-
19 tunity to respond shall be provided at the time of
20 such final action.

21 (2) VERIFICATION OR SUBSTANTIATION OF IN-
22 FORMATION.—With respect to subsection (b)(3), a
23 delay in the consideration of a license, application,
24 report, or other request for the purpose of verifying
25 or substantiating information relating to such li-

1 cense, application, report, or other request shall not
2 be treated as an adverse action if the verification or
3 substantiation of such information is completed
4 within a reasonable time.

5 (d) IMPLEMENTATION.—

6 (1) SUBMISSION OF PLAN.—Before the end of
7 the 6-month period beginning on the date of the en-
8 actment of this Act, the Federal financial regulators
9 shall submit to Congress a plan detailing how the fi-
10 nancial regulators (and any association representing
11 financial regulators) expect to meet the requirements
12 of subsections (a) and (b).

13 (2) DEADLINE FOR IMPLEMENTATION.—Before
14 the end of the 2-year period beginning on the date
15 of the enactment of this Act, the financial regulators
16 shall establish the network described in subsections
17 (a) and (b).

18 (e) FINANCIAL REGULATORS DEFINED.—For the
19 purposes of this section, the term “financial regulators”
20 means the financial regulators described in subparagraphs
21 (A) through (Q) of section 115(3).

22 (f) DETERMINATION OF IMPLEMENTATION OF SUB-
23 TITLE B.—

24 (1) IN GENERAL.—The provisions of subtitle B
25 shall take effect only if the Secretary of the Treas-

1 ury, or a designee of the Secretary, before the end
2 of the 30-day period beginning at the end of the pe-
3 riod referred to in—

4 (A) subsection (d)(1), does not determine
5 that the Federal financial regulators have sub-
6 mitted a plan which substantially meets the re-
7 quirements of such subsection; or

8 (B) subsection (d)(2), does not determine
9 that the financial regulators have established a
10 network that substantially complies with the re-
11 quirements of subsections (a) and (b).

12 (2) SCOPE OF APPLICATION.—This subtitle
13 shall cease to apply as of the date subtitle B takes
14 effect.

15 (g) USE OF CENTRALIZED DATABASES.—

16 (1) IN GENERAL.—A financial regulator shall
17 be deemed to have met the requirements of sub-
18 section (b)(1) if—

19 (A) the participants have access to a cen-
20 tralized database that contains information on
21 public final disciplinary or formal enforcement
22 actions similar to that described in such sub-
23 section; or

1 (B) the financial regulator makes the in-
2 formation described in such subsection available
3 to the public over the Internet.

4 (2) STATE SUPERVISORS.—It is the sense of the
5 Congress that the National Association of Insurance
6 Commissioners, the Conference of State Bank Su-
7 pervisors, the American Council of State Savings
8 Supervisors, the National Association of State Credit
9 Union Supervisors, and the North American Securi-
10 ties Administrators Association should develop model
11 guidelines for regulators in their respective regulated
12 financial industries, where appropriate, to promote
13 uniform standards for sharing information with the
14 network under this section.

15 (h) FINANCIAL REGULATOR CONTROL OF ACCESS.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (4), each participant that allows access to its
18 databases or information by other participants
19 through the network may establish parameters for
20 controlling or limiting such access, including the reg-
21 ulation of—

22 (A) the type or category of information
23 that may be accessed by other participants and
24 the extent to which any such type or category
25 of information may be accessed;

1 (B) the participants that may have access
2 to the database or any specific type or category
3 of information in the database (whether for rea-
4 sons of cost reimbursement, data security, effi-
5 ciency, or otherwise); and

6 (C) the disclosure by any other participant
7 of any type or category of information that may
8 be accessed by the participant.

9 (2) PROCEDURES.—A participant may establish
10 the parameters described in paragraph (1) by regu-
11 lation, order, or guideline or on a case-by-case basis.

12 (3) DISCLAIMER.—

13 (A) IN GENERAL.—Each participant shall
14 ensure that any transfer of information through
15 the network under this section, other than in-
16 formation described in subsection (b)(1), from
17 such participant to another participant is sub-
18 ject to a disclaimer that the information
19 accessed may be unsubstantiated and may not
20 be relied on as the basis for denying any appli-
21 cation or license.

22 (B) REGULATORY FLEXIBILITY.—Each fi-
23 nancial regulator may develop guidelines, as the
24 regulator determines to be appropriate, gov-
25 erning the location, wording, and frequency of

1 disclaimers under this paragraph and the man-
2 ner in which any such disclaimer shall be made.

3 (4) FINAL DISCIPLINARY AND FORMAL EN-
4 FORCEMENT ACTIONS NOT SUBJECT TO LIMITA-
5 TION.—This subsection, and standards or proce-
6 dures adopted by any participant under this sub-
7 section, shall not apply with respect to information
8 described in subsection (b)(1).

9 (5) NO EFFECT ON PUBLIC OR COMPANY AC-
10 CESS.—No provision of this section shall replace, su-
11 persede, or otherwise affect access to any databases
12 maintained by any Federal or State regulator, or
13 any entity representing any such regulator, which
14 are accessible by the public or persons engaged in
15 the business of conducting financial activities.

16 (i) ELIGIBILITY REQUIREMENTS FOR STATE SECURI-
17 TIES ADMINISTRATORS.—

18 (1) IN GENERAL.—No State securities adminis-
19 trator shall be eligible to be a participant and access
20 the network unless—

21 (A) such State securities administrator
22 participates in a centralized database for
23 broker-dealers, broker-dealer agents, investment
24 advisers, and investment advisor representa-
25 tives, registered or required to be registered, as

1 designated by the North American Securities
2 Administrators Association; and

3 (B) such State securities administrator re-
4 quires the broker-dealer, broker-dealer agent,
5 investment adviser, or investment adviser rep-
6 resentative, currently registered or required to
7 be registered, to file any application, amend-
8 ment to an application, or a renewal of an ap-
9 plication through the centralized registration
10 database.

11 (2) TIME DELAY FOR PARTICIPATION IN DATA-
12 BASES.—The provisions of paragraph (1) shall not
13 become effective until 3 years after the date of en-
14 actment of this Act.

15 (j) ELIGIBILITY REQUIREMENTS FOR STATE INSUR-
16 ANCE COMMISSIONERS.—

17 (1) PARTICIPATION IN DATABASES.—No State
18 insurance commissioner shall be eligible to access
19 the network unless such commissioner participates
20 with other State insurance commissioners—

21 (A) in a centralized database addressing
22 disciplinary or enforcement actions taken
23 against persons engaged in the business of in-
24 surance, such as the Regulatory Information
25 Retrieval System maintained by the National

1 Association of Insurance Commissioners or any
2 network or database designated by such Asso-
3 ciation as a successor to such System; and

4 (B) in centralized databases addressing,
5 with respect to persons engaged in the business
6 of insurance—

7 (i) corporate and other business affili-
8 ations or relationships, such as the Pro-
9 ducer Database maintained by the Na-
10 tional Association of Insurance Commis-
11 sioners or any network or database des-
12 igned by such Association as a successor
13 to such Database; and

14 (ii) consumer complaints, such as the
15 Complaints Database maintained by the
16 National Association of Insurance Commis-
17 sioners or any network or database des-
18 igned by such Association as a successor
19 to such Database.

20 (2) TIME DELAY FOR PARTICIPATION IN DATA-
21 BASES.—The provisions of subparagraph (1)(B) of
22 this section shall not become effective until 3 years
23 after the date of enactment of this Act.

24 (3) ACCREDITATION.—No State insurance com-
25 missioner shall be eligible to access the network un-

1 less the State insurance department which such
2 commissioner represents meets 1 of the following ac-
3 creditation requirements at the time of access to the
4 network:

5 (A) Is accredited by the National Associa-
6 tion of Insurance Commissioners.

7 (B) Has an application for accredited sta-
8 tus pending with the National Association of
9 Insurance Commissioners.

10 (k) STANDARDS.—Each financial regulator shall con-
11 sider developing guidelines on—

12 (1) how to denote which types of information
13 are to receive different levels of confidentiality pro-
14 tection; and

15 (2) how entities or associations that act as
16 agents for financial regulators should denote such
17 agency status when acting in that capacity.

18 (l) OTHER SHARING ARRANGEMENTS NOT AF-
19 FECTED.—No provision of this section shall be construed
20 as limiting or otherwise affecting the authority of a finan-
21 cial regulator to provide any person, including another
22 participant, access to any information in accordance with
23 any provision of law other than this Act.

1 **Subtitle B—Potential Establish-**
2 **ment of Antifraud Sub-**
3 **committee**

4 **SEC. 101. ESTABLISHMENT.**

5 (a) IN GENERAL.—Unless the determinations de-
6 scribed in section 100(f) are made, after the applicable
7 date described in such section there shall be established
8 within the President’s Working Group on Financial Mar-
9 kets (as established by Executive Order No. 12631) a sub-
10 committee to be known as the “Antifraud Subcommittee”
11 (hereafter in this title referred to as the “Subcommittee”)
12 which shall consist of the following members:

13 (1) The Secretary of the Treasury, or a des-
14 ignee of the Secretary.

15 (2) The Chairman of the Securities and Ex-
16 change Commission or a designee of the Chairman.

17 (3) A State insurance commissioner designated
18 by the National Association of Insurance Commis-
19 sioners, or a designee of such commissioner.

20 (4) The Chairman of the Commodity Futures
21 Trading Commission or a designee of such Chair-
22 man.

23 (5) A designee of the Chairman of the Federal
24 Financial Institutions Examination Council.

1 (b) FINANCIAL LIAISONS.—The following shall serve
2 as liaisons between the Subcommittee and the agencies
3 represented by each such liaison:

4 (1) A representative of each Federal banking
5 agency appointed by the head of each such agency.

6 (2) A representative of the National Credit
7 Union Administration appointed by the National
8 Credit Union Administration Board.

9 (3) A representative of the Farm Credit Admin-
10 istration, appointed by the Farm Credit Administra-
11 tion Board.

12 (4) A representative of the Federal Housing Fi-
13 nance Board, appointed by such Board.

14 (5) A representative of the Office of Federal
15 Housing Enterprise Oversight of the Department of
16 Housing and Urban Development appointed by the
17 Director of such Office.

18 (6) A representative of the Appraisal Sub-
19 committee of the Financial Institutions Examination
20 Council designated by the Chairperson of the Ap-
21 praisal Subcommittee.

22 (7) A representative of State bank supervisors
23 designated by the Conference of State Bank Super-
24 visors.

1 (8) A representative of State savings associa-
2 tion supervisors designated by the American Council
3 of State Savings Supervisors.

4 (9) A representative of State credit union su-
5 pervisors designated by the National Association of
6 State Credit Union Supervisors.

7 (10) A representative of State securities admin-
8 istrators designated by the North American Securi-
9 ties Administrators Association.

10 (11) A representative of the National Associa-
11 tion of Securities Dealers appointed by the National
12 Association of Securities Dealers.

13 (12) A representative of the National Futures
14 Association appointed by the National Futures Asso-
15 ciation.

16 (13) Any other financial liaison as the Sub-
17 committee may provide to represent any other finan-
18 cial regulator or foreign financial regulator, includ-
19 ing self-regulatory agencies or organizations that
20 maintain databases on persons engaged in the busi-
21 ness of conducting financial activities, designated in
22 the manner provided by the Subcommittee.

23 (c) OTHER LIAISONS.—

24 (1) LAW ENFORCEMENT LIAISONS.—The fol-
25 lowing shall serve as liaisons between the Sub-

1 committee and the agencies represented by each
2 such liaison:

3 (A) A representative of the Department of
4 Justice appointed by the Attorney General.

5 (B) A representative of the Federal Bu-
6 reau of Investigation appointed by the Director
7 of such Bureau.

8 (C) A representative of the United States
9 Secret Service appointed by the Director of
10 such Service.

11 (D) A representative of the Financial
12 Crimes Enforcement Network (as established by
13 the Secretary of the Treasury) appointed by the
14 Secretary of the Treasury.

15 (2) SUBCOMMITTEE APPOINTED LIAISONS.—

16 The Subcommittee may provide for any other liaison
17 to represent any other regulator, including self-regu-
18 latory agencies or organizations that maintain data-
19 bases on persons engaged in the business of con-
20 ducting financial activities, designated in the manner
21 provided by the Subcommittee.

22 (d) VACANCY.—If, for any reason, the position of any
23 member of or liaison to the Subcommittee is not filled
24 within a reasonable period of time after being created or
25 becoming vacant, the President shall appoint an individual

1 to fill the position after consulting the agency or entity
2 to be represented by such member or liaison, and to the
3 extent possible, shall appoint such individual from a list
4 of possible representatives submitted by such agency or
5 entity.

6 (e) REORGANIZATION AUTHORITY.—

7 (1) IN GENERAL.—If the President disbands or
8 otherwise significantly modifies the Working Group
9 referred to in subsection (a), the President shall pro-
10 vide for the continuation of the Subcommittee’s co-
11 ordination functions.

12 (2) MEMBER AND LIAISON WITHDRAWAL.—If
13 the President materially alters the structure or du-
14 ties of the Subcommittee, any member of or liaison
15 to the Subcommittee may withdraw from the Sub-
16 committee.

17 **SEC. 102. PURPOSES OF THE SUBCOMMITTEE.**

18 (a) IN GENERAL.—The purposes of the Sub-
19 committee are as follows:

20 (1) Coordinate access by the participants to
21 antifraud databases of various regulators, by facili-
22 tating the establishment, maintenance, and use of a
23 network of existing antifraud information main-
24 tained by such regulators with respect to persons en-

1 gaged in the business of conducting financial activi-
2 ties.

3 (2) Coordinate access by each participant to
4 such network in a manner that allows the partici-
5 pant to review, at a minimal cost, existing informa-
6 tion in the databases of other regulators, as a part
7 of licensure, change of control, or investigation, con-
8 cerning any person engaged in the business of con-
9 ducting financial activities.

10 (3) Coordinate information sharing, where ap-
11 propriate, among State, Federal, and foreign finan-
12 cial regulators, and law enforcement agencies, where
13 sufficient privacy and confidentiality safeguards
14 exist.

15 (4) Consider coordinating development by par-
16 ticipants of a networked name-relationship index for
17 persons engaged in the business of conducting finan-
18 cial activities using information from the databases
19 of regulators, to the extent such information is avail-
20 able.

21 (5) Advise participants on coordinating their
22 antifraud databases with the network.

23 (6) Coordinate development of guidelines by
24 participants for ensuring appropriate privacy, con-
25 fidentiality, and security of shared information, in-

1 including tracking systems or testing audits, as appro-
2 priate.

3 (b) CRITERIA FOR NETWORK WITH RESPECT TO
4 ANY PERSON ENGAGED IN THE BUSINESS OF CON-
5 DUCTING FINANCIAL ACTIVITIES.—

6 (1) FINAL DISCIPLINARY AND FORMAL EN-
7 FORCEMENT ACTIONS.—Each financial regulator
8 that is represented by a member of the Sub-
9 committee under section 101(a) or by a financial li-
10 aison to the Subcommittee under section 101(b)
11 shall allow any participant access, through the net-
12 work, to any public final disciplinary or formal en-
13 forcement action by such regulator which is acces-
14 sible electronically relating to the conduct of persons
15 engaged in the business of conducting financial ac-
16 tivities that is fraudulent or dishonest, involves a
17 breach of trust, or relates to the failure to register
18 with the appropriate financial regulator as required
19 by law.

20 (2) SENSE OF THE CONGRESS ON OTHER IN-
21 FORMATION.—It is the sense of the Congress that
22 the financial regulators should consider sharing
23 through the network other relevant and useful anti-
24 fraud information relating to companies and other
25 persons engaged in conducting financial activities, to

1 the extent practicable and appropriate when ade-
2 quate privacy, confidentiality, and security safe-
3 guards governing access to and the use of such in-
4 formation have been developed that—

5 (A) is accessible by the public; or

6 (B) consists of information, that does not
7 include personally identifiable information on
8 consumers, on—

9 (i) licenses and applications, financial
10 affiliations and name-relationships, aggre-
11 gate trend data, or reports filed by a regu-
12 lated entity with the participant; or

13 (ii) similar information generated by
14 or for a participant if—

15 (I) such information is being
16 shared for the purpose of verifying an
17 application or other report filed by a
18 regulated entity; and

19 (II) the participant determines
20 such information is factual and sub-
21 stantiated.

22 (3) NOTICE AND RESPONSE.—If a financial reg-
23 ulator takes an adverse action against a person en-
24 gaged in the business of conducting financial activi-
25 ties on the basis of information described in para-

1 graph (1) or (2) that was received from another par-
2 ticipant through the network, the regulator shall—

3 (A) notify the person of the identity of the
4 participant from whom such information was
5 received;

6 (B) provide the person with a specific and
7 detailed description of the information that was
8 received from the other participant through the
9 network and would be relied on in taking the
10 adverse action; and

11 (C) notify the person of the right to a rea-
12 sonable opportunity to respond to such informa-
13 tion.

14 (4) PROVISIONS RELATING TO REQUIRE-
15 MENTS.—

16 (A) TIME OF NOTICE.—Any notice to any
17 person, and an opportunity to respond, under
18 paragraph (3) shall be provided to the person a
19 reasonable period of time before any final ac-
20 tion against the person which is based on infor-
21 mation referred to in such paragraph is com-
22 pleted, unless the financial regulator determines
23 that such advance notice and opportunity to re-
24 spond is impracticable or inappropriate, in
25 which case the notice and opportunity to re-

1 spond shall be provided at the time of such
2 final action.

3 (B) VERIFICATION OR SUBSTANTIATION OF
4 INFORMATION.—With respect to paragraph (3),
5 a delay in the consideration of a license, appli-
6 cation, report, or other request for the purpose
7 of verifying or substantiating information relat-
8 ing to such license, application, report, or other
9 request shall not be treated as an adverse ac-
10 tion if the verification or substantiation of such
11 information is completed within a reasonable
12 time.

13 (5) USE OF CENTRALIZED DATABASES.—

14 (A) IN GENERAL.—A financial regulator
15 shall be deemed to have met the requirements
16 of paragraph (1) if the Subcommittee deter-
17 mines that the participants have access to a
18 centralized database that contains information
19 on public final disciplinary or formal enforce-
20 ment actions similar to that described in para-
21 graph (1) or if the financial regulator makes
22 the information described in paragraph (1)
23 available to the public over the Internet.

24 (B) FACTORS FOR DETERMINATION.—The
25 Subcommittee shall make the determination

1 under subparagraph (A) on an ongoing basis,
2 considering both short-term costs and techno-
3 logical limitations, as well as the need for long-
4 term comprehensive coverage, and other appro-
5 priate factors.

6 (C) STATE SUPERVISORS.—It is the sense
7 of the Congress that the National Association
8 of Insurance Commissioners, the Conference of
9 State Bank Supervisors, the American Council
10 of State Savings Supervisors, the National As-
11 sociation of State Credit Union Supervisors,
12 and the North American Securities Administra-
13 tors Association should develop model guidelines
14 for regulators in their respective regulated fi-
15 nancial industries, where appropriate, to pro-
16 mote uniform standards for sharing information
17 with the network under this section.

18 (c) FINANCIAL REGULATOR CONTROL OF ACCESS.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (4), each participant that allows access to its
21 databases or information by other participants
22 through the network may establish parameters for
23 controlling or limiting such access, including the reg-
24 ulation of—

1 (A) the type or category of information
2 that may be accessed by other participants and
3 the extent to which any such type or category
4 of information may be accessed;

5 (B) the participants that may have access
6 to the database or any specific type or category
7 of information in the database (whether for rea-
8 sons of cost reimbursement, data security, effi-
9 ciency, or otherwise); and

10 (C) the disclosure by any other participant
11 of any type or category of information that may
12 be accessed by the participant.

13 (2) PROCEDURES.—A participant may establish
14 the parameters described in paragraph (1) by regu-
15 lation, order, or guideline or on a case-by-case basis.

16 (3) DISCLAIMER.—

17 (A) IN GENERAL.—Each participant shall
18 ensure that any transfer of information through
19 the network under this section, other than in-
20 formation described in paragraph (1) of sub-
21 section (b), from such participant to another
22 participant is subject to a disclaimer that the
23 information accessed may be unsubstantiated
24 and may not be relied on as the basis for deny-
25 ing any application or license.

1 (B) SUBCOMMITTEE FLEXIBILITY.—The
2 Subcommittee may prescribe such guidelines as
3 the Subcommittee determines to be appropriate
4 governing the location, wording, and frequency
5 of disclaimers under this paragraph and the
6 manner in which any such disclaimer shall be
7 made.

8 (4) FINAL DISCIPLINARY AND FORMAL EN-
9 FORCEMENT ACTIONS NOT SUBJECT TO LIMITA-
10 TION.—This subsection, and standards or proce-
11 dures adopted by any participant under this sub-
12 section, shall not apply with respect to information
13 described in paragraph (1) of subsection (b).

14 (5) NO EFFECT ON PUBLIC OR COMPANY AC-
15 CESS.—No provision of this section shall replace, su-
16 perse, or otherwise affect access to any databases
17 maintained by any Federal or State regulator, or
18 any entity representing any such regulator, which
19 are accessible by the public or persons engaged in
20 the business of conducting financial activities.

21 (d) ELIGIBILITY REQUIREMENTS FOR STATE SECU-
22 RITIES ADMINISTRATORS.—

23 (1) IN GENERAL.—No State securities adminis-
24 trator shall be eligible to be a participant and access
25 the network unless—

1 (A) such State securities administrator
2 participates in a centralized database for
3 broker-dealers, broker-dealer agents, investment
4 advisers, and investment advisor representa-
5 tives, registered or required to be registered, as
6 designated by the North American Securities
7 Administrators Association; and

8 (B) such State securities administrator re-
9 quires the broker-dealer, broker-dealer agent,
10 investment adviser, or investment adviser rep-
11 resentative, currently registered or required to
12 be registered, to file any application, amend-
13 ment to an application, or a renewal of an ap-
14 plication through the centralized registration
15 database.

16 (2) TIME DELAY FOR PARTICIPATION IN DATA-
17 BASES.—The provisions of paragraph (1) shall not
18 become effective until 3 years after the date of en-
19 actment of this Act.

20 (e) ELIGIBILITY REQUIREMENTS FOR STATE INSUR-
21 ANCE COMMISSIONERS.—

22 (1) PARTICIPATION IN DATABASES.—No State
23 insurance commissioner shall be eligible to access
24 the network unless such commissioner participates
25 with other State insurance commissioners—

1 (A) in a centralized database addressing
2 disciplinary or enforcement actions taken
3 against persons engaged in the business of in-
4 surance, such as the Regulatory Information
5 Retrieval System maintained by the National
6 Association of Insurance Commissioners or any
7 network or database designated by such Asso-
8 ciation as a successor to such System; and

9 (B) in centralized databases addressing,
10 with respect to persons engaged in the business
11 of insurance—

12 (i) corporate and other business affili-
13 ations or relationships, such as the Pro-
14 ducer Database maintained by the Na-
15 tional Association of Insurance Commis-
16 sioners or any network or database des-
17 igned by such Association as a successor
18 to such Database; and

19 (ii) consumer complaints, such as the
20 Complaints Database maintained by the
21 National Association of Insurance Commis-
22 sioners or any network or database des-
23 igned by such Association as a successor
24 to such Database.

1 (2) TIME DELAY FOR PARTICIPATION IN DATA-
2 BASES.—The provisions of subparagraph (1)(B) of
3 this section shall not become effective until 3 years
4 after the date of enactment of this Act.

5 (3) ACCREDITATION.—No State insurance com-
6 missioner shall be eligible to access the network un-
7 less the State insurance department which such
8 commissioner represents meets 1 of the following ac-
9 creditation requirements at the time of access to the
10 network:

11 (A) Is accredited by the National Associa-
12 tion of Insurance Commissioners.

13 (B) Has an application for accredited sta-
14 tus pending with the National Association of
15 Insurance Commissioners.

16 (C) Has a determination by the Sub-
17 committee in effect that such State insurance
18 department meets or exceeds the standards es-
19 tablished by the National Association of Insur-
20 ance Commissioners for accreditation.

21 (f) SUBCOMMITTEE STANDARDS.—The Sub-
22 committee shall consider developing guidelines for partici-
23 pants on—

1 (1) how to denote which types of information
2 are to receive different levels of confidentiality pro-
3 tection; and

4 (2) how entities or associations that act as
5 agents for financial regulators should denote such
6 agency status when acting in that capacity.

7 (g) REPORTING AND FEASIBILITY REQUIREMENTS
8 AND REVIEW OF OPTIMAL NETWORKING METHODS.—

9 (1) REPORT.—Before the end of the 180-day
10 period beginning on the date this subtitle takes ef-
11 fect in accordance with section 101(a), and again be-
12 fore the end of the 2-year period beginning on such
13 date, the Subcommittee shall submit a report to the
14 Congress regarding the methods the regulators plan
15 to use to network information, and a description of
16 any impediments to (or recommended additional leg-
17 islation for) facilitating the appropriate sharing of
18 such information.

19 (2) TIMEFRAME FOR NETWORKING.—

20 (A) IN GENERAL.—The networking of in-
21 formation required under subsection (b)(1)
22 shall be established before the end of the 2-year
23 period beginning on the date this subtitle takes
24 effect, unless the Subcommittee determines, in
25 conjunction with the liaisons, that such a net-

1 work cannot be established within such time pe-
2 riod in a practicable and cost-effective manner.

3 (B) REPORTS ON EFFORTS IF TIMEFRAME
4 IS NOT MET.—If the Subcommittee makes such
5 a determination, the Subcommittee shall report
6 annually to the Congress on its efforts to co-
7 ordinate the sharing of appropriate information
8 among the regulators until the networking re-
9 quirements are fulfilled.

10 (h) OTHER SHARING ARRANGEMENTS NOT AF-
11 FECTED.—No provision of this section shall be construed
12 as limiting or otherwise affecting the authority of a finan-
13 cial regulator or other member or liaison of the Sub-
14 committee to provide any person, including another partic-
15 ipant, access to any information in accordance with any
16 provision of law other than this Act.

17 (i) NO NEW DATABASES OR EXPENDITURES MAN-
18 DATED.—In implementing this Act, the Subcommittee
19 shall not have any authority to require a member or liaison
20 to create a new database or otherwise incur significant
21 costs in modifying existing databases for the networking
22 of information.

23 **SEC. 103. CHAIRPERSON; TERM OF CHAIRPERSON; MEET-**
24 **INGS; OFFICERS AND STAFF.**

25 (a) CHAIRPERSON.—

1 (1) SELECTION.—The members of the Sub-
2 committee shall select the Chairperson from among
3 the members of the Subcommittee.

4 (2) TERM.—The term of the Chairperson shall
5 be 2 years.

6 (b) MEETINGS.—The Subcommittee shall meet at the
7 call of the Chairperson or a majority of the members when
8 there is business to be conducted.

9 (c) QUORUM.—A majority of members of the Sub-
10 committee shall constitute a quorum.

11 (d) MAJORITY VOTE.—Decisions of the Sub-
12 committee shall be made by the vote of a majority of the
13 members of the Subcommittee.

14 (e) OFFICERS AND STAFF.—The Chairperson of the
15 Subcommittee may appoint such officers and staff as may
16 be necessary to carry out the purposes of the Sub-
17 committee.

18 **SEC. 104. NONAGENCY STATUS.**

19 The Subcommittee shall not be considered an advi-
20 sory committee for purposes of the Federal Advisory Com-
21 mittee Act or as an agency for purposes of subchapter II
22 of chapter 5 of title 5, United States Code.

1 **SEC. 105. POWERS OF THE SUBCOMMITTEE.**

2 (a) IN GENERAL.—The Subcommittee shall have
3 such powers as are necessary to carry out the purposes
4 of the Subcommittee under this title.

5 (b) INFORMATION TO FACILITATE COORDINATION.—
6 Each agency and entity represented by a member or liai-
7 son shall, to the extent permitted by law, provide the Sub-
8 committee with a description of the types of databases
9 maintained by the agency or entity to assist the Sub-
10 committee in carrying out the purposes described in sec-
11 tion 102(a).

12 (c) SERVICE OF MEMBERS AND LIAISONS.—Members
13 of and liaisons to the Subcommittee shall serve without
14 additional compensation for their work on the Sub-
15 committee.

16 (d) ADMINISTRATIVE AND TECHNICAL SUPPORT.—
17 The Subcommittee may request that any agency or entity
18 represented by a member or liaison provide the Sub-
19 committee with any administrative, technical, or other
20 support service that the Subcommittee determines is nec-
21 essary or appropriate for it to carry out the purposes de-
22 scribed in section 102(a).

23 **SEC. 106. AGREEMENT ON COST STRUCTURE.**

24 (a) IN GENERAL.—The Subcommittee shall deter-
25 mine, after consultation with the affected participants or
26 their representatives, the means for providing for any

1 costs the Subcommittee may incur in carrying out the pur-
2 poses of this subtitle.

3 (b) CONSULTATION AND AGREEMENT ON FEES AND
4 CONTRIBUTIONS.—Notwithstanding any other provision
5 of this subtitle, the Subcommittee may not impose any fee
6 or assessment on, or apportion any contribution against,
7 any member or liaison under this section unless—

8 (1) the Subcommittee consults with such mem-
9 ber or liaison; and

10 (2) the member or liaison consents to the
11 amounts, or to a schedule, of such fees, assessments,
12 or contributions.

13 (c) REIMBURSEMENT OF PARTICIPANT COSTS.—Be-
14 fore allowing access by the Subcommittee or a participant
15 to any information described in section 102, other than
16 access described in subsection (b)(1) of such section, a
17 member or liaison may request the reimbursement of rea-
18 sonable costs for providing such access.

19 **Subtitle C—Regulatory Provisions**

20 **SEC. 111. AGENCY SUPERVISORY PRIVILEGE.**

21 (a) DEFINITIONS.—For purposes of this section, the
22 following definitions shall apply:

23 (1) SUPERVISORY PROCESS.—The term “super-
24 visory process” means any activity engaged in by a
25 financial regulator to carry out the official respon-

1 sibilities of the financial regulator with regard to the
2 regulation or supervision of persons engaged in the
3 business of conducting financial activities, including
4 examinations, inspections, visitations, investigations,
5 consumer complaints, or any other regulatory or su-
6 pervisory activities.

7 (2) CONFIDENTIAL SUPERVISORY INFORMA-
8 TION.—Subject to paragraph (3), the term “con-
9 fidential supervisory information” means any of the
10 following information which is treated as, or consid-
11 ered to be, confidential information by a financial
12 regulator, regardless of the form or format in which
13 the information is created, conveyed, or maintained:

14 (A) Any report of examination, inspection,
15 visitation, or investigation, and information pre-
16 pared or collected by the financial regulator in
17 connection with the supervisory process,
18 including—

19 (i) any file, work paper, or similar in-
20 formation;

21 (ii) any correspondence, communica-
22 tion, or information exchanged, in connec-
23 tion with the supervisory process, between
24 a financial regulator and a person engaged

1 in the business of conducting financial ac-
2 tivities; and

3 (iii) any information, including any
4 report, created by or on behalf of a person
5 engaged in the business of conducting fi-
6 nancial activities that is required by, or is
7 prepared at the request of, a financial reg-
8 ulator in connection with the supervisory
9 process.

10 (B) Any record to the extent it contains in-
11 formation derived from any report, correspond-
12 ence, communication or other information de-
13 scribed in subparagraph (A).

14 (C) Any consumer complaints filed with
15 the financial regulator by a consumer with re-
16 spect to a person engaged in the business of
17 conducting financial activities that have been
18 identified by the financial regulator as requiring
19 confidential treatment to protect the integrity
20 of an investigation or the safety of an indi-
21 vidual.

22 (3) EXCLUSIONS.—The term “confidential su-
23 pervisory information” shall not include—

24 (A) any book, record, or other information,
25 in the possession of, or maintained on behalf of,

1 the person engaged in the business of con-
2 ducting financial activities that—

3 (i) is not a report required by, or pre-
4 pared at the request of, a financial regu-
5 lator; and

6 (ii) is not, and is not derived from,
7 confidential supervisory information that
8 was created or prepared by a financial reg-
9 ulator; or

10 (B) any information required to be made
11 publicly available by—

12 (i) any applicable Federal law or regu-
13 lation; or

14 (ii) in the case of confidential super-
15 visory information created by a State fi-
16 nancial regulator or requested from a per-
17 son engaged in the business of conducting
18 financial activities by a State financial reg-
19 ulator, any applicable State law or regula-
20 tion that specifically refers to such type of
21 information.

22 (b) SHARING OF REPORTS.—

23 (1) IN GENERAL.—No provision of this section
24 shall be construed as preventing—

1 (A) a person engaged in the business of
2 conducting financial activities from providing a
3 report that is required by, or prepared at the
4 request of, a financial regulator (the originating
5 financial regulator) to another financial regu-
6 lator that has the authority to obtain the infor-
7 mation from the person under any other provi-
8 sion of law;

9 (B) a financial regulator that obtains a re-
10 port described in subparagraph (A) from a per-
11 son engaged in the business of conducting fi-
12 nancial activities from using or disclosing such
13 report to the extent otherwise permitted by law;
14 or

15 (C) a person engaged in the business of
16 conducting financial activities from sharing con-
17 fidential supervisory information with the per-
18 son's attorneys, accountants, and auditors, sole-
19 ly for the purpose of providing legal, account-
20 ing, or auditing services, respectively, for such
21 person, except that—

22 (i) such sharing shall not be consid-
23 ered a disclosure for any other purpose;

1 (ii) the attorneys, accountants, or
2 auditors may not further disclose such in-
3 formation; and

4 (iii) such sharing shall be conducted
5 in accordance with any other applicable
6 governing laws and regulations.

7 (2) PRIVILEGE PRESERVED.—If a person pro-
8 vides a report referred to in paragraph (1) to a fi-
9 nancial regulator other than the originating financial
10 regulator, such action shall not affect the ability of
11 the originating financial regulator to assert any
12 privilege that such financial regulator may claim
13 with respect to the report against any person that
14 is not a financial regulator.

15 (c) FINANCIAL REGULATOR SUPERVISORY PRIVI-
16 LEGE.—

17 (1) PRIVILEGE ESTABLISHED.—

18 (A) IN GENERAL.—All confidential super-
19 visory information shall be privileged from dis-
20 closure to any person except as provided in this
21 section.

22 (B) PROHIBITION ON UNAUTHORIZED DIS-
23 CLOSURES.—No person in possession of con-
24 fidential supervisory information may disclose
25 such information, in whole or in part, without

1 the prior authorization of the financial regu-
2 lator that created the information, or requested
3 the information from a person engaged in the
4 business of conducting financial activities, ex-
5 cept for a disclosure made in published statis-
6 tical material that does not disclose, either di-
7 rectly or when used in conjunction with publicly
8 available information, the affairs of any person
9 or other personally identifiable information.

10 (C) AGENCY WAIVER.—The financial regu-
11 lator that created the confidential supervisory
12 information, or requested the confidential su-
13 pervisory information from a person engaged in
14 the business of conducting financial activities,
15 may waive, in whole or in part, in the discretion
16 of the regulator, any privilege established under
17 this paragraph with respect to such informa-
18 tion.

19 (2) EXCEPTIONS.—

20 (A) ACCESS BY GOVERNMENTAL BODIES.—

21 (i) CONGRESS AND GENERAL AC-
22 COUNTING OFFICE.—No provision of para-
23 graph (1) shall be construed as preventing
24 access to confidential supervisory informa-
25 tion by duly authorized committees of the

1 Congress or the Comptroller General of the
2 United States.

3 (ii) FINANCIAL REGULATOR OVER-
4 SIGHT.—No financial regulator which is
5 described in subparagraph (P), (Q), or (R)
6 of section 115(3) and is subject to the
7 oversight of a Federal financial regulator
8 may assert the privilege described in para-
9 graph (1) to prevent access to confidential
10 supervisory information by such Federal fi-
11 nancial regulator.

12 (B) PRIVILEGE NOT WAIVED.—If a finan-
13 cial regulator provides access to confidential su-
14 pervisory information to the Congress, the
15 Comptroller General, or another financial regu-
16 lator, such action shall not affect the ability of
17 the financial regulator to assert any privilege
18 associated with such information against any
19 other person.

20 (d) TREATMENT OF FOREIGN SUPERVISORY INFOR-
21 MATION.—In any proceeding before a Federal or State
22 court of the United States, in which a person seeks to
23 compel production or disclosure by a financial regulator
24 of information or documents prepared or collected by a
25 foreign financial regulator that would, had the information

1 or document been prepared or collected by a financial reg-
2 ulator, be confidential supervisory information for pur-
3 poses of this section, the information or document shall
4 be privileged to the same extent that the information and
5 documents of financial regulators are privileged under this
6 title.

7 (e) OTHER PRIVILEGES NOT WAIVED BY DISCLO-
8 SURE TO FINANCIAL REGULATOR.—The submission by a
9 person engaged in the business of conducting financial ac-
10 tivities of any information to a financial regulator or a
11 foreign financial regulator in connection with the super-
12 visory process of such financial regulator or foreign finan-
13 cial regulator shall not waive, destroy, or otherwise affect
14 any privilege such person may claim with respect to such
15 information under Federal or State law as to a party other
16 than such financial regulator or foreign financial regu-
17 lator.

18 (f) DISCOVERY AND DISCLOSURE OF INFORMA-
19 TION.—

20 (1) INFORMATION AVAILABLE ONLY FROM FI-
21 NANCIAL REGULATOR.—

22 (A) IN GENERAL.—No person (other than
23 the financial regulator that created the informa-
24 tion or requested the information from a person
25 engaged in the business of conducting financial

1 activities) may disclose, in whole or in part, any
2 confidential supervisory information to any per-
3 son who seeks such information through sub-
4 poena, discovery procedures, or otherwise.

5 (B) PROCEDURE FOR REQUESTS SUB-
6 MITTED TO FINANCIAL REGULATOR.—

7 (i) IN GENERAL.—Any request for
8 discovery or disclosure of confidential su-
9 pervisory information shall be made to the
10 financial regulator that created the infor-
11 mation, or requested the information from
12 a person engaged in the business of con-
13 ducting financial activities.

14 (ii) PROCEDURE.—Upon receiving a
15 request for confidential supervisory infor-
16 mation, the financial regulator shall deter-
17 mine within a reasonable time period
18 whether to disclose such information pur-
19 suant to procedures and criteria estab-
20 lished by the financial regulator.

21 (C) NOTIFICATION.—

22 (i) IN GENERAL.—Before any finan-
23 cial regulator releases confidential super-
24 visory information that was requested from
25 a person engaged in the business of con-

1 ducting financial activities to a person
2 under subparagraph (B), notice and a rea-
3 sonable time for comment shall be provided
4 to the person from whom such information
5 was requested unless such information—

6 (I) is being provided to another
7 financial regulator, an agency or enti-
8 ty represented by a liaison to the Sub-
9 committee, or a Federal, State, or for-
10 eign government (or any agency or in-
11 strumentality of any such government
12 acting in any capacity);

13 (II) is being sought for use in a
14 criminal proceeding or investigation,
15 or a regulatory, supervisory, enforce-
16 ment, or disciplinary administrative
17 proceeding, civil action, or investiga-
18 tion; or

19 (III) was originally created, or
20 included in information created, by
21 the financial regulator.

22 (ii) PROCEDURES AND REQUIRE-
23 MENTS.—A financial regulator may pre-
24 scribe regulations, or issue orders, guide-

1 lines, or procedures, governing the notice
2 and time period required by clause (i).

3 (2) FEDERAL COURT JURISDICTION OVER DIS-
4 PUTES.—

5 (A) DECLARATORY JUDGMENT.—If a party
6 seeks in any action or proceeding to compel dis-
7 closure of confidential supervisory information,
8 a financial regulator may in a civil action for a
9 declaratory judgment seek to prevent such dis-
10 closure.

11 (B) JUDICIAL REVIEW.—Judicial review of
12 the final action of a financial regulator with re-
13 gard to the disposition of a request for con-
14 fidential supervisory information shall be before
15 a district court of the United States of com-
16 petent jurisdiction, subject to chapter 7 of part
17 I of title 5, United States Code.

18 (g) AUTHORITY TO INTERVENE.—In the case of any
19 action or proceeding to compel compliance with a sub-
20 poena, order, discovery request, or other judicial or admin-
21 istrative process with respect to any confidential super-
22 visory information of a financial regulator concerning any
23 person engaged in the business of conducting financial ac-
24 tivities, the financial regulator may intervene in such ac-

1 tion or proceeding, and such person may intervene with
2 such regulator, for the purpose of—

3 (1) enforcing the limitations established in
4 paragraph (1) of subsections (c) and (f);

5 (2) seeking the withdrawal of any compulsory
6 process with respect to such information; and

7 (3) registering appropriate objections with re-
8 spect to the action or proceeding to the extent the
9 action or proceeding relates to or involves such infor-
10 mation.

11 (h) RIGHT TO APPEAL.—Any court order that com-
12 pels production of confidential supervisory information
13 may be immediately appealed by the financial regulator
14 and the order compelling production shall be automatically
15 stayed, pending the outcome of such appeal.

16 (i) REGULATIONS.—

17 (1) AUTHORITY TO PRESCRIBE.—Each financial
18 regulator may prescribe such regulations as the reg-
19 ulator considers to be appropriate, after consultation
20 with the other financial regulators (to the extent the
21 prescribing financial regulator considers appropriate
22 and feasible), to carry out the purposes of this sec-
23 tion.

24 (2) AUTHORITY TO REQUIRE NOTICE.—Any
25 regulations prescribed by a financial regulator under

1 paragraph (1) may require any person in possession
2 of confidential supervisory information to notify the
3 financial regulator whenever the person is served
4 with a subpoena, order, discovery request, or other
5 judicial or administrative process requiring the per-
6 sonal attendance of such person as a witness or re-
7 quiring the production of such information in any
8 proceeding.

9 (j) ABILITY TO PARTIALLY WAIVE PRIVILEGE
10 WHERE NO OTHER PRIVILEGE APPLIES.—A financial
11 regulator may, to the extent permitted by applicable law
12 governing the disclosure of information by the regulator,
13 authorize a waiver of the privilege established by this sec-
14 tion to allow access by a person to confidential supervisory
15 information created by such regulator (or requested by
16 such regulator from any person engaged in the business
17 of conducting financial activities), except that—

18 (1) the regulator may place appropriate limits
19 on the use and disclosure of the information shared,
20 and may continue to assert the privilege with respect
21 to any other person that seeks access to the infor-
22 mation; and

23 (2) such waiver shall not affect any other privi-
24 lege or confidentiality protection that any party may

1 assert against any person other than such financial
2 regulator.

3 (k) SHARING OF CONFIDENTIAL SUPERVISORY IN-
4 FORMATION AMONG FEDERAL FUNCTIONAL REGU-
5 LATORS.—A Federal functional regulator (as defined in
6 section 509 of the Gramm-Leach-Bliley Act) shall freely
7 share, upon request, any confidential supervisory informa-
8 tion created by it with another Federal functional regu-
9 lator subject only to any existing legal restrictions on the
10 regulator’s authority to share or disclose information and
11 to the following paragraphs:

12 (1) REQUESTS DIRECTED TO REGULATOR.—A
13 Federal functional regulator may seek information
14 described in this subsection solely from the Federal
15 functional regulator that created the information
16 (hereafter in this subsection referred to as the “origi-
17 nating regulator”), and not from any other person
18 (unless authorized by the originating regulator).

19 (2) REVIEW OF REQUESTS.—Notwithstanding
20 any other provision of law, in response to a request
21 for such information, the originating regulator may
22 decline to provide any portion of the information if
23 the originating regulator, in consultation with the
24 requesting regulator and after giving due consider-

1 ation to the request, determines that withholding the
2 information is appropriate in the public interest.

3 (3) USE WITHIN AGENCY PERMITTED.—Any
4 confidential supervisory information received by a re-
5 questing regulator under this subsection may be
6 shared freely among personnel within the requesting
7 regulator.

8 (4) APPROVAL REQUIRED FOR OTHER USES.—
9 The requesting regulator shall obtain the approval of
10 the originating regulator before any information de-
11 scribed in this subsection is—

12 (A) made public;

13 (B) provided to any third person or agen-
14 cy; or

15 (C) cited or made a part of the record in
16 the course of any enforcement action.

17 (I) ACCESS TO INFORMATION OF REGULATED ENTI-
18 TY PRESERVED.—No provision of this section shall be
19 construed as preventing a Federal functional regulator (as
20 defined in section 509 of the Gramm-Leach-Bliley Act)
21 from obtaining from any person, other than a Federal
22 functional regulator, any book, record or information
23 (other than confidential supervisory information created
24 by a Federal functional regulator), including any book,
25 record or other information referred to in, or constituting

1 the underlying data for, any confidential supervisory infor-
2 mation created by another Federal functional regulator.

3 (m) NO GRANT OF AUTHORITY.—No provision of
4 this section shall be construed as providing any financial
5 regulator any new authority to request or obtain informa-
6 tion.

7 (n) NO WAIVER OF ANY PRIVILEGE OF ANY OTHER
8 PARTY.—No provision of this Act shall be construed as
9 providing a financial regulator with any new authority to
10 disclose information in contravention of applicable law
11 governing disclosure of information.

12 **SEC. 112. CONFIDENTIALITY OF INFORMATION.**

13 (a) IN GENERAL.—

14 (1) FINANCIAL REGULATORS.—Except as other-
15 wise provided in this section or section 111, any re-
16 quirement under Federal or State law regarding the
17 privacy or confidentiality of any information or ma-
18 terial in the possession of any participant, and any
19 privilege arising under Federal or State law (includ-
20 ing the rules of any Federal or State court) with re-
21 spect to such information or material, shall continue
22 to apply to such information or material after the in-
23 formation or material has been disclosed through the
24 network to another participant or, if subtitle B has
25 taken effect, the Subcommittee.

1 (2) CERTAIN INSURANCE INFORMATION.—Ex-
2 cept as otherwise provided in this section or section
3 111, any requirement under Federal or State law re-
4 garding the privacy or confidentiality of any infor-
5 mation or material in the possession of the National
6 Association of Insurance Commissioners, or any
7 member or affiliate of the Association, and any
8 privilege arising under Federal or State law (includ-
9 ing the rules of any Federal or State court) with re-
10 spect to such information or material, shall continue
11 to apply to such information or material after the in-
12 formation has been disclosed to the Association, or
13 any other member or affiliate of the Association,
14 through the computer databases maintained by the
15 Association.

16 (3) NONAPPLICABILITY OF CERTAIN REQUIRE-
17 MENTS.—Information or material that is subject to
18 a privilege or confidentiality under any other para-
19 graph of this subsection shall not be subject to—

20 (A) disclosure under any Federal or State
21 law governing the disclosure to the public of in-
22 formation held by an officer or an agency of the
23 Federal Government or the respective State; or

1 (B) subpoena or discovery, or admission
2 into evidence, in any private civil action or ad-
3 ministrative process,
4 unless with respect to any privilege held by a partici-
5 pant with respect to such information or material,
6 the participant waives, in whole or in part, in the
7 discretion of the participant, such privilege.

8 (b) PREEMPTION OF STATE LAW.—Any State law,
9 including any State open record law, relating to the dislo-
10 sure of confidential supervisory information or any infor-
11 mation or material described in subsection (a) that is in-
12 consistent with any provision of section 111 or subsection
13 (a) of this section shall be superseded by the requirements
14 of such provision to the extent State law provides less con-
15 fidentiality or a weaker privilege.

16 (c) DUTY OF FINANCIAL REGULATOR TO MAINTAIN
17 CONFIDENTIALITY.—A participant may not receive,
18 download, copy, or otherwise maintain any information or
19 material from any other member of or liaison to the Sub-
20 committee through the network unless—

21 (1) the participant maintains a system that en-
22 ables the participant to maintain full compliance
23 with the requirements of sections 100, 102, and 111
24 and this section, with respect to such information
25 and material; and

1 (2) if and to the extent required by the guide-
2 lines established under sections 100 and 102, a
3 record is maintained of each attempt to access such
4 information and material, and the identity of the
5 person making the attempt, in order to prevent eva-
6 sions of such requirements.

7 **SEC. 113. LIABILITY PROVISIONS.**

8 (a) NO LIABILITY FOR GOOD FAITH DISCLO-
9 SURES.—Any financial regulator, and any officer or em-
10 ployee of any financial regulator, shall not be subject to
11 any civil action or proceeding for monetary damages by
12 reason of the good faith action or omission of any officer
13 or employee, while acting within the scope of office or em-
14 ployment, relating to collecting, furnishing, or dissemi-
15 nating regulatory or supervisory information concerning
16 persons engaged in the business of conducting financial
17 activities, to or from another financial regulator, whether
18 directly or through the network.

19 (b) CRIMINAL LIABILITY FOR INTENTIONAL UNLAW-
20 FUL DISCLOSURES.—

21 (1) IN GENERAL.—It shall be unlawful to will-
22 fully disclose to any person any information con-
23 cerning any person engaged in the business of con-
24 ducting financial activities knowing the disclosure to
25 be in violation of any provision of this title—

1 (A) requiring the confidentiality of such in-
2 formation; or

3 (B) establishing a privilege from disclosure
4 for such information that has not been waived
5 by the relevant financial regulator.

6 (2) PENALTY.—Notwithstanding section 3571
7 of title 18, United States Code, any person who vio-
8 lates paragraph (1) shall be fined an amount not to
9 exceed the greater of \$100,000 or the amount of the
10 actual damages sustained by any person as a result
11 of such violation, or imprisoned not more than 5
12 years, or both.

13 (c) FULL, CONTINUED PROTECTION UNDER THE SO-
14 CALLED “FEDERAL TORT CLAIMS ACT”.—No provision
15 of this Act shall be construed as reducing or limiting any
16 protection provided for any Federal agency, or any officer
17 or employee of any Federal agency, under section 2679
18 of title 28, United States Code.

19 (d) PROTECTION APPLIED TO THE SUB-
20 COMMITTEE.—For the purposes of this section, the term
21 “financial regulator” includes the Subcommittee after
22 subtitle B has taken effect.

23 **SEC. 114. AUTHORIZATION FOR IDENTIFICATION AND**
24 **CRIMINAL BACKGROUND CHECK.**

25 (a) SHARING OF CRIMINAL RECORDS.—

1 (1) ATTORNEY GENERAL AUTHORIZATION.—

2 Upon receiving a request from a financial regulator,
3 the Attorney General shall—

4 (A) search the records of the Criminal Jus-
5 tice Information Services Division of the Fed-
6 eral Bureau of Investigation, and any other
7 similar database over which the Attorney Gen-
8 eral has authority and deems appropriate, for
9 any criminal background records (including
10 wanted persons information) corresponding to
11 the identification information provided under
12 subsection (b); and

13 (B) either—

14 (i) shall provide any such records to
15 any authorized agent of the financial regu-
16 lator, which shall provide the relevant in-
17 formation to such regulator; or

18 (ii) may provide such records directly
19 to the financial regulator if the Attorney
20 General limits such provision of records to
21 relevant information.

22 (2) AUTHORIZED AGENT DEFINED.—For pur-
23 poses of this section, the term “authorized agent”
24 means—

1 (A) any agent which has been recognized
2 by the Attorney General for such purpose and
3 authorized by at least 3 other financial regu-
4 lators to receive such records and perform the
5 information sharing requirements of paragraph
6 (3);

7 (B) the State attorney general for the
8 State in which the regulator is primarily lo-
9 cated; and

10 (C) any law enforcement designee of the
11 Attorney General or such State attorney gen-
12 eral.

13 (3) INFORMATION SHARED.—

14 (A) IN GENERAL.—The authorized agent
15 shall provide to the requesting financial regu-
16 lator only any records that are relevant infor-
17 mation.

18 (B) RELEVANT INFORMATION DEFINED.—
19 For purposes of this section, the term “relevant
20 information” means any of the following
21 records:

22 (i) All felony convictions.

23 (ii) All misdemeanor convictions
24 involving—

1 (I) violation of a law involving fi-
2 nancial activities;

3 (II) dishonesty or breach of
4 trust, within the meaning of section
5 1033 of title 18, United States Code,
6 including taking, withholding, mis-
7 appropriating, or converting money or
8 property;

9 (III) failure to comply with child
10 support obligations;

11 (IV) failure to pay taxes; and

12 (V) domestic violence, child
13 abuse, or a crime of violence.

14 (C) CRIME OF VIOLENCE DEFINED.—For
15 purposes of subparagraph (B)(ii)(V), the term
16 “crime of violence” means a burglary of a
17 dwelling and a criminal offense that has as an
18 element the use or attempted use of physical
19 force, or threat of great bodily harm, or the
20 use, attempted use, or threatened use of a
21 deadly weapon, against an individual, including
22 committing or attempting to commit murder,
23 manslaughter, kidnapping, aggravated assault,
24 forcible sex offenses, robbery, arson, extortion,
25 and extortionate extension of credit.

1 (4) STATE UNIFORM OR RECIPROCITY LAWS RE-
2 QUIREMENT.—

3 (A) IN GENERAL.—The Attorney General
4 may not provide any records under this sub-
5 section to an insurance regulator of a State, or
6 agent of such regulator, if such State does not
7 have in effect uniform or reciprocity laws and
8 regulations governing the licensure of individ-
9 uals and entities authorized to sell and solicit
10 the purchase of insurance within the State as
11 set forth in section 321 of P.L. 106-102.

12 (B) DETERMINATION OF RECIPROCITY.—
13 The determination of whether or not a State
14 has uniform or reciprocity laws or regulations
15 in effect for purposes of subparagraph (A) shall
16 be made by the Attorney General, with the ad-
17 vice and counsel of the National Association of
18 Insurance Commissioners.

19 (C) EXCEPTION UNDER CERTAIN CIR-
20 CUMSTANCES.—Notwithstanding subparagraph
21 (B), the Attorney General may provide records
22 under this section to an insurance regulator of
23 a State, or agent of such regulator, on the basis
24 of a specific determination by the National As-
25 sociation of Insurance Commissioners that such

1 State has in effect uniform or reciprocity laws
2 and regulations referred to in subparagraph (A)
3 if—

4 (i) a determination by the Attorney
5 General under subparagraph (B) is pend-
6 ing; or

7 (ii) the Attorney General considers
8 whether such State has in effect such uni-
9 form or reciprocity laws or regulations and
10 fails to make a determination, unless the
11 Attorney General subsequently determines
12 that such State does not have in effect uni-
13 form or reciprocity laws or regulations.

14 (b) FORM OF REQUEST.—A request under subsection
15 (a) shall include a copy of any necessary identification in-
16 formation required by the Attorney General, such as the
17 name and fingerprints of the person about whom the
18 record is requested and a statement signed by the person
19 acknowledging that the regulator (or such regulator’s des-
20 ignated agent under subsection (g)(1)) may request the
21 search.

22 (c) LIMITATION ON PERMISSIBLE USES OF INFORMA-
23 TION.—Information obtained under this section may—

24 (1) be used only for regulatory or law enforce-
25 ment purposes; and

1 (2) be disclosed—

2 (A) only to other financial regulators or
3 Federal or State law enforcement agencies; and

4 (B) only if the recipient agrees to—

5 (i) maintain the confidentiality of
6 such information; and

7 (ii) limit the use of such information
8 to appropriate regulatory and law enforce-
9 ment purposes.

10 (d) PENALTY FOR IMPROPER USE.—

11 (1) IN GENERAL.—Whoever uses any informa-
12 tion obtained under this section knowingly and will-
13 fully for an unauthorized purpose shall be fined
14 under title 18, United States Code, imprisoned for
15 not more than 2 years, or both.

16 (2) ADDITIONAL PENALTIES AND WAIVERS.—

17 (A) IN GENERAL.—Any authorized agent
18 who violates paragraph (1), or any individual
19 who directs such agent to violate such para-
20 graph, shall be barred from engaging in or reg-
21 ulating any activities related to the business of
22 insurance.

23 (B) WAIVER AUTHORIZED.—The Attorney
24 General, in the discretion of the Attorney Gen-

1 eral, may waive the bar in subparagraph (A), as
2 appropriate.

3 (e) RELIANCE ON INFORMATION.—A financial regu-
4 lator (or such regulator’s designated agent under sub-
5 section (g)(1)) who reasonably relies on information pro-
6 vided under this section shall not be liable in any action
7 for using information as permitted under this section in
8 good faith.

9 (f) CLARIFICATION OF SECTION 1033.—With respect
10 to any action brought under section 1033(e)(1)(B) of title
11 18, United States Code, no person engaged in the business
12 of conducting financial activities shall be subject to any
13 penalty resulting from such section if the individual who
14 the person permitted to engage in the business of insur-
15 ance is licensed, or approved (as part of an application
16 or otherwise), by a State insurance regulator that per-
17 forms criminal background checks under this section, un-
18 less such person knows that the individual is in violation
19 of section 1033(e)(1)(A) of such title.

20 (g) DESIGNATION OF AGENT.—

21 (1) IN GENERAL.—A financial regulator may
22 designate an agent for facilitating requests and ex-
23 changes of information under this section between or
24 among the financial regulator, the Attorney General,
25 and any other authorized agent.

1 (2) SENSE OF CONGRESS REGARDING AGENTS
2 OF INSURANCE REGULATORS.—It is the sense of the
3 Congress that—

4 (A) each State insurance commissioner
5 should designate the National Association of In-
6 surance Commissioners as an agent under para-
7 graph (1);

8 (B) persons engaged in the business of in-
9 surance should be able to use the National As-
10 sociation of Insurance Commissioners to facili-
11 tate obtaining fingerprints and supplying identi-
12 fication information for use in background
13 checks under this section on a multijuris-
14 dictional basis;

15 (C) the National Association of Insurance
16 Commissioners should maintain a database to
17 obtain records under this section for use by
18 State insurance commissioners to reduce mul-
19 tiple or duplicative fingerprinting requirements
20 and criminal background checks, except that
21 any such record shall not be maintained for
22 more than 1 year without performing a new
23 background check to determine if the criminal
24 background record has changed;

1 (D) other financial regulators that require
2 fingerprints and criminal background checks
3 should similarly coordinate efforts to reduce du-
4 plication for persons engaged in the business of
5 conducting multiple types of financial activities;
6 and

7 (E) the National Association of Insurance
8 Commissioners, and other financial regulators
9 that use this section, should consult with the
10 Attorney General to consider the feasibility of
11 developing an on-going notification system that
12 would allow the Attorney General to notify such
13 Association when a licensed or approved insur-
14 ance professional is convicted of a relevant
15 crime.

16 (h) FEES.—The Attorney General may charge a rea-
17 sonable fee for the provision of information under this sec-
18 tion.

19 (i) RULE OF CONSTRUCTION.—This section shall
20 not—

21 (1) provide independent authorization for a fi-
22 nancial regulator to require fingerprinting as a part
23 of a licensure or other application;

24 (2) require a financial regulator to perform
25 criminal background checks under this section; or

1 (3) supersede or otherwise limit any other au-
2 thority that allows access to criminal background
3 records.

4 (j) REGULATIONS.—The Attorney General may pre-
5 scribe regulations to carry out this section.

6 **SEC. 115. DEFINITIONS.**

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

9 (1) FEDERAL BANKING AGENCY.—The term
10 “Federal banking agency” has the same meaning as
11 given in section 3(z) of the Federal Deposit Insur-
12 ance Act.

13 (2) FINANCIAL ACTIVITIES.—

14 (A) IN GENERAL.—The term “financial
15 activities”—

16 (i) means banking activities (including
17 the ownership of a bank), securities activi-
18 ties, insurance activities, or commodities
19 activities; and

20 (ii) includes all activities that are fi-
21 nancial in nature or are incidental to a fi-
22 nancial activity (as defined under section
23 4(k) of the Bank Holding Company Act of
24 1956).

1 (B) RULE OF CONSTRUCTION.—Subpara-
2 graph (A) shall not be construed as creating
3 any inference, including any negative inference,
4 concerning the types or extent of activities that
5 are appropriately recognized as activities that
6 are financial in nature, or are incidental to a fi-
7 nancial activity, for purposes of section 4 of the
8 Bank Holding Company Act of 1956.

9 (3) FINANCIAL REGULATOR.—The term “finan-
10 cial regulator” means—

11 (A) each Federal banking agency;

12 (B) the Securities and Exchange Commis-
13 sion;

14 (C) the Commodity Futures Trading Com-
15 mission;

16 (D) the National Credit Union Administra-
17 tion;

18 (E) the Farm Credit Administration;

19 (F) the Federal Housing Finance Board;

20 (G) the Federal Trade Commission, to the
21 extent the Commission has jurisdiction over fi-
22 nancial activities being conducted by a person
23 engaged in the business of conducting financial
24 activities;

1 (H) the Secretary of the Treasury, to the
2 extent the Secretary has jurisdiction over finan-
3 cial activities being conducted by a person en-
4 gaged in the business of conducting financial
5 activities;

6 (I) the Office of Federal Housing Enter-
7 prise Oversight of the Department of Housing
8 and Urban Development;

9 (J) the Appraisal Subcommittee of the Fi-
10 nancial Institutions Examination Council;

11 (K) any State bank supervisor (as defined
12 in section 3(r) of the Federal Deposit Insurance
13 Act), including the Conference of State Bank
14 Supervisors only to the extent such conference
15 is acting as an agent of, and is subject to the
16 oversight of, any such State bank supervisor;

17 (L) any State savings association super-
18 visor, including the American Council of State
19 Savings Supervisors only to the extent such
20 conference is acting as an agent of, and is sub-
21 ject to the oversight of, any such State savings
22 association supervisor;

23 (M) any State insurance commissioner, in-
24 cluding the National Association of Insurance
25 Commissioners only to the extent such associa-

1 tion is acting as the agent of, and is subject to
2 the oversight of, any such insurance commis-
3 sioner;

4 (N) any State securities administrator, in-
5 cluding the North American Securities Adminis-
6 trators Association only to the extent such asso-
7 ciation is acting as the agent of, and is subject
8 to the oversight of, any such securities adminis-
9 trator;

10 (O) any State credit union supervisor, in-
11 cluding the National Association of State Credit
12 Union Supervisors only to the extent such asso-
13 ciation is acting as the agent of, and is subject
14 to the oversight of, any such credit union super-
15 visor;

16 (P) the National Association of Securities
17 Dealers, only to the extent that—

18 (i) such association is acting in con-
19 nection with the financial services industry;
20 and

21 (ii) the association and the relevant
22 actions are subject to the oversight of the
23 Securities and Exchange Commission;

24 (Q) the National Futures Association, only
25 to the extent that—

1 (i) such association is acting in con-
2 nection with the financial services industry;
3 and

4 (ii) the association and the relevant
5 actions are subject to the oversight of the
6 Commodity Futures Trading Commission
7 or the Securities and Exchange Commis-
8 sion; and

9 (R) any other self-regulatory organization
10 that engages in or coordinates regulatory and
11 supervisory activities, with respect to any per-
12 son engaged in the business of conducting fi-
13 nancial activities, and is subject to the oversight
14 of the Securities and Exchange Commission or
15 the Commodity Futures Trading Commission,
16 but only to the extent that the organization en-
17 gages in such activities and is subject to such
18 oversight.

19 (4) FOREIGN FINANCIAL REGULATOR.—The
20 term “foreign financial regulator” means any agen-
21 cy, entity, or body (including a self-regulatory orga-
22 nization) that is empowered by the laws of a foreign
23 country to supervise and regulate persons engaged
24 in the business of conducting financial activities, but

1 only to the extent of such supervisory and regulatory
2 activities.

3 (5) PARTICIPANT.—The term “participant”
4 means any entity described in section 101 as being
5 represented by a member of, or a liaison to, the Sub-
6 committee (regardless of whether subtitle B has
7 taken effect) but only to the extent the regulator
8 provides or obtains access to information through
9 the network.

10 (6) PERSON.—The term “person” includes any
11 financial regulator.

12 (7) PERSON ENGAGED IN THE BUSINESS OF
13 CONDUCTING FINANCIAL ACTIVITIES.—The term
14 “person engaged in the business of conducting finan-
15 cial activities” includes, to the extent appropriate
16 under the laws applicable to the jurisdiction of a fi-
17 nancial regulator over such person—

18 (A) any director, officer, employee, or con-
19 trolling stockholder of, or agent for, any such
20 person;

21 (B) any other person who has filed or is
22 required to file a change-in-control notice with
23 the appropriate financial regulator before ac-
24 quiring control of such person; and

1 (C) any person who has sought approval
2 from a financial regulator to engage in the
3 business of conducting financial activities, or
4 that was engaged in such business and subject
5 to the jurisdiction of a financial regulator; and

6 (D) any shareholder, consultant, joint ven-
7 ture partner, and any other person, including
8 an independent contractor, as determined by
9 the appropriate financial regulator (by regula-
10 tion or case-by-case) who participates in the
11 conduct of the affairs of such person.

12 (8) STATE INSURANCE COMMISSIONER.—The
13 term “State insurance commissioner” means any of-
14 ficer, agency, or other entity of any State which has
15 primary regulatory authority over the business of in-
16 surance and over any person engaged in the business
17 of insurance to the extent of such activities, in such
18 State.

19 (9) STATE SECURITIES ADMINISTRATOR.—The
20 term “State securities administrator” means the se-
21 curities commission (or any agency or office per-
22 forming like functions) of any State.

1 **SEC. 116. TECHNICAL AND CONFORMING AMENDMENTS TO**
2 **OTHER ACTS.**

3 (a) Subsection (b) of section 552a of title 5, United
4 States Code, is amended—

5 (1) by striking “and” at the end of paragraph
6 (11);

7 (2) by striking the period at the end of para-
8 graph (12) and inserting “; or”; and

9 (3) by inserting after paragraph (12) the fol-
10 lowing new paragraph:

11 “(13) for recordkeeping, licensing, and other
12 regulatory and law enforcement purposes in accord-
13 ance with title I of the Financial Services Antifraud
14 Network Act of 2001—

15 “(A) through a network or name-relation-
16 ship index maintained under such title; or

17 “(B) to a multistate database maintained
18 by the National Association of Insurance Com-
19 missioners and any subsidiary or affiliate of
20 such association, subject to the requirements of
21 such title.”.

22 (b) Section 1113 of the Financial Institutions Regu-
23 latory and Interest Rate Control Act of 1978 (12 U.S.C.
24 3413) is amended by adding at the end the following new
25 subsection:

1 “(r) This title shall not apply to disclosure by a finan-
2 cial regulator of information pursuant to subtitle A or B
3 of title I of the Financial Services Antifraud Network Act
4 of 2001 to the extent the disclosure is made in accordance
5 with the requirements of such Act.”.

6 (c) Section 602 of the Consumer Credit Protection
7 Act (15 U.S.C. 1681) is amended by adding at the end
8 the following new subsection:

9 “(c) This title shall not apply to a communication be-
10 tween participants, as defined in the Financial Services
11 Antifraud Network Act of 2001, to the extent the commu-
12 nication is made in accordance with such Act.”.

13 **SEC. 117. AUDIT OF STATE INSURANCE REGULATORS.**

14 (a) IN GENERAL.—At the request of the Congress,
15 the Comptroller General shall audit a State insurance reg-
16 ulator or any person who maintains information on behalf
17 of such regulator.

18 (b) LIMITATIONS ON DISCLOSURE OF INFORMA-
19 TION.—Except as provided in this subsection, an officer
20 or employee of the General Accounting Office may not dis-
21 close information identifying an open insurance company
22 or a customer of an open or closed insurance company.
23 The Comptroller General may disclose information related
24 to the affairs of a closed insurance company only if the
25 Comptroller General believes the customer had a control-

1 ling influence in the management of the closed insurance
2 company or was related to or affiliated with a person or
3 group having a controlling influence.

4 (c) COORDINATION WITH STATE REGULATOR.—An
5 officer or employee of the General Accounting Office may
6 discuss a customer or insurance company with an official
7 of a State insurance regulator and may report an apparent
8 criminal violation to an appropriate law enforcement au-
9 thority of the United States Government or a State.

10 (d) CONGRESSIONAL OVERSIGHT.—This subsection
11 shall not be construed as authorizing an officer or em-
12 ployee of a State insurance regulator to withhold informa-
13 tion from a committee of the Congress authorized to have
14 the information.

15 (e) ADMINISTRATIVE ASPECTS OF AUDIT.—

16 (1) IN GENERAL.—To carry out this section, all
17 records and property of or used by a State insurance
18 regulator, including samples of reports of examina-
19 tions of an insurance company the Comptroller Gen-
20 eral considers statistically meaningful and
21 workpapers and correspondence related to the re-
22 ports shall be made available to the Comptroller
23 General. The Comptroller General shall give a State
24 insurance regulator a current list of officers and em-
25 ployees to whom, with proper identification, records

1 and property may be made available, and who may
2 make notes or copies necessary to carry out an
3 audit.

4 (2) PREVENTION OF UNAUTHORIZED ACCESS.—

5 The Comptroller General shall prevent unauthorized
6 access to records or property of or used by a State
7 insurance regulator that the Comptroller General ob-
8 tains during an audit.

9 (f) CONFIDENTIALITY.—

10 (1) IN GENERAL.—The Comptroller General
11 shall maintain the same level of confidentiality for a
12 record made available under this section as is re-
13 quired of the head of the State insurance regulator
14 from which it is obtained.

15 (2) PREVENTION OF INVASION OF PERSONAL
16 PRIVACY.—The Comptroller General shall keep in-
17 formation described in section 552(b)(6) of title 5,
18 United States Code, that the Comptroller General
19 obtains in a way that prevents unwarranted inva-
20 sions of personal privacy.

21 (3) AVAILABILITY OF INFORMATION.—Except
22 as provided in subsection (b), no provision of this
23 section shall be construed as authorizing any infor-
24 mation to be withheld from the Congress.

1 (g) AVAILABILITY OF INFORMATION AND INSPEC-
2 TION OF RECORDS.—The right of access of the Comp-
3 troller General to information under this section shall be
4 enforceable under section 716 of title 31, United States
5 Code.

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

8 (1) STATE INSURANCE REGULATOR DEFINED.—
9 The term “State insurance regulator” means the
10 principal insurance regulatory authority of a State,
11 the District of Columbia, any territory of the United
12 States, Puerto Rico, Guam, American Samoa, the
13 Trust Territory of the Pacific Islands, the Virgin Is-
14 lands, and the Northern Mariana Islands.

15 (2) INSURANCE COMPANY.—The term “insur-
16 ance company” includes any person engaged in the
17 business of insurance to the extent of such activities.

18 **Subtitle D—Anti-Terrorism**

19 **SEC. 121. PREVENTING INTERNATIONAL TERRORISM.**

20 (a) IN GENERAL.—The financial regulators shall co-
21 ordinate the network established under sections 100 and
22 101 with their foreign counterparts, to the extent the reg-
23 ulators deem possible, practicable, and appropriate, to
24 help uncover, hinder, and prosecute the financial activities
25 of terrorists.

1 (b) REPORT REQUIRED.—The entities described in
2 section 101(a) shall report to the Congress by the end of
3 the 6-month period beginning on the date of the enact-
4 ment of this Act their further recommendations to the
5 Congress for achieving the goals of subsection (a).

6 **TITLE II—SECURITIES**
7 **INDUSTRY COORDINATION**
8 **Subtitle A—Disciplinary**
9 **Information**

10 **SEC. 201. INVESTMENT ADVISERS ACT OF 1940.**

11 (a) AMENDMENT.—Section 204 of the Investment
12 Advisers Act of 1940 (15 U.S.C. 80b–4) is amended—

13 (1) by striking “Every investment” and insert-
14 ing the following:

15 “(a) IN GENERAL.—Every investment”; and

16 (2) by adding at the end the following:

17 “(b) FILING DEPOSITORIES.—The Commission, by
18 rule, may require an investment adviser—

19 “(1) to file with the Commission any fee, appli-
20 cation, report, or notice required to be filed by this
21 title or the rules issued under this title through any
22 entity designated by the Commission for that pur-
23 pose; and

1 “(2) to pay the reasonable costs associated with
2 such filing and the establishment and maintenance
3 of the systems required by subsection (c).

4 “(c) ACCESS TO DISCIPLINARY AND OTHER INFOR-
5 MATION.—

6 “(1) MAINTENANCE OF SYSTEM TO RESPOND
7 TO INQUIRIES.—The Commission shall require the
8 entity designated by the Commission under sub-
9 section (b)(1)—

10 “(A) to establish and maintain a toll-free
11 telephone listing or other readily accessible elec-
12 tronic process to receive inquiries regarding dis-
13 ciplinary actions and proceedings and other in-
14 formation involving investment advisers and
15 persons associated with investment advisers;
16 and

17 “(B) to respond promptly to such inquir-
18 ies.

19 “(2) RECOVERY OF COSTS.—An entity des-
20 ignated by the Commission under subsection (b)(1)
21 may charge persons, other than individual investors,
22 reasonable fees for responses to inquiries made
23 under paragraph (1).

24 “(3) LIMITATION ON LIABILITY.—An entity
25 designated by the Commission under subsection

1 (b)(1) shall not have any liability to any person for
2 any actions taken or omitted in good faith under
3 this subsection.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Section 203A of the Investment Advisers
6 Act of 1940 (15 U.S.C. 80b-3a) is amended—

7 (A) by striking subsection (d); and

8 (B) by redesignating subsection (e) as sub-
9 section (d).

10 (2) Section 306 of the National Securities Mar-
11 kets Improvement Act of 1996 (15 U.S.C. 80b-10,
12 note; P.L. 104-290; 110 Stat. 3439) is repealed.

13 **SEC. 202. SECURITIES EXCHANGE ACT OF 1934.**

14 Subsection (i) of section 15A of the Securities Ex-
15 change Act of 1934 (15 U.S.C. 78o-3) is amended to read
16 as follows:

17 “(i) OBLIGATION TO MAINTAIN DISCIPLINARY AND
18 OTHER DATA.—

19 “(1) MAINTENANCE OF SYSTEM TO RESPOND
20 TO INQUIRIES.—A registered securities association
21 shall—

22 “(A) establish and maintain a toll-free tele-
23 phone listing or other readily accessible elec-
24 tronic process to receive inquiries regarding dis-
25 ciplinary actions and proceedings and other in-

1 formation involving its members and their asso-
2 ciated persons and regarding disciplinary ac-
3 tions and proceedings and other information
4 that has been reported to the Central Registra-
5 tion Depository by any registered national secu-
6 rities exchange involving its members and their
7 associated persons; and

8 “(B) promptly respond to such inquiries.

9 “(2) RECOVERY OF COSTS.—Such association
10 may charge persons, other than individual investors,
11 reasonable fees for responses to such inquiries.

12 “(3) LIMITATION ON LIABILITY.—Such an asso-
13 ciation or exchange shall not have any liability to
14 any person for any actions taken or omitted in good
15 faith under this subsection.”.

16 **Subtitle B—Preventing Migration**
17 **of Rogue Financial Profes-**
18 **sionals to the Securities Indus-**
19 **try**

20 **SEC. 211. SECURITIES EXCHANGE ACT OF 1934.**

21 (a) BROKERS AND DEALERS.—Section 15(b) of the
22 Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is
23 amended—

24 (1) in paragraph (4), by striking subparagraphs
25 (F) and (G) and inserting the following:

1 “(F) is subject to any order of the Commission
2 barring or suspending the right of the person to be
3 associated with a broker or dealer.

4 “(G) has been found by a foreign financial reg-
5 ulatory authority to have—

6 “(i) made or caused to be made in any ap-
7 plication for registration or report required to
8 be filed with a foreign financial regulatory au-
9 thority, or in any proceeding before a foreign fi-
10 nancial regulatory authority with respect to reg-
11 istration, any statement that was at the time
12 and in the light of the circumstances under
13 which it was made false or misleading with re-
14 spect to any material fact, or omitted to state
15 in any such application, report, or proceeding
16 any material fact that is required to be stated
17 therein;

18 “(ii) violated any foreign statute or regula-
19 tion regarding securities, banking, thrift activi-
20 ties, credit union activities, insurance, or con-
21 tracts of sale of a commodity for future deliv-
22 ery, traded on or subject to the rules of a con-
23 tract market or any board of trade; or

24 “(iii) aided, abetted, counseled, com-
25 manded, induced, or procured the violation by

1 any other person of any provision of any statu-
2 tory provisions enacted by a foreign govern-
3 ment, or rules or regulations thereunder, re-
4 garding securities, banking, thrift activities,
5 credit union activities, insurance, or contracts
6 of sale of a commodity for future delivery trad-
7 ed on or subject to the rules of a contract mar-
8 ket or any board of trade, or to have failed rea-
9 sonably to supervise, with a view to preventing
10 violations of such statutory provisions, rules,
11 and regulations, another person who commits
12 such a violation, if such other person is subject
13 to his supervision.

14 “(H) is subject to any final order of a State se-
15 curities commission (or any agency or officer per-
16 forming like functions), State authority that super-
17 vises or examines banks, thrifts, or credit unions,
18 State insurance commission (or any agency or office
19 performing like functions), an appropriate Federal
20 banking agency (as defined in section 3 of the Fed-
21 eral Deposit Insurance Act (12 U.S.C. 1813(q)), or
22 the National Credit Union Administration, that—

23 “(i) bars such person from association with
24 an entity regulated by such commission, author-
25 ity, agency, or officer, or from engaging in the

1 business of securities, insurance, banking, thrift
2 activities, or credit union activities; or

3 “(ii) constitutes a final order based on vio-
4 lations of any laws or regulations that prohibit
5 fraudulent, manipulative, or deceptive con-
6 duct.”; and

7 (2) in paragraph (6)(A)(i), by striking “or
8 omission enumerated in subparagraph (A), (D), (E),
9 or (G)” and inserting “, or is subject to an order or
10 finding, enumerated in subparagraph (A), (D), (E),
11 (G), or (H)”.

12 (b) MUNICIPAL SECURITIES BROKERS AND DEAL-
13 ERS.—Section 15B(c) of the Securities Exchange Act of
14 1934 (15 U.S.C. 78o-4(c)) is amended—

15 (1) in paragraph (2)—

16 (A) by striking “or omission enumerated in
17 subparagraph (A), (D), (E), or (G)” and insert-
18 ing “, or is subject to an order or finding, enu-
19 merated in subparagraph (A), (D), (E), (G), or
20 (H)”;

21 (B) by striking “ten” and inserting “10”;
22 and

23 (2) in paragraph (4) by striking “or omission
24 enumerated in subparagraph (A), (D), (E), or (G)”
25 and inserting “, or is subject to an order or finding,

1 enumerated in subparagraph (A), (D), (E), (G), or
2 (H)”.

3 (c) GOVERNMENT SECURITIES BROKERS AND DEAL-
4 ERS.—Section 15C(e)(1) of the Securities Exchange Act
5 of 1934 (15 U.S.C. 78o–5(c)(1)) is amended—

6 (1) in subparagraph (A), by striking “or omis-
7 sion enumerated in subparagraph (A), (D), (E), or
8 (G)” and inserting “, or is subject to an order or
9 finding, enumerated in subparagraph (A), (D), (E),
10 (G), or (H)”;

11 (2) in subparagraph (C), by striking “or omis-
12 sion enumerated in subparagraph (A), (D), (E), or
13 (G)” and inserting “, or is subject to an order or
14 finding, enumerated in subparagraph (A), (D), (E),
15 (G), or (H)”.

16 (d) CLEARANCE AND SETTLEMENT.—Section 17A(c)
17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q–
18 1(c)) is amended—

19 (1) in paragraph (3)(A), by striking “enumer-
20 ated in subparagraph (A), (D), (E), or (G)” and in-
21 serting “, or is subject to an order or finding, enu-
22 merated in subparagraph (A), (D), (E), (G), or
23 (H)”;

24 (2) in paragraph (4)(C)—

1 (A) by striking “enumerated in subpara-
2 graph (A), (D), (E), or (G)” and inserting “,
3 or is subject to an order or finding, enumerated
4 in subparagraph (A), (D), (E), (G), or (H)”;
5 and

6 (B) by striking “ten years” and inserting
7 “10 years”.

8 (e) DEFINITION OF STATUTORY DISQUALIFICA-
9 TION.—Section 3(a)(39)(F) of the Securities Exchange
10 Act of 1934 (15 U.S.C. 78c(a)(39)(F)) is amended by
11 striking “has committed or omitted any act enumerated
12 in subparagraph (D), (E), or (G)” and inserting “has
13 committed or omitted any act, or is subject to an order
14 or finding, enumerated in subparagraph (D), (E), (G), or
15 (H)”.

16 **SEC. 212. INVESTMENT ADVISERS ACT OF 1940.**

17 (a) AUTHORITY TO DENY OR REVOKE REGISTRA-
18 TION BASED ON STATE (AND OTHER GOVERNMENTAL)
19 ADMINISTRATIVE ACTIONS.—Section 203(e) of the Invest-
20 ment Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is
21 amended by striking paragraphs (7) and (8) and inserting
22 the following:

23 “(7) is subject to any order of the Commission
24 barring or suspending the right of the person to be
25 associated with an investment adviser.

1 “(8) has been found by a foreign financial regu-
2 latory authority to have—

3 “(A) made or caused to be made in any
4 application for registration or report required to
5 be filed with a foreign securities authority, or in
6 any proceeding before a foreign securities au-
7 thority with respect to registration, any state-
8 ment that was at the time and in light of the
9 circumstances under which it was made false or
10 misleading with respect to any material fact, or
11 has omitted to state in any such application, re-
12 port, or proceeding any material fact that is re-
13 quired to be stated therein;

14 “(B) violated any foreign statute or regula-
15 tion regarding securities, banking, thrift activi-
16 ties, credit union activities, insurance, or con-
17 tracts of sale of a commodity for future delivery
18 traded on or subject to the rules of a contract
19 market or any board of trade;

20 “(C) aided, abetted, counseled, com-
21 manded, induced, or procured the violation by
22 any other person of any foreign statute or regu-
23 lation regarding securities, banking, thrift ac-
24 tivities, credit union activities, insurance, or
25 contracts of sale of a commodity for future de-

1 livery traded on or subject to the rules of a con-
2 tract market or any board of trade, or to have
3 failed reasonably to supervise, with a view to
4 preventing violations of statutory provisions,
5 and rules and regulations promulgated there-
6 under, another person who commits such a vio-
7 lation, if such other person is subject to his su-
8 pervision.

9 “(9) is subject to any final order of a State se-
10 curities commission (or any agency or officer per-
11 forming like functions), State authority that super-
12 vises or examines banks, thrifts, or credit unions,
13 State insurance commission (or any agency or office
14 performing like functions), an appropriate Federal
15 banking agency (as defined in section 3 of the Fed-
16 eral Deposit Insurance Act (12 U.S.C. 1813(q)), or
17 the National Credit Union Administration, that—

18 “(A) bars such person from association
19 with an entity regulated by such commission,
20 authority, agency, or officer, or from engaging
21 in the business of securities, insurance, bank-
22 ing, thrift activities, or credit union activities;
23 or

24 “(B) constitutes a final order based on vio-
25 lations of any laws or regulations that prohibit

1 fraudulent, manipulative, or deceptive con-
2 duct.”.

3 (b) BARS ON FELONS ASSOCIATED WITH INVEST-
4 MENT ADVISERS.—Section 203(f) of the Investment Ad-
5 visers Act of 1940 (15 U.S.C. 80b–3(f)) is amended—

6 (A) by striking “or (8)” and inserting
7 “(8), or (9)”; and

8 (B) by inserting “or (3)” after “paragraph
9 (2)”.

 Passed the House of Representatives November 6,
2001.

Attest:

Clerk.