

FEDERAL AGENCY PROTECTION OF PRIVACY ACT

SEPTEMBER 30, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 4561]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4561) to amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 4561, the “Federal Agency Protection of Privacy Act,” preserves and promotes the privacy rights of all Americans by requiring Federal agencies to assess and mitigate the adverse privacy impact of rules noticed for public comment pursuant to the Adminis-

trative Procedure Act¹ (APA). H.R. 4561 helps safeguard privacy rights by requiring that rules noticed for public comment by Federal agencies be accompanied by an initial assessment of the rule's impact on personal privacy interests, including the extent to which the proposed rule provides notice of the collection of personally identifiable information, the type of personally identifiable information to be obtained, and the manner in which this information will be collected, maintained, protected, transferred, or disclosed by the Federal Government.

The bill further provides that final rules be accompanied by a final privacy impact analysis which details how the issuing agency considered and responded to privacy concerns raised by the public during the comment period and explains whether the agency issuing the rule could have taken an approach less burdensome to personal privacy. Of critical importance, H.R. 4561 contains a provision for judicial review to ensure agency compliance with its requirements. While existing Federal statutes protect against the disclosure of information already obtained by the Federal Government, the Federal Agency Protection of Privacy Act provides the public with prospective notice and an opportunity to comment on how proposed Federal rules might affect personal privacy before they become binding regulations.

BACKGROUND AND NEED FOR THE LEGISLATION

PUBLIC CONCERNS

There is growing public anxiety toward the diminishing sphere of personal privacy brought about by the rapid pace of technological and social change. Many have decried the perceived encroachment by outside entities into areas until recently considered part of our private lives. Examples include: facial recognition software linked to video cameras that can identify individuals in public places; tracking devices that monitor online activity; cameras that record our movements at traffic intersections and whose photographs serve as an exclusive basis for traffic fines and other penalties; Government-mandated devices in cellular phones that record the physical movements of their users; and the proliferation of Global Position Satellite (GPS) technologies that can be used to monitor a range of personal public and private activity.

The effort to create a Federal Department of Homeland Security and America's ongoing war against terrorism has heightened public sensitivity toward Government policies which might intrude upon personal privacy interests. H.R. 4561 would help address these concerns by ensuring that the privacy impact of proposed regulations are considered by Federal agencies when rules are noticed for public comment under the Administrative Procedure Act.

GOVERNMENT COLLECTION OF PRIVATE INFORMATION

The compulsory nature of Government collection of personally identifiable information raises serious concerns. Unlike private entities, with which consumers voluntarily interact, the Government often requires the disclosure of personal information under penalty of law. The Government collects and maintains large volumes of

¹ 5 U.S.C. § 553 *et seq.* (2001).

personally-identifiable information. Much of this information is available to the public. While the legitimacy of our judicial system is premised on public access to court documents, this information might be susceptible to misuse. For example, section 107 of the Bankruptcy Code makes any filing in a bankruptcy case a matter of public record.² With bankruptcy records increasingly available online, the potential for identity theft has greatly multiplied. In addition, the Social Security card has been widely adopted by both governments and the public as a standard identifier. Social Security numbers are now used for tax collection, credit and banking transactions, Federal Government security, State-level record keeping, passport issuance, and other purposes. Public transmission of this information further heightens the potential for identity fraud, a growing problem which impacted over 700 thousand Americans last year.³ While the Identity Theft and Assumption Deterrence Act of 1998⁴ was enacted to address this problem, persistent concerns remain unaddressed.

States also maintain large, comprehensive databases of personal information, some of which are susceptible to intrusion. In 1994, Congress enacted the Driver's Privacy Protection Act⁵ after the murder of actress Rebecca Shaeffer by an assailant who obtained her address from the California Department of Motor Vehicles. While responsibility for this crime lies squarely with the assailant, the Shaeffer case highlights the potential vulnerability of personal information in public records databases.

Federal agencies collect and maintain large volumes of personally-identifiable, private information in computer databases. Much of this information is obtained from individuals pursuant to regulations issued by Federal agencies in accordance with their organic statutes and the procedural requirements of the APA. While Federal agencies are required to conduct a cost-benefit analysis of rules noticed for public comment, privacy concerns often go unaddressed. Currently, there is no requirement that agencies issuing rules in accordance with the APA specifically examine the privacy implications of rules they promulgate. As a result, agencies are free to issue rules without considering how personally-sensitive information may be stored, protected, and transmitted among Federal agencies. The public is often uninformed about the privacy impact of proposed rules. The following is a summary of the major databases containing private information currently operated by the Federal Government.

FEDERAL BUREAU OF INVESTIGATION "BRADY LAW" DATABASE

The Brady Handgun Violence Prevention Act⁶ requires firearms dealers to submit information about prospective firearms purchasers to the Department of Justice. Required information includes the potential purchaser's name, sex, race, date of birth, and State of residence. This information is then cross-referenced with existing databases to prevent firearms sales to convicted felons, fugitives from justice, and other disqualified buyers. The Brady Law

² 11 U.S.C. § 107 (2002).

³ Identity Theft Resource Center, *available at* <http://www.idtheftcenter.org/>.

⁴ Pub. L. No. 105-318, 112 Stat. 3007 (1998), codified at 18 U.S.C. § 1028 (2001).

⁵ 18 U.S.C. § 2721-2725 (2001).

⁶ Pub. L. No. 103-159 (1993), 107 Stat. 1536, codified at 18 U.S.C. § 921 *et seq.* (2001).

requires the National Instant Check System to “destroy all records” relating to the backgrounds of individuals cleared to purchase a firearm under the law. In regulations implementing this legislation, however, the FBI provided for an “Audit Log” of background checks. This log is maintained for as long as 6 months after a firearm transaction. Upon taking office, Attorney General Ashcroft considerably shortened this time period. While some insist the Audit Log might serve creditable auditing and oversight purposes, the collection, storage, and dissemination of private information relating to legal purchasers of firearms raise considerable constitutional concerns.

ICANN “WHOIS” DATABASE

The “Whois” database consists of the names, e-mail addresses, postal addresses, and telephone numbers for the holders of the more than 24 million Internet domain names. The Internet Corporation for Assigned Names and Numbers (ICANN), which oversees Network Solutions, the record keeper of Internet addresses and the domain registration companies, currently requires disclosure of contact information for holders of “.com,” “.net,” and “.org” Internet addresses. Compulsory disclosure of this information helps ensure the veracity of the identity of website operators. This information can reduce fraud, defamation, copyright infringements, and trademark violations. While some contend this database is private or quasi-governmental, ICANN exercises control of Network Solutions and the Whois database under authority granted by the U.S. Department of Commerce. It is thus best viewed as a Government database.

VETERANS ADMINISTRATION COMPUTER SYSTEM

The Veterans Administration (VA) maintains detailed records that facilitate the management of its finances, the oversight of its employees, and the delivery of health care benefits to military veterans and their families. The VA has not taken sufficient steps to protect electronic data that it maintains. Poor management of personal information by the VA has led to invasions of the privacy of those who receive treatment in VA facilities. Testimony received by the House Veterans Affairs Committee revealed that a security company hired by the VA’s Office of Inspector General easily entered and gained control over VA computer system.⁷ Poor computer security has also produced fraud and financial mismanagement, permitting VA employees to write more than \$1.2 million in fraudulent benefit checks from 1998 to 2001.⁸ While ameliorative steps have been taken by the agency, concerns about the security of this information persist.

HEALTH CARE FINANCING ADMINISTRATION “OASIS” DATABASE

In 1999, the Health Care Financing Administration announced a final effective date for the mandatory use, collection, encoding, and

⁷VA Computer Security, 2000, Hearings Before the House Comm. on Veterans’ Affairs, Subcomm. on Oversight and Investigations, 106th Cong. (2000) (statement of Michael Slachta, Jr. Assistant Inspector General for Auditing Office of Inspector General Department of Veterans Affairs Va’s Information Security Program).

⁸*Id.* (statement of Joel C. Willemsen, Director of Civil Agencies Information Systems Accounting and Information Management Division).

transmission of OASIS data for all Medicare and Medicaid patients receiving skilled services.⁹ OASIS is the acronym for “Outcome and Assessment Information Set.”

Medicare and Medicaid recipients are required to submit highly detailed and personal medical information in accordance with this regulation. A cursory review of OASIS “data sets” reveals their breadth. Patients are required to submit their name, Social Security number, residence, birth date, gender, payment sources for health care, past and recent medical treatment, current condition, medical risk factors, living arrangements, residential safety hazards, the identity of those who have assisted or are currently assisting the patient, the patient’s vision and speech status, and a host of other data. While information concerning a patient’s history ensures the delivery of the proper medical care, the public must be assured that adequate safeguards exist to protect this highly personal information.

FEDERAL BUREAU OF INVESTIGATION “CODIS” DATABASE

CODIS, the Combined DNA Index System, was established by Congress in 1994.¹⁰ It gives Federal funds to States that assist the FBI in collecting DNA information. By 1998, all 50 States had passed laws requiring local police departments to collect DNA samples. CODIS was intended to help Federal law enforcement collect information about convicted sex offenders. Since its inception, some have called for considerable expansion of the database. While modern technology plays an increasingly important and necessary part in modern law enforcement, steps must also be taken to ensure the security of this information.

THE CENSUS

The Constitution authorizes the Federal Government to “enumerate” persons in order to apportion congressional representatives among the States.¹¹ To accomplish this purpose, the Government needs only to know how many individuals reside at a given residence. This question appears on the first page of the census. The remaining questions which appear on the census long form require Americans to provide information which has little or nothing to do with apportioning electoral votes. The current census form requires all Americans to provide detailed information concerning income, modes of transportation, family status, ethnicity, and other personal data. Census forms also ask detailed questions about employment, the number of household toilets, and the annual cost of electricity, gas, water, and other municipal services. Responding to the census is not optional, it is required under penalty of Federal law. For this reason, all questions beyond those needed for apportionment are a threat to the privacy of Americans who do not wish to have information about their lives and habits collected and catalogued. In addition, the potential misuse of this information raises significant privacy concerns.

⁹ Privacy Act of 1974, Report of New System, 64 Fed. Reg. 32,992 (1999).

¹⁰ DNA Analysis Backlog Elimination Act of 2000, Pub. L. No. 106-546, 114 Stat. 2726 (2000).

¹¹ U.S. CONST., art. 1, § 8, cl. 2.

TREASURY DEPARTMENT "FINCEN" DATABASE

The Financial Crimes Enforcement Network (FinCEN), is a network of databases and financial records maintained by the Federal Government. Housed within the Treasury Department, FinCEN contains data compiled from 21,000 depository institutions and 200,000 nonbank financial institutions. Banks, casinos, brokerage firms and money transmitters all must file reports with FinCEN if cash transactions exceed \$10,000.

The Bank Secrecy Act authorizes the Treasury Department to require financial institutions to maintain records of personal financial transactions that "have a high degree of usefulness in criminal, tax and regulatory investigations and proceedings."¹² It also authorizes the Treasury Department to require any financial institution to report any "suspicious transaction relevant to a possible violation of law or regulation."¹³ This is done secretly, without the consent or knowledge of bank customers, any time a financial institution decides that a transaction is "suspicious." The reports are made available electronically to every U.S. Attorney's Office and to 59 law enforcement agencies, including the FBI, Secret Service, and Customs Service. A law enforcement agency does not have to be suspicious of an actual crime before it accesses a report, and no court order, warrant, subpoena, or even written request is needed. While this information serves legitimate law enforcement objectives, the security of this information should be maintained.

HEALTH AND HUMAN SERVICES "NEW HIRES" DATABASE

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996¹⁴ requires the Secretary of Health and Human Services to develop a National Directory of recently employed "New Hires." This directory contains information on all newly hired employees, quarterly wage reports, and unemployment insurance claims in the United States. The National Directory of New Hires is maintained by the Federal Office of Child Support Enforcement in the Administration for Children and Families at the U.S. Department of Health and Human Services, and is located at the Social Security Administration's National Computer Center.

This database has helped States locate parents who evade their child support obligations. However, it has also been employed for purposes which exceed its original scope.¹⁵ The National Directory of New Hires has already been expanded to track down defaulters on student loans.¹⁶ Additional expansions have been proposed that would give State unemployment insurance officials access to the database. A centralized database containing detailed personal information on every working American raises considerable privacy concerns.

¹² 12 U.S.C. § 951 (2002).

¹³ Bank Secrecy Act of 1970, 31 U.S.C. §§ 5311–5330 (2002).

¹⁴ Pub. L. No. 104–193, 109 Stat. 961 (1996) (codified in scattered sections of 42 U.S.C.).

¹⁵ Solveig Singleton, *How Big Brother Began*, Cato Institute (Nov. 25, 1997), available at: <http://www.cato.org/dailys/11-25-97.html>.

¹⁶ See Greg Langois, Fed. Computer Week, "Education Touts New Loan Default Tool," Sept. 24, 2001, available at: <http://www.fcw.com/fcw/articles/2001/0924/news-edu-09-24-01.asp>.

INTER-AGENCY TRANSFER OF PERSONAL INFORMATION

While Federal agencies individually collect a wealth of personal information, this information is often shared with other Federal agencies in a manner which compounds the risks of unauthorized disclosure. According to a report prepared by Privacilla.org entitled “Government Exchange and Merger of Citizens’ Personal Information is Systematic and Routine,” Federal agencies routinely share personally-identifiable information with other Federal agencies without the knowledge or consent of those whose information is being exchanged.¹⁷ The report cites 47 specific instances between September 1999 and February 2001 when Federal agencies announced their intention to exchange personal data and combine it into their own databases.¹⁸ The transfer of personal information between and among Federal agencies without the consent of those in question heightens concern that personal information could be utilized for a purpose inconsistent with that for which it was originally obtained.

GOVERNMENT USE AND MISUSE OF PERSONALLY-IDENTIFIABLE INFORMATION

GAO Studies of Government Federal Government Privacy Practices

A series of General Accounting Office (GAO) reports have demonstrated the vulnerability of personal information maintained in several Federal databases. On September 5, 2000, the GAO released a study that revealed that Federal agencies largely ignore Office of Management and Budget guidelines on the maintenance of computer websites.¹⁹ In a survey of online privacy protections at Government-run websites, the GAO found that 23 of the 70 agencies it surveyed had disclosed personal information gathered from websites to third parties, mostly other Government agencies. At least four agencies had shared information with private entities.

On September 6, 2000, the GAO issued a second study which concluded that security practices at Federal Government agencies are fraught with weaknesses.²⁰ The study concluded that “information security weaknesses place enormous amounts of confidential data, ranging from personal and tax to proprietary business information, at risk of inappropriate disclosure.”²¹

Finally, a third GAO study, released on September 12, 2000, found that a staggering 97 percent of Federal websites did not adhere to the principles of notice, choice, access, and security that the Federal Trade Commission has imposed on private-sector websites.²² This study is particularly significant because while consumers may freely decide whether to disclose information to pri-

¹⁷ Report available at: <http://www.privacilla.org/releases/Government—Data—Merger.html>

¹⁸ *Id.* at 1.

¹⁹ *Internet Privacy: Agencies’ Efforts to Implement OMB’s Privacy Policy*, Report of the General Accounting Office, September 5, 2000, available at: <http://www.gao.gov/new.items/gg00191.pdf>.

²⁰ *Information Security: Serious and Widespread Risks Persist At Federal Agencies*, Report of the General Accounting Office, Sept. 6, 2000, available at: http://www.gao.gov/news_items/ai00295.pdf.

²¹ *Id.* at 7.

²² *Internet Privacy: Comparison of Federal Agency Practices With FTC’s Fair Information Principles*, Report of the General Accounting Office, September 12, 2000, available at: <http://www.gao.gov/new.items/ai00296r.pdf>.

vate, commercial entities, the compulsory nature of Government collection of personal information forecloses this option.

The vulnerability of private information collected and maintained by the Federal Government is clearly established and well-documented. A legislative solution is a necessary first step toward addressing this pervasive problem.

FEDERAL AGENCY PROTECTION OF PRIVACY ACT (FAPPA)

On April 24, 2002, Subcommittee on Commercial and Administrative Law Chairman Bob Barr introduced H.R. 4561. Original cosponsors included: Subcommittee Ranking Member Melvin Watt (D-NC); Rep. George W. Gekas (R-PA); Rep. Gerrold Nadler (D-NY); and Rep. Steve Chabot (R-OH). Since its introduction, Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-WI), Ranking Member John Conyers, Jr. (D-MI), and several other Committee Members have joined as cosponsors. While H.R. 4561 makes no substantive demands on Federal agencies with respect to privacy, it would ensure that Federal agencies consider the privacy implications of proposed rules and regulations when they are noticed for public comment. Specifically, FAPPA would help ensure Federal agencies consider ways to: (1) protect the individual privacy rights of all Americans; (2) safeguard personal information collected and maintained by the Federal Government; and (3) indicate how personally-identifiable information will be used by the Federal Government; and (4) specify if and how this information will be disseminated among Federal agencies or State governments. The Federal Agency Protection of Privacy Act seeks to improve the regulatory process and protect Americans from unjustified or unintended invasions of privacy, by:

- ensuring Federal agencies consider the impact of proposed regulations on individual privacy;
- requiring agencies to include an initial privacy impact analysis with proposed regulations that are circulated for public notice and comment;
- requiring agencies, after the notice and comment period, to include a final privacy impact analysis that describes the steps that were taken to minimize the significant privacy impact of proposed regulations and that justifies the alternative with respect to privacy that was chosen by the agency;
- permitting judicial review of the adequacy of an agency's final privacy impact, similar to that provided by the Regulatory Flexibility Act for small businesses; and
- requiring agencies to periodically review rules that have either a significant privacy impact on individuals or a privacy impact on a significant number of individuals.

H.R. 4561 does not unduly burden agencies in the development and issuance of proposed rules, because:

- it would require a privacy impact analysis only when an agency is already required to publish a general notice of proposed rulemaking; and
- an agency would not be required to do anything that it presumably had not already done, i.e. consider the consequences

of the proposed rule. It would only have to publicly articulate how its proposed rule would effect privacy interests.

HEARINGS

The Subcommittee on Commercial and Administrative Law held 1 day of hearings on H.R. 4561 on May 1, 2002. Testimony was received from an ideologically-diverse panel comprised of the following witnesses: Lori Waters, Executive Director, the Eagle Forum; Gregory Nojeim, Associate Director and Chief Legislative Counsel, American Civil Liberties Union; James Harper, Editor, Privacilla.com, and Adjunct Fellow, Progress & Freedom Foundation; and Edward Mierzwinski, Consumer Program Director, United States Public Interest Group.

COMMITTEE CONSIDERATION

On July 9, 2002, the Subcommittee on Commercial and Administrative Law met in open session and ordered favorably reported the bill H.R.4561, without amendment by voice vote, a quorum being present. On September 10, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 4561 without amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes on H.R. 4561.

COMMITTEE OVERSIGHT FINDINGS

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

PERFORMANCE GOALS AND OBJECTIVES

H.R. 4561 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable. H.R. 4561 protects the privacy rights of all Americans by requiring that Federal agencies assess, consider, and inform the public about the privacy impact of rules noticed for public comment under the Administrative Procedure Act.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4561, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 10, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4561, the Federal Agency Protection of Privacy Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 4561—Federal Agency Protection of Privacy Act.

H.R. 4561 would require Federal agencies to analyze proposed regulations to determine their impact on the privacy of individuals. H.R. 4561 also would require agencies issuing rules with a potentially significant impact on individual privacy to ensure that individuals have been given ample opportunity to participate in such rulemakings. Finally, agencies would have to review existing rules to consider impacts on the privacy of individuals at least every 10 years.

CBO estimates that implementing H.R. 4561 would have no significant effect on Federal spending. Based on a review on the number and types of agency rules published in recent years, we expect the privacy of individuals is of concern for less than 2 percent of the rules published annually. H.R. 4561 would add to the existing regulatory procedures for considering impacts on the privacy of individuals that are already performed by agencies under the Privacy Act of 1974, the Paperwork Reduction Act, and current Office of Management and Budget requirements concerning information collected from the public. Based on information from some agencies that would be affected by the bill, we expect that implementing this bill would not require significant additional efforts by rulemaking agencies. Thus, its implementation would not have a significant cost.

H.R. 4561 also could affect direct spending by increasing the administrative costs of rulemaking agencies that receive no annual appropriations; therefore, pay-as-you-go procedures would apply. CBO estimates, however, that any increase in direct spending would not be significant. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford, who can be reached at 226-2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 14 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title

The title of this bill is the “Federal Agency Protection of Privacy Act.”

Section 2. Requirement that Agency Rulemaking Take Into Consideration Impacts on Individual Privacy

This section amends the Administrative Procedure Act to require agencies to provide an initial privacy impact analysis when publishing rules requiring notice and comment under 5 U.S.C. § 553 or other laws. The analysis must describe the impact of the proposed rule or IRS interpretive statement on individual privacy and be signed by the senior agency official with primary responsibility for privacy policy and be published in the Federal Register at the time the rule is published.

The initial privacy impact analysis must contain: a description and assessment of the rule’s impact on personal privacy interests, including the extent to which the proposed rule provides notice of the collection of personally identifiable information; what information will be obtained, how it is to be collected, maintained, used and disclosed. The initial statement must also provide the person to whom the personal information pertains an opportunity to correct inaccuracies, prevent the information from being used for another purpose, provide security for such information, and contain a description of any significant alternatives to the proposed rule that would advance its goals while protecting private information.

This section also requires an agency to issue a final privacy impact analysis to accompany rules published for notice and comment under 5 U.S.C. § 553 or issued by the IRS. The final statement must be signed by the senior agency official responsible for privacy policy, and contain an assessment of the extent to which the final rule will impact the privacy of individuals, including the degree to which the proposed rule: provides notice of the collection of private information, specifies what information is to be collected, maintained and disclosed, allows access and opportunity to correct inaccuracies to the person whose information is obtained, prevents this information from being used for another purpose, and provides security for this information.

This statement must contain a summary of the significant issues raised by the public comments in response to the initial privacy analysis, a summary of the assessment of the agency, and a statement of any changes made in the proposed rule. This statement must also contain a description of the steps the agency has taken to minimize the significant privacy impact on individuals consistent with the objective of the rules and applicable statutes, including a Statement of the factual and legal basis for selection of the final rule as well as other alternatives that might have a less adverse impact on privacy. The final privacy impact analysis shall be made available to the public and published in the Federal Register.

This section also provides heads of agencies authority to waive or delay the completion of the final privacy impact analysis in specified circumstances. It further provides for procedures designed to ensure that the public adequately participates in the rulemaking process by including in the advance notice of proposed rulemaking, a statement that the proposed rule may have a significant impact on personal privacy, or a privacy impact on a substantial number of individuals, the publication of a general notice of proposed rulemaking in national publications, direct notification of affected individuals, and the adoption of agency procedural rules to reduce the cost and complexity of participation in the rulemaking by individuals.

In addition, this section requires that agencies conduct periodic reviews of rules having a significant privacy impact to determine whether the rule can be amended or rescinded in a manner that minimizes any such impact while remaining accordance with applicable statutes. In making this determination, the agency should examine the need for the rule, the nature of complaints or comments received from the public concerning the rule, the complexity of the rule, the extent to which the rule is duplicative, the length of time since the rule was last reviewed, and changing technology. Each agency is required to carry out its periodic reviews in accordance with a plan published in the Federal Register, and each rule shall be examined no later than 10 years after its finalization. The agency in question shall annually publish a list of all rules to be reviewed.

Of critical importance, this section allows individuals adversely affected by a final agency action to seek judicial review of agency compliance with the requirements of this legislation. Jurisdiction is conferred upon all courts which currently have jurisdiction over 5 U.S.C. § 553. There are limitations on this standing. For example, an individual is permitted to challenge the rule only after the rule has been in existence for 1 year, unless otherwise specified. In the case where an agency delays the issuance of a final privacy impact analysis, an action for judicial review under this section shall be filed not later than 1 year after the date the analysis is made public, unless otherwise specified.

In granting relief under this section, a court may remand the rule to the agency, or defer the enforcement of the rule unless the court finds the rule is in the public interest. This section also contains a savings clause, which permits judicial review of other privacy-related claims if otherwise not prohibited.

This section defines personally identifiable information as data that can be used to identify an individual, including the individual's name, address, telephone number, photograph, Social Security number, other identifying information. This definition encompasses information related to medical or financial condition. Finally, this section amends the Congressional Review Act to permit Congress to strike agency rules inconsistent with the requirements of this legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART I—THE AGENCIES GENERALLY

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CHAPTER 5—ADMINISTRATIVE PROCEDURE

SUBCHAPTER I—GENERAL PROVISIONS

Sec. 500. Administrative practice; general provisions.
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SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

551. Definitions.
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553a. *Privacy impact analysis in rulemaking.*
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SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

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§ 553a. *Privacy impact analysis in rulemaking*

(a) *INITIAL PRIVACY IMPACT ANALYSIS.*—
 (1) *IN GENERAL.*—Whenever an agency is required by section 553 of this title, or any other law, to publish a general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial privacy impact analysis. Such analysis shall describe the impact of the proposed rule on the privacy of individuals. The initial privacy impact analysis or a summary shall be signed by the senior agency official with primary responsibility for privacy policy and be published in the Federal Register at the time of the publication of a general notice of proposed rulemaking for the rule.
 (2) *CONTENTS.*—Each initial privacy impact analysis required under this subsection shall contain the following:
 (A) A description and assessment of the extent to which the proposed rule will impact the privacy interests of individuals, including the extent to which the proposed rule—
 (i) provides notice of the collection of personally identifiable information, and specifies what personally identifiable information is to be collected and how it is to be collected, maintained, used, and disclosed;
 (ii) allows access to such information by the person to whom the personally identifiable information per-

tains and provides an opportunity to correct inaccuracies;

(iii) prevents such information, which is collected for one purpose, from being used for another purpose; and

(iv) provides security for such information.

(B) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant privacy impact of the proposed rule on individuals.

(b) **FINAL PRIVACY IMPACT ANALYSIS.**—

(1) **IN GENERAL.**—Whenever an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States, the agency shall prepare a final privacy impact analysis, signed by the senior agency official with primary responsibility for privacy policy.

(2) **CONTENTS.**—Each final privacy impact analysis required under this subsection shall contain the following:

(A) A description and assessment of the extent to which the final rule will impact the privacy interests of individuals, including the extent to which the proposed rule—

(i) provides notice of the collection of personally identifiable information, and specifies what personally identifiable information is to be collected and how it is to be collected, maintained, used, and disclosed;

(ii) allows access to such information by the person to whom the personally identifiable information pertains and provides an opportunity to correct inaccuracies;

(iii) prevents such information, which is collected for one purpose, from being used for another purpose; and

(iv) provides security for such information.

(B) A summary of the significant issues raised by the public comments in response to the initial privacy impact analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such issues.

(C) A description of the steps the agency has taken to minimize the significant privacy impact on individuals consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the privacy interests of individuals was rejected.

(3) **AVAILABILITY TO PUBLIC.**—The agency shall make copies of the final privacy impact analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

(c) **PROCEDURE FOR WAIVER OR DELAY OF COMPLETION.**—An agency head may waive or delay the completion of some or all of the requirements of subsections (a) and (b) to the same extent as the

agency head may, under section 608, waive or delay the completion of some or all of the requirements of sections 603 and 604, respectively.

(d) *PROCEDURES FOR GATHERING COMMENTS.*—When any rule is promulgated which may have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that individuals have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

(1) the inclusion in an advance notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals;

(2) the publication of a general notice of proposed rulemaking in publications of national circulation likely to be obtained by individuals;

(3) the direct notification of interested individuals;

(4) the conduct of open conferences or public hearings concerning the rule for individuals, including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by individuals.

(e) *PERIODIC REVIEW OF RULES.*—

(1) *IN GENERAL.*—Each agency shall carry out a periodic review of the rules promulgated by the agency that have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals. Under such periodic review, the agency shall determine, for each such rule, whether the rule can be amended or rescinded in a manner that minimizes any such impact while remaining in accordance with applicable statutes. For each such determination, the agency shall consider the following factors:

(A) The continued need for the rule.

(B) The nature of complaints or comments received from the public concerning the rule.

(C) The complexity of the rule.

(D) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules.

(E) The length of time since the rule was last reviewed under this subsection.

(F) The degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since the rule was last reviewed under this subsection.

(2) *PLAN REQUIRED.*—Each agency shall carry out the periodic review required by paragraph (1) in accordance with a plan published by such agency in the Federal Register. Each such plan shall provide for the review under this subsection of each rule promulgated by the agency not later than 10 years after the date on which such rule was published as the final rule and, thereafter, not later than 10 years after the date on

which such rule was last reviewed under this subsection. The agency may amend such plan at any time by publishing the revision in the Federal Register.

(3) *ANNUAL PUBLICATION.*—Each year, each agency shall publish in the Federal Register a list of the rules to be reviewed by such agency under this subsection during the following year. The list shall include a brief description of each such rule and the need for and legal basis of such rule and shall invite public comment upon the determination to be made under this subsection with respect to such rule.

(f) *JUDICIAL REVIEW.*—

(1) *IN GENERAL.*—For any rule subject to this section, an individual who is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of subsections (b) and (c) in accordance with chapter 7. Agency compliance with subsection (d) shall be judicially reviewable in connection with judicial review of subsection (b).

(2) *JURISDICTION.*—Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with subsections (b) and (c) in accordance with chapter 7. Agency compliance with subsection (d) shall be judicially reviewable in connection with judicial review of subsection (b).

(3) *LIMITATIONS.*—

(A) An individual may seek such review during the period beginning on the date of final agency action and ending 1 year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of 1 year, such lesser period shall apply to an action for judicial review under this subsection.

(B) In the case where an agency delays the issuance of a final privacy impact analysis pursuant to subsection (c), an action for judicial review under this section shall be filed not later than—

(i) 1 year after the date the analysis is made available to the public; or

(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

(4) *RELIEF.*—In granting any relief in an action under this subsection, the court shall order the agency to take corrective action consistent with this section and chapter 7, including, but not limited to—

(A) remanding the rule to the agency; and

(B) deferring the enforcement of the rule against individuals, unless the court finds that continued enforcement of the rule is in the public interest.

(5) *RULE OF CONSTRUCTION.*—Nothing in this subsection shall be construed to limit the authority of any court to stay the

effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this subsection.

(6) RECORD OF AGENCY ACTION.—In an action for the judicial review of a rule, the privacy impact analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (4), shall constitute part of the entire record of agency action in connection with such review.

(7) EXCLUSIVITY.—Compliance or noncompliance by an agency with the provisions of this section shall be subject to judicial review only in accordance with this subsection.

(8) SAVINGS CLAUSE.—Nothing in this subsection bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

(g) DEFINITION.—For purposes of this section, the term “personally identifiable information” means information that can be used to identify an individual, including such individual’s name, address, telephone number, photograph, social security number or other identifying information. It includes information about such individual’s medical or financial condition.

* * * * *

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

* * * * *

§ 801. Congressional review

(a)(1)(A) * * *

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

(i) * * *

* * * * *

(iii) the agency’s actions relevant to section 553a;

[(iii)] *(iv) the agency’s actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and*

[(iv)] *(v) any other relevant information or requirements under any other Act and any relevant Executive orders.*

* * * * *

MARKUP TRANSCRIPT

**BUSINESS MEETING
TUESDAY, SEPTEMBER 10, 2002**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order, and a working quorum is present.

* * * * *

The next item on the agenda is the adoption of H.R.4561, the "Federal Agency Protection of Privacy Act." The chair recognizes the gentleman from Georgia, Mr. Barr, for a motion.

Mr. BARR. Mr. Chairman, the Subcommittee on Commercial and Administrative Law reports favorably the bill H.R.4561 and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, H.R.4561 will be considered as read and open for amendment at any point.

[The bill, H.R.4561, follows:]

107TH CONGRESS
2^D SESSION

H. R. 4561

To amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2002

Mr. BARR of Georgia (for himself, Mr. CHABOT, Mr. WATT of North Carolina, Mr. GEKAS, Mr. NADLER, Mr. GREEN of Wisconsin, and Mr. SHOWS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Agency Pro-
5 tection of Privacy Act”.

1 **SEC. 2. REQUIREMENT THAT AGENCY RULEMAKING TAKE**
2 **INTO CONSIDERATION IMPACTS ON INDI-**
3 **VIDUAL PRIVACY.**

4 (a) IN GENERAL.—Title 5, United States Code, is
5 amended by adding after section 553 the following new
6 section:

7 **“§ 553a. Privacy impact analysis in rulemaking**

8 “(a) INITIAL PRIVACY IMPACT ANALYSIS.—

9 “(1) IN GENERAL.—Whenever an agency is re-
10 quired by section 553 of this title, or any other law,
11 to publish a general notice of proposed rulemaking
12 for any proposed rule, or publishes a notice of pro-
13 posed rulemaking for an interpretative rule involving
14 the internal revenue laws of the United States, the
15 agency shall prepare and make available for public
16 comment an initial privacy impact analysis. Such
17 analysis shall describe the impact of the proposed
18 rule on the privacy of individuals. The initial privacy
19 impact analysis or a summary shall be signed by the
20 senior agency official with primary responsibility for
21 privacy policy and be published in the Federal Reg-
22 ister at the time of the publication of a general no-
23 tice of proposed rulemaking for the rule.

24 “(2) CONTENTS.—Each initial privacy impact
25 analysis required under this subsection shall contain
26 the following:

1 “(A) A description and assessment of the
2 extent to which the proposed rule will impact
3 the privacy interests of individuals, including
4 the extent to which the proposed rule—

5 “(i) provides notice of the collection of
6 personally identifiable information, and
7 specifies what personally identifiable infor-
8 mation is to be collected and how it is to
9 be collected, maintained, used, and dis-
10 closed;

11 “(ii) allows access to such information
12 by the person to whom the personally iden-
13 tifiable information pertains and provides
14 an opportunity to correct inaccuracies;

15 “(iii) prevents such information,
16 which is collected for one purpose, from
17 being used for another purpose; and

18 “(iv) provides security for such infor-
19 mation.

20 “(B) A description of any significant alter-
21 natives to the proposed rule which accomplish
22 the stated objectives of applicable statutes and
23 which minimize any significant privacy impact
24 of the proposed rule on individuals.

25 “(b) FINAL PRIVACY IMPACT ANALYSIS.—

1 “(1) IN GENERAL.—Whenever an agency pro-
2 mulgates a final rule under section 553 of this title,
3 after being required by that section or any other law
4 to publish a general notice of proposed rulemaking,
5 or promulgates a final interpretative rule involving
6 the internal revenue laws of the United States, the
7 agency shall prepare a final privacy impact analysis,
8 signed by the senior agency official with primary re-
9 sponsibility for privacy policy.

10 “(2) CONTENTS.—Each final privacy impact
11 analysis required under this subsection shall contain
12 the following:

13 “(A) A description and assessment of the
14 extent to which the final rule will impact the
15 privacy interests of individuals, including the
16 extent to which the proposed rule—

17 “(i) provides notice of the collection of
18 personally identifiable information, and
19 specifies what personally identifiable infor-
20 mation is to be collected and how it is to
21 be collected, maintained, used, and dis-
22 closed;

23 “(ii) allows access to such information
24 by the person to whom the personally iden-

1 tifiable information pertains and provides
2 an opportunity to correct inaccuracies;

3 “(iii) prevents such information,
4 which is collected for one purpose, from
5 being used for another purpose; and

6 “(iv) provides security for such infor-
7 mation.

8 “(B) A summary of the significant issues
9 raised by the public comments in response to
10 the initial privacy impact analysis, a summary
11 of the assessment of the agency of such issues,
12 and a statement of any changes made in the
13 proposed rule as a result of such issues.

14 “(C) A description of the steps the agency
15 has taken to minimize the significant privacy
16 impact on individuals consistent with the stated
17 objectives of applicable statutes, including a
18 statement of the factual, policy, and legal rea-
19 sons for selecting the alternative adopted in the
20 final rule and why each one of the other signifi-
21 cant alternatives to the rule considered by the
22 agency which affect the privacy interests of in-
23 dividuals was rejected.

24 “(3) AVAILABILITY TO PUBLIC.—The agency
25 shall make copies of the final privacy impact anal-

1 ysis available to members of the public and shall
2 publish in the Federal Register such analysis or a
3 summary thereof.

4 “(c) PROCEDURE FOR WAIVER OR DELAY OF COM-
5 PLETION.—An agency head may waive or delay the com-
6 pletion of some or all of the requirements of subsections
7 (a) and (b) to the same extent as the agency head may,
8 under section 608, waive or delay the completion of some
9 or all of the requirements of sections 603 and 604, respec-
10 tively.

11 “(d) PROCEDURES FOR GATHERING COMMENTS.—
12 When any rule is promulgated which may have a signifi-
13 cant privacy impact on individuals, or a privacy impact
14 on a substantial number of individuals, the head of the
15 agency promulgating the rule or the official of the agency
16 with statutory responsibility for the promulgation of the
17 rule shall assure that individuals have been given an op-
18 portunity to participate in the rulemaking for the rule
19 through techniques such as—

20 “(1) the inclusion in an advance notice of pro-
21 posed rulemaking, if issued, of a statement that the
22 proposed rule may have a significant privacy impact
23 on individuals, or a privacy impact on a substantial
24 number of individuals;

1 “(2) the publication of a general notice of pro-
2 posed rulemaking in publications of national circula-
3 tion likely to be obtained by individuals;

4 “(3) the direct notification of interested individ-
5 uals;

6 “(4) the conduct of open conferences or public
7 hearings concerning the rule for individuals, includ-
8 ing soliciting and receiving comments over computer
9 networks; and

10 “(5) the adoption or modification of agency
11 procedural rules to reduce the cost or complexity of
12 participation in the rulemaking by individuals.

13 “(c) PERIODIC REVIEW OF RULES.—

14 “(1) IN GENERAL.—Each agency shall carry
15 out a periodic review of the rules promulgated by the
16 agency that have a significant privacy impact on in-
17 dividuals, or a privacy impact on a substantial num-
18 ber of individuals. Under such periodic review, the
19 agency shall determine, for each such rule, whether
20 the rule can be amended or rescinded in a manner
21 that minimizes any such impact while remaining in
22 accordance with applicable statutes. For each such
23 determination, the agency shall consider the fol-
24 lowing factors:

25 “(A) The continued need for the rule.

1 “(B) The nature of complaints or com-
2 ments received from the public concerning the
3 rule.

4 “(C) The complexity of the rule.

5 “(D) The extent to which the rule over-
6 laps, duplicates, or conflicts with other Federal
7 rules, and, to the extent feasible, with State and
8 local governmental rules.

9 “(E) The length of time since the rule was
10 last reviewed under this subsection.

11 “(F) The degree to which technology, eco-
12 nomic conditions, or other factors have changed
13 in the area affected by the rule since the rule
14 was last reviewed under this subsection.

15 “(2) PLAN REQUIRED.—Each agency shall
16 carry out the periodic review required by paragraph
17 (1) in accordance with a plan published by such
18 agency in the Federal Register. Each such plan shall
19 provide for the review under this subsection of each
20 rule promulgated by the agency not later than 10
21 years after the date on which such rule was pub-
22 lished as the final rule and, thereafter, not later
23 than 10 years after the date on which such rule was
24 last reviewed under this subsection. The agency may

1 amend such plan at any time by publishing the revi-
2 sion in the Federal Register.

3 “(3) ANNUAL PUBLICATION.—Each year, each
4 agency shall publish in the Federal Register a list of
5 the rules to be reviewed by such agency under this
6 subsection during the following year. The list shall
7 include a brief description of each such rule and the
8 need for and legal basis of such rule and shall invite
9 public comment upon the determination to be made
10 under this subsection with respect to such rule.

11 “(f) JUDICIAL REVIEW.—

12 “(1) IN GENERAL.—For any rule subject to this
13 section, an individual who is adversely affected or
14 aggrieved by final agency action is entitled to judi-
15 cial review of agency compliance with the require-
16 ments of subsections (b) and (c) in accordance with
17 chapter 7. Agency compliance with subsection (d)
18 shall be judicially reviewable in connection with judi-
19 cial review of subsection (b).

20 “(2) JURISDICTION.—Each court having juris-
21 diction to review such rule for compliance with sec-
22 tion 553, or under any other provision of law, shall
23 have jurisdiction to review any claims of noncompli-
24 ance with subsections (b) and (c) in accordance with
25 chapter 7. Agency compliance with subsection (d)

1 shall be judicially reviewable in connection with judi-
2 cial review of subsection (b).

3 “(3) LIMITATIONS.—

4 “(A) An individual may seek such review
5 during the period beginning on the date of final
6 agency action and ending 1 year later, except
7 that where a provision of law requires that an
8 action challenging a final agency action be com-
9 menced before the expiration of 1 year, such
10 lesser period shall apply to an action for judicial
11 review under this subsection.

12 “(B) In the case where an agency delays
13 the issuance of a final privacy impact analysis
14 pursuant to subsection (c), an action for judi-
15 cial review under this section shall be filed not
16 later than—

17 “(i) 1 year after the date the analysis
18 is made available to the public; or

19 “(ii) where a provision of law requires
20 that an action challenging a final agency
21 regulation be commenced before the expi-
22 ration of the 1-year period, the number of
23 days specified in such provision of law that
24 is after the date the analysis is made avail-
25 able to the public.

1 “(4) RELIEF.—In granting any relief in an ac-
2 tion under this subsection, the court shall order the
3 agency to take corrective action consistent with this
4 section and chapter 7, including, but not limited
5 to—

6 “(A) remanding the rule to the agency;
7 and

8 “(B) deferring the enforcement of the rule
9 against individuals, unless the court finds that
10 continued enforcement of the rule is in the pub-
11 lic interest.

12 “(5) RULE OF CONSTRUCTION.—Nothing in
13 this subsection shall be construed to limit the au-
14 thority of any court to stay the effective date of any
15 rule or provision thereof under any other provision
16 of law or to grant any other relief in addition to the
17 requirements of this subsection.

18 “(6) RECORD OF AGENCY ACTION.—In an ac-
19 tion for the judicial review of a rule, the privacy im-
20 pact analysis for such rule, including an analysis
21 prepared or corrected pursuant to paragraph (4),
22 shall constitute part of the entire record of agency
23 action in connection with such review.

24 “(7) EXCLUSIVITY.—Compliance or noncompli-
25 ance by an agency with the provisions of this section

1 shall be subject to judicial review only in accordance
2 with this subsection.

3 “(8) SAVINGS CLAUSE.—Nothing in this sub-
4 section bars judicial review of any other impact
5 statement or similar analysis required by any other
6 law if judicial review of such statement or analysis
7 is otherwise permitted by law.

8 “(g) DEFINITION.—For purposes of this section, the
9 term ‘personally identifiable information’ means informa-
10 tion that can be used to identify an individual, including
11 such individual’s name, address, telephone number, photo-
12 graph, social security number or other identifying infor-
13 mation. It includes information about such individual’s
14 medical or financial condition.”.

15 (b) PERIODIC REVIEW TRANSITION PROVISIONS.—

16 (1) INITIAL PLAN.—For each agency, the plan
17 required by subsection (e) of section 553a of title 5,
18 United States Code (as added by subsection (a)),
19 shall be published not later than 180 days after the
20 date of the enactment of this Act.

21 (2) In the case of a rule promulgated by an
22 agency before the date of the enactment of this Act,
23 such plan shall provide for the periodic review of
24 such rule before the expiration of the 10-year period
25 beginning on the date of the enactment of this Act.

1 For any such rule, the head of the agency may pro-
2 vide for a 1-year extension of such period if the head
3 of the agency, before the expiration of the period,
4 certifies in a statement published in the Federal
5 Register that reviewing such rule before the expira-
6 tion of the period is not feasible. The head of the
7 agency may provide for additional 1-year extensions
8 of the period pursuant to the preceding sentence,
9 but in no event may the period exceed 15 years.

10 (c) CONGRESSIONAL REVIEW.—Section 801(a)(1)(B)
11 of title 5, United States Code, is amended—

12 (1) by redesignating clauses (iii) and (iv) as
13 clauses (iv) and (v), respectively; and

14 (2) by inserting after clause (ii) the following
15 new clause:

16 “(iii) the agency’s actions relevant to section
17 553a;”.

18 (d) CLERICAL AMENDMENT.—The table of sections
19 at the beginning of chapter 5 of title 5, United States
20 Code, is amended by adding after the item relating to sec-
21 tion 553 the following new item:

“553a. Privacy impact analysis in rulemaking.”.

Chairman SENSENBRENNER. The chair again makes the same admonition about opening statements. Without objection, all opening statements will appear in the record at this point.

Chairman SENSENBRENNER. Are there amendments? If there are no amendments, the chair notes the presence of a reporting quorum.

The question occurs on the motion to report the bill H.R. 4561 favorably. All in favor say aye.

Opposed, no. The ayes appear to have it. The ayes have it. The motion to report favorably is adopted. Without objection, the bill will be reported to the House favorably in the form of a single amendment in the nature of a substitute.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules.

Without objection, the staff is directed to make any technical and conforming changes and all Members will be given 2 days, pursuant to House rules, in which to submit additional dissenting, supplemental or minority views.

