To amend the Federal Deposit Insurance Act and the Federal Credit Union
Act to safeguard confidential banking and credit union information,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

Mr. McCollum (for himself, Mr. Leach, Mr. Bereuter, Mr. Baker, Mr. Royle, Mr. Ackerman, Mr. Metcalf, Mr. Paul, Mr. Cook, Mr. Hill of Montana, Mr. Jones of North Carolina, and Mr. Ehrlich) introduced
the following bill; which was referred to the Committee on Banking and Financial Services

A BILL

To amend the Federal Deposit Insurance Act and the Federal Credit Union Act to safeguard confidential banking and credit union information, and for other purposes.

1 Be it enacted by the Senate and House of Represen-
2 tatives of the United States of America in Congress assembled,
106th Congress
1st Session
H. R.

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A BILL

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1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Bank Examination Report Protection Act of 1999”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SEC. 501. AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

“SEC. 45. BANK SUPERVISORY PRIVILEGE.

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

“(1) DEPOSITORY INSTITUTION.—The term ‘depository institution’ includes—

“(A) any institution which is treated in the same manner as an insured depository institution under paragraph (3), (4), (5), or (9) of section 8(b); and

“(B) any subsidiary or other affiliate of an insured depository institution or an institution described in subparagraph (A).

“(2) SUPERVISORY PROCESS.—The term ‘supervisory process’ means any activity engaged in by a Federal banking agency to carry out the official responsibilities of the agency with regard to the regulation or supervision of depository institutions.

“(3) CONFIDENTIAL SUPERVISORY INFORMATION.—Subject to paragraph (4), the term ‘confidential supervisory information’ means any of the following information, or any portion of any such in-
information, which is treated as, or considered to be, confidential information by a Federal banking agency, regardless of the medium in which the information is conveyed or stored:

“(A) Any report of examination, inspection, visitation, or investigation, and information prepared or collected by a Federal banking agency in connection with the supervisory process, including any computer file, work paper, or similar document.

“(B) Any correspondence of communication from a Federal banking agency to a depository institution as part of an examination, inspection, visitation, or investigation by a Federal banking agency.

“(C) Any correspondence, communication, or document, including any compliance and other reports, created by a depository institution in response to any request, inquiry, or directive from a Federal banking agency in connection with any examination, inspection, visitation, or investigation and provided to a Federal banking agency.

“(D) Any record of a Federal banking agency to the extent it contains information de-
rived from any report, correspondence, commu-
nication or other information described in sub-
paragraph (A), (B), or (C).

“(4) Ordinary business records ex-
cluded.—The term ‘confidential supervisory infor-
mation’ shall not include any book or record in the
possession of the depository institution routinely pre-
pared by the depository institution and maintained
in the ordinary course of business or any informa-
tion required to be made publicly available by any
Federal law or regulation.

“(b) Bank Supervisory Privilege.—

“(1) Privilege established.—

“(A) In general.—All confidential super-
visory information shall be the property of the
Federal banking agency that created or re-
quested the information and shall be privileged
from disclosure to any other person.

“(B) Prohibition on unauthorized
disclosures.—No person in possession of con-
fidential supervisory information may disclose
such information, in whole or in part, without
the prior authorization of the Federal banking
agency that created or requested the informa-
tion, except for a disclosure made in published
statistical material that does not disclose, either
directly or when used in conjunction with pub-
licly available information, the affairs of any
person.

“(C) AGENCY WAIVER.—The Federal
banking agency may waive, in whole or in part,
in the discretion of the agency, any privilege es-
tablished under this paragraph.

“(2) EXCEPTION.—No provision of paragraph
(1) shall be construed as preventing access to con-
fidential supervisory information by duly authorized
committees of the United States Congress or the
Comptroller General of the United States.

“(c) TREATMENT OF STATE AND FOREIGN SUPER-
VISORY INFORMATION.—In any proceeding before a court
of the United States, in which a person seeks to compel
production or disclosure by a State bank supervisor, for-
eign bank regulatory or supervisory authority, Federal
banking agency, or other person, of information or a docu-
ment prepared or collected by a State bank supervisor or
foreign bank regulatory or supervisory authority that
would, had they been prepared or collected by a Federal
banking agency, be confidential supervisory information
for purposes of this section, the information or document
shall be privileged to the same extent that the information
and documents of Federal banking agencies are privileged under this Act.

``(d) Other Privileges Not Waived by Disclosure to Banking Agency.—The submission by a depository institution of any information to a Federal banking agency, a State bank supervisor, or a foreign banking authority for any purpose in the course of the supervisory process of such agency or supervisor shall not be construed as waiving, destroying, or otherwise affecting any privilege such institution may claim with respect to such information under Federal or State law.

``(e) Discovery and Disclosure of Information.—

``(1) Information Available Only from Banking Agency.—

“(A) In general.—A person seeking discovery or disclosure, in whole or in part, of confidential supervisory information may not seek to obtain such information through subpoena, discovery procedures, or other process from any person, except that such information may be sought in accordance with this section from the Federal banking agency that created or requested the information.
(B) REQUESTS SUBMITTED TO BANKING AGENCY.—Any request for discovery or disclosure of confidential supervisory information shall be made to the Federal banking agency that created or requested the information, which shall determine within a reasonable time period whether to disclose such information pursuant to procedures and criteria established in regulations.

(2) EXCLUSIVE FEDERAL COURT JURISDICTION OVER DISPUTES.—

(A) IN GENERAL.—Federal courts shall have exclusive jurisdiction over actions or proceedings in which any party seeks to compel disclosure of confidential supervisory information.

(B) JUDICIAL REVIEW.—Judicial review of the final action of a Federal banking agency with regard to the disposition of a request for confidential supervisory information shall be before a district court of the United States of competent jurisdiction, subject to chapter 7 of part I of title 5, United States Code.

(C) RIGHT TO APPEAL.—Any court order that compels production of confidential super-
visory information may be immediately appealed by the Federal banking agency and the order compelling production shall be automatically stayed, pending the outcome of such appeal.

“(f) SUBPOENAS.—

“(1) AUTHORITY TO INTERVENE.—In the case of any action or proceeding to compel compliance with a subpoena, order, discovery request, or other judicial or administrative process with respect to any confidential supervisory information relating to any depository institution, a Federal banking agency and the depository institution may intervene in such action or proceeding for the purpose of—

“(A) enforcing the limitations established in paragraph (1) of subsections (b) and (e);

“(B) seeking the withdrawal of any compulsory process with respect to such information; and

“(C) registering appropriate objections with respect to the action or proceeding to the extent the action or proceeding relates to or involves such information.

“(2) RIGHT TO APPEAL.—Any court order that compels production of confidential supervisory information may be immediately appealed by the Federal
banking agency and the order compelling production
shall be automatically stayed, pending the outcome
of such appeal.

“(g) REGULATIONS.—

“(1) AUTHORITY TO PRESCRIBE.—Each Fed-
eral banking agency may prescribe such regulations
as the agency considers to be appropriate, after con-
sultation with the other Federal banking agencies
and the National Credit Union Administration
Board, to carry out the purposes of this section.

“(2) AUTHORITY TO REQUIRE NOTICE.—Any
regulations prescribed by a Federal banking agency
under paragraph (1) may require any person in pos-
session of confidential supervisory information to no-
tify the Federal banking agency whenever the person
is served with a subpoena, order, discovery request,
or other judicial or administrative process requiring
the personal attendance of such person as a witness
or requiring the production of such information in
any proceeding.

“(h) ACCESS IN ACCORDANCE WITH REGULATIONS
AND ORDERS.—Notwithstanding any other provision of
this section, the Federal banking agency may, without
waiving any privilege, authorize access to confidential su-
pervisory information for any appropriate governmental,
law enforcement, or public purpose in accordance with agency regulations or orders.”

SEC. 502. AMENDMENT TO THE FEDERAL CREDIT UNION ACT.

Title II of the Federal Credit Union Act (12 U.S.C. 1781 et seq.) is amended by adding at the end the following new section:

“SEC. 215. CREDIT UNION SUPERVISORY PRIVILEGE.

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

“(1) SUPERVISORY PROCESS.—The term ‘supervisory process’ means any activity engaged in by the Administration to carry out the official responsibilities of the Administration with regard to the regulation or supervision of credit unions.

“(2) CONFIDENTIAL SUPERVISORY INFORMATION.—The term ‘confidential supervisory information’ means any of the following information, or any portion of any such information, which is treated as, or considered to be, confidential information by the Administration, regardless of the medium in which the information is conveyed or stored:

“(A) Any report of examination, inspection, visitation, or investigation, and information prepared or collected by the Administration
in connection with the supervisory process, in-
cluding any computer file, work paper, or simi-
lar document.

“(B) Any correspondence or communica-
tion from the Administration to a credit union
arising from or relating to an examination, in-
spection, visitation, or investigation by the Ad-
ministration.

“(C) Any correspondence, communication,
or document, including any compliance and
other reports, created by a credit union in re-
sponse to any request, inquiry, or directive from
the Administration in connection with any ex-
amination, inspection, visitation, or investiga-
tion and provided to the Administration, other
than any book or record in the possession of the
credit union routinely prepared by the credit
union and maintained in the ordinary course of
business or any information required to be
made publicly available by any Federal law or
regulation.

“(D) Any record of the Administration to
the extent it contains information derived from
any report, correspondence, communication or
other information described in subparagraph (A), (B), or (C).

“(b) CREDIT UNION SUPERVISORY PRIVILEGE.—

“(1) Privilege established.—

“(A) IN GENERAL.—All confidential supervisory information shall be the property of the Administration and shall be privileged from disclosure to any other person.

“(B) PROHIBITION ON UNAUTHORIZED DISCLOSURES.—No person in possession of confidential supervisory information may disclose such information, in whole or in part, without the prior authorization of the Administration, except for a disclosure made in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any person.

“(C) AGENCY WAIVERS.—The Board may waive, in whole or in part, in the discretion of the Board, any privilege established under this paragraph.

“(2) EXCEPTION.—No provision of paragraph (1) shall be construed as preventing access to confidential supervisory information by duly authorized
committees of the United States Congress or the Comptroller General of the United States.

“(c) Other Privileges Not Waived by Disclosure to Administration.—The submission by a credit union of any information to the Administration or a State credit union supervisor for any purpose in the course of the supervisory process of the Administration or such supervisor shall not be construed as waiving, destroying, or otherwise affecting any privilege such institution may claim with respect to such information under Federal or State law.

“(d) Discovery and Disclosure of Information.—

“(1) Information Available Only from Administration.—

“(A) In General.—A person seeking discovery or disclosure, in whole or in part, of confidential supervisory information may not seek to obtain such information through subpoena, discovery procedures, or other process from any person, except that such information may be sought in accordance with this section from the Administration.

“(B) Request Submitted to Administration.—Any request for discovery or disclo-
sure of confidential supervisory information shall be made in the Administration, which shall determine within a reasonable time period whether to disclose such information pursuant to procedures and criteria established in regulations.

“(2) EXCLUSIVE FEDERAL COURT JURISDICTION OVER DISPUTES.—

“(A) IN GENERAL.—Federal courts shall have exclusive jurisdiction over actions or proceedings in which any party seeks to compel disclosure of confidential supervisory information.

“(B) JUDICIAL REVIEW.—Judicial review of the final action of the Administration with regard to the disposition of a request for confidential supervisory information shall be before a district court of the United States of competent jurisdiction, subject to chapter 7 of part I of title 5, United States Code.

“(C) RIGHT TO APPEAL.—Any court order that compels production of confidential supervisory information may be immediately appealed by the Administration and the order compelling
production shall be automatically stayed, pending the outcome of such appeal.

“(e) SUBPOENAS.—

“(1) AUTHORITY TO INTERVENE.—In the case of any action or proceeding to compel compliance with a subpoena, order, discover request, or other judicial or administrative process with respect to any confidential supervisory information relating to any credit union, the Administration and the credit union may intervene in such action or proceeding for the purpose of—

“(A) enforcing the limitations established in paragraph (1) of subsections (b) and (d);

“(B) seeking the withdrawal of any compulsory process with respect to such information; and

“(C) registering appropriate objections with respect to the action or proceeding to the extent the action or proceeding relates to or involves such information.

“(2) RIGHT TO APPEAL.—Any court order that compels production of confidential supervisory information may be immediately appealed by the Administration and the order compelling production shall
be automatically stayed, pending the outcome of such appeal.

“(f) Regulations.—

“(1) Authority to prescribe.—The Board may prescribe such regulations as the Board considers to be appropriate, after consultation with the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), to carry out the purposes of this section.

“(2) Authority to require notice.—Any regulations prescribed by the Administration under paragraph (1) may require any person in possession of confidential supervisory information to notify the Administration whenever the person is served with a subpoena, order, discovery request, or other judicial or administrative process requiring the personal attendance of such person as a witness or requiring the production of such information in any proceeding.

“(g) Access in accordance with regulations and orders.—Notwithstanding any other provision of this section, the Administration may, without waiving any privilege, authorize access to confidential supervisory information for any appropriate governmental, law enforce-
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1  ment, or public purpose in accordance with agency regula-
2  tions or orders.”.

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