

106TH CONGRESS  
1ST SESSION

# H. R. 174

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.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

Mr. MCCOLLUM (for himself, Mr. LEACH, Mr. BEREUTER, Mr. BAKER, Mr. ROYCE, 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

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## 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 Representa-*  
2       *tives of the United States of America in Congress assembled,*

.....  
(Original Signature of Member)

106<sup>TH</sup> CONGRESS  
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IN THE HOUSE OF REPRESENTATIVES

Mr. McCOLLUM introduced the following bill; which was referred to the  
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**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 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 “Bank Examination Re-  
5 port Protection Act of 1999”.

1 **SEC. 501. AMENDMENT TO THE FEDERAL DEPOSIT INSUR-**  
2 **ANCE ACT.**

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

6 **“SEC. 45. BANK SUPERVISORY PRIVILEGE.**

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

9 “(1) DEPOSITORY INSTITUTION.—The term ‘de-  
10 pository institution’ includes—

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

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

18 “(2) SUPERVISORY PROCESS.—The term ‘su-  
19 pervisory process’ means any activity engaged in by  
20 a Federal banking agency to carry out the official  
21 responsibilities of the agency with regard to the reg-  
22 ulation or supervision of depository institutions.

23 “(3) CONFIDENTIAL SUPERVISORY INFORMA-  
24 TION.—Subject to paragraph (4), the term ‘con-  
25 fidential supervisory information’ means any of the  
26 following information, or any portion of any such in-

1 formation, which is treated as, or considered to be,  
2 confidential information by a Federal banking agen-  
3 cy, regardless of the medium in which the informa-  
4 tion is conveyed or stored:

5 “(A) Any report of examination, inspec-  
6 tion, visitation, or investigation, and informa-  
7 tion prepared or collected by a Federal banking  
8 agency in connection with the supervisory proc-  
9 ess, including any computer file, work paper, or  
10 similar document.

11 “(B) Any correspondence of communica-  
12 tion from a Federal banking agency to a deposi-  
13 tory institution as part of an examination, in-  
14 spection, visitation, or investigation by a Fed-  
15 eral banking agency.

16 “(C) Any correspondence, communication,  
17 or document, including any compliance and  
18 other reports, created by a depository institu-  
19 tion in response to any request, inquiry, or di-  
20 rective from a Federal banking agency in con-  
21 nection with any examination, inspection, visita-  
22 tion, or investigation and provided to a Federal  
23 banking agency.

24 “(D) Any record of a Federal banking  
25 agency to the extent it contains information de-

1           rived from any report, correspondence, commu-  
2           nication or other information described in sub-  
3           paragraph (A), (B), or (C).

4           “(4) ORDINARY BUSINESS RECORDS EX-  
5           CLUDED.—The term ‘confidential supervisory infor-  
6           mation’ shall not include any book or record in the  
7           possession of the depository institution routinely pre-  
8           pared by the depository institution and maintained  
9           in the ordinary course of business or any informa-  
10          tion required to be made publicly available by any  
11          Federal law or regulation.

12          “(b) BANK SUPERVISORY PRIVILEGE.—

13                  “(1) PRIVILEGE ESTABLISHED.—

14                          “(A) IN GENERAL.—All confidential super-  
15                          visory information shall be the property of the  
16                          Federal banking agency that created or re-  
17                          quested the information and shall be privileged  
18                          from disclosure to any other person.

19                          “(B) PROHIBITION ON UNAUTHORIZED  
20                          DISCLOSURES.—No person in possession of con-  
21                          fidential supervisory information may disclose  
22                          such information, in whole or in part, without  
23                          the prior authorization of the Federal banking  
24                          agency that created or requested the informa-  
25                          tion, except for a disclosure made in published

1           statistical material that does not disclose, either  
2           directly or when used in conjunction with pub-  
3           licly available information, the affairs of any  
4           person.

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

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

14          “(c) TREATMENT OF STATE AND FOREIGN SUPER-  
15          VISORY INFORMATION.—In any proceeding before a court  
16          of the United States, in which a person seeks to compel  
17          production or disclosure by a State bank supervisor, for-  
18          eign bank regulatory or supervisory authority, Federal  
19          banking agency, or other person, of information or a docu-  
20          ment prepared or collected by a State bank supervisor or  
21          foreign bank regulatory or supervisory authority that  
22          would, had they been prepared or collected by a Federal  
23          banking agency, be confidential supervisory information  
24          for purposes of this section, the information or document  
25          shall be privileged to the same extent that the information

1 and documents of Federal banking agencies are privileged  
2 under this Act.

3       “(d) OTHER PRIVILEGES NOT WAIVED BY DISCLO-  
4 SURE TO BANKING AGENCY.—The submission by a depos-  
5 itory institution of any information to a Federal banking  
6 agency, a State bank supervisor, or a foreign banking au-  
7 thority for any purpose in the course of the supervisory  
8 process of such agency or supervisor shall not be construed  
9 as waiving, destroying, or otherwise affecting any privilege  
10 such institution may claim with respect to such informa-  
11 tion under Federal or State law.

12       “(e) DISCOVERY AND DISCLOSURE OF INFORMA-  
13 TION.—

14               “(1) INFORMATION AVAILABLE ONLY FROM  
15 BANKING AGENCY.—

16                       “(A) IN GENERAL.—A person seeking dis-  
17 covery or disclosure, in whole or in part, of con-  
18 fidential supervisory information may not seek  
19 to obtain such information through subpoena,  
20 discovery procedures, or other process from any  
21 person, except that such information may be  
22 sought in accordance with this section from the  
23 Federal banking agency that created or re-  
24 quested the information.

1           “(B) REQUESTS SUBMITTED TO BANKING  
2 AGENCY.—Any request for discovery or disclo-  
3 sure of confidential supervisory information  
4 shall be made to the Federal banking agency  
5 that created or requested the information,  
6 which shall determine within a reasonable time  
7 period whether to disclose such information  
8 pursuant to procedures and criteria established  
9 in regulations.

10           “(2) EXCLUSIVE FEDERAL COURT JURISDIC-  
11 TION OVER DISPUTES.—

12           “(A) IN GENERAL.—Federal courts shall  
13 have exclusive jurisdiction over actions or pro-  
14 ceedings in which any party seeks to compel  
15 disclosure of confidential supervisory informa-  
16 tion.

17           “(B) JUDICIAL REVIEW.—Judicial review  
18 of the final action of a Federal banking agency  
19 with regard to the disposition of a request for  
20 confidential supervisory information shall be be-  
21 fore a district court of the United States of  
22 competent jurisdiction, subject to chapter 7 of  
23 part I of title 5, United States Code.

24           “(C) RIGHT TO APPEAL.—Any court order  
25 that compels production of confidential super-

1           visory information may be immediately appealed  
2           by the Federal banking agency and the order  
3           compelling production shall be automatically  
4           stayed, pending the outcome of such appeal.

5           “(f) SUBPOENAS.—

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

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

16                 “(B) seeking the withdrawal of any com-  
17                 pulsory process with respect to such informa-  
18                 tion; and

19                 “(C) registering appropriate objections  
20                 with respect to the action or proceeding to the  
21                 extent the action or proceeding relates to or in-  
22                 volves such information.

23           “(2) RIGHT TO APPEAL.—Any court order that  
24           compels production of confidential supervisory infor-  
25           mation may be immediately appealed by the Federal

1 banking agency and the order compelling production  
2 shall be automatically stayed, pending the outcome  
3 of such appeal.

4 “(g) REGULATIONS.—

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

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

21 “(h) ACCESS IN ACCORDANCE WITH REGULATIONS  
22 AND ORDERS.—Notwithstanding any other provision of  
23 this section, the Federal banking agency may, without  
24 waiving any privilege, authorize access to confidential su-  
25 pervisory information for any appropriate governmental,

1 law enforcement, or public purpose in accordance with  
2 agency regulations or orders.”.

3 **SEC. 502. AMENDMENT TO THE FEDERAL CREDIT UNION**  
4 **ACT.**

5 Title II of the Federal Credit Union Act (12 U.S.C.  
6 1781 et seq.) is amended by adding at the end the follow-  
7 ing new section:

8 **“SEC. 215. CREDIT UNION SUPERVISORY PRIVILEGE.**

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

11 “(1) SUPERVISORY PROCESS.—The term ‘su-  
12 pervisory process’ means any activity engaged in by  
13 the Administration to carry out the official respon-  
14 sibilities of the Administration with regard to the  
15 regulation or supervision of credit unions.

16 “(2) CONFIDENTIAL SUPERVISORY INFORMA-  
17 TION.—The term ‘confidential supervisory informa-  
18 tion’ means any of the following information, or any  
19 portion of any such information, which is treated as,  
20 or considered to be, confidential information by the  
21 Administration, regardless of the medium in which  
22 the information is conveyed or stored:

23 “(A) Any report of examination, inspec-  
24 tion, visitation, or investigation, and informa-  
25 tion prepared or collected by the Administration

1 in connection with the supervisory process, in-  
2 cluding any computer file, work paper, or simi-  
3 lar document.

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

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

22 “(D) Any record of the Administration to  
23 the extent it contains information derived from  
24 any report, correspondence, communication or

1 other information described in subparagraph  
2 (A), (B), or (C).

3 “(b) CREDIT UNION SUPERVISORY PRIVILEGE.—

4 “(1) PRIVILEGE ESTABLISHED.—

5 “(A) IN GENERAL.—All confidential super-  
6 visory information shall be the property of the  
7 Administration and shall be privileged from dis-  
8 closure to any other person.

9 “(B) PROHIBITION ON UNAUTHORIZED  
10 DISCLOSURES.—No person in possession of con-  
11 fidential supervisory information may disclose  
12 such information, in whole or in part, without  
13 the prior authorization of the Administration,  
14 except for a disclosure made in published statis-  
15 tical material that does not disclose, either di-  
16 rectly or when used in conjunction with publicly  
17 available information, the affairs of any person.

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

22 “(2) EXCEPTION.—No provision of paragraph  
23 (1) shall be construed as preventing access to con-  
24 fidential supervisory information by duly authorized

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

3 “(c) OTHER PRIVILEGES NOT WAIVED BY DISCLO-  
4 SURE TO ADMINISTRATION.—The submission by a credit  
5 union of any information to the Administration or a State  
6 credit union supervisor for any purpose in the course of  
7 the supervisory process of the Administration or such su-  
8 pervisor shall not be construed as waiving, destroying, or  
9 otherwise affecting any privilege such institution may  
10 claim with respect to such information under Federal or  
11 State law.

12 “(d) DISCOVERY AND DISCLOSURE OF INFORMA-  
13 TION.—

14 “(1) INFORMATION AVAILABLE ONLY FROM AD-  
15 MINISTRATION.—

16 “(A) IN GENERAL.—A person seeking dis-  
17 covery or disclosure, in whole or in part, of con-  
18 fidential supervisory information may not seek  
19 to obtain such information through subpoena,  
20 discovery procedures, or other process from any  
21 person, except that such information may be  
22 sought in accordance with this section from the  
23 Administration.

24 “(B) REQUEST SUBMITTED TO ADMINIS-  
25 TRATION.—Any request for discovery or disclo-

1           sure of confidential supervisory information  
2           shall be made in the Administration, which  
3           shall determine within a reasonable time period  
4           whether to disclose such information pursuant  
5           to procedures and criteria established in regula-  
6           tions.

7           “(2) EXCLUSIVE FEDERAL COURT JURISDIC-  
8           TION OVER DISPUTES.—

9                   “(A) IN GENERAL.—Federal courts shall  
10           have exclusive jurisdiction over actions or pro-  
11           ceedings in which any party seeks to compel  
12           disclosure of confidential supervisory informa-  
13           tion.

14                   “(B) JUDICIAL REVIEW.—Judicial review  
15           of the final action of the Administration with  
16           regard to the disposition of a request for con-  
17           fidential supervisory information shall be before  
18           a district court of the United States of com-  
19           petent jurisdiction, subject to chapter 7 of part  
20           I of title 5, United States Code.

21                   “(C) RIGHT TO APPEAL.—Any court order  
22           that compels production of confidential super-  
23           visory information may be immediately appealed  
24           by the Administration and the order compelling

1 production shall be automatically stayed, pend-  
2 ing the outcome of such appeal.

3 “(e) SUBPOENAS.—

4 “(1) AUTHORITY TO INTERVENE.—In the case  
5 of any action or proceeding to compel compliance  
6 with a subpoena, order, discover request, or other ju-  
7 dicial or administrative process with respect to any  
8 confidential supervisory information relating to any  
9 credit union, the Administration and the credit  
10 union may intervene in such action or proceeding for  
11 the purpose of—

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

14 “(B) seeking the withdrawal of any com-  
15 pulsory process with respect to such informa-  
16 tion; and

17 “(C) registering appropriate objections  
18 with respect to the action or proceeding to the  
19 extent the action or proceeding relates to or in-  
20 volves such information.

21 “(2) RIGHT TO APPEAL.—Any court order that  
22 compels production of confidential supervisory infor-  
23 mation may be immediately appealed by the Admin-  
24 istration and the order compelling production shall

1 be automatically stayed, pending the outcome of  
2 such appeal.

3 “(f) REGULATIONS.—

4 “(1) AUTHORITY TO PRESCRIBE.—The Board  
5 may prescribe such regulations as the Board consid-  
6 ers to be appropriate, after consultation with the  
7 Federal banking agencies (as defined in section 3 of  
8 the Federal Deposit Insurance Act), to carry out the  
9 purposes of this section.

10 “(2) AUTHORITY TO REQUIRE NOTICE.—Any  
11 regulations prescribed by the Administration under  
12 paragraph (1) may require any person in possession  
13 of confidential supervisory information to notify the  
14 Administration whenever the person is served with a  
15 subpoena, order, discovery request, or other judicial  
16 or administrative process requiring the personal at-  
17 tendance of such person as a witness or requiring  
18 the production of such information in any proceed-  
19 ing.

20 “(g) ACCESS IN ACCORDANCE WITH REGULATIONS  
21 AND ORDERS.—Notwithstanding any other provision of  
22 this section, the Administration may, without waiving any  
23 privilege, authorize access to confidential supervisory in-  
24 formation for any appropriate governmental, law enforce-

1 ment, or public purpose in accordance with agency regula-  
2 tions or orders.”.

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