

118TH CONGRESS  
2D SESSION

# S. 5170

To establish the Data Protection Agency.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2024

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To establish the Data Protection Agency.

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 “Data Protection Act  
5 of 2024”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **AGENCY.**—The term “Agency” means the  
9 Data Protection Agency established under section 3.

10 (2) **ANONYMIZED DATA.**—The term  
11 “anonymized data” means information—

1 (A) that does not identify an individual;  
2 and

3 (B) with respect to which there is no rea-  
4 sonable basis to believe that the information  
5 can be used on its own or in combination with  
6 other reasonably available information to iden-  
7 tify an individual.

8 (3) AUTOMATED DECISION SYSTEM.—The term  
9 “automated decision system” means a computational  
10 process, including one derived from machine learn-  
11 ing, statistics, or other data processing or artificial  
12 intelligence techniques, that automates, analyzes,  
13 aids, or augments decisions.

14 (4) BIOMETRIC INFORMATION.—The term “bio-  
15 metric information”—

16 (A) means information regarding the phys-  
17 iological or biological characteristics of an indi-  
18 vidual that may be used, singly or in combina-  
19 tion with each other or with other identifying  
20 data, to establish the identity of an individual;

21 (B) includes—

22 (i) genetic data;

23 (ii) imagery of the iris, retina, finger-  
24 print, face, hand, palm, vein patterns, and  
25 voice recordings, from which an identifier

1           template, such as a faceprint, a minutiae  
2           template, or a voiceprint, can be extracted;

3           (iii) keystroke patterns or rhythms,  
4           gait patterns or rhythms, and sleep,  
5           health, or exercise data that contain identi-  
6           fying information; and

7           (iv) any mathematical code, profile, or  
8           algorithmic model derived from informa-  
9           tion regarding the physiological or biologi-  
10          cal characteristics of an individual;

11          (C) does not include information captured  
12          from a patient in a health care setting for a  
13          medical purpose or information collected, used,  
14          or stored for health care treatment, payment, or  
15          operations under the Health Insurance Port-  
16          ability and Accountability Act of 1996 (Public  
17          Law 104–191); and

18          (D) does not include an X-ray, roentgen  
19          process, computed tomography, MRI, PET  
20          scan, mammography, or other image or film of  
21          the human anatomy used to diagnose, prognose,  
22          or treat an illness or other medical condition or  
23          to further validate scientific testing or screen-  
24          ing.

25          (5) COLLECT.—The term “collect”—

1 (A) means buying, renting, gathering, ob-  
2 taining, receiving, or accessing any personal  
3 data by any means; and

4 (B) includes—

5 (i) receiving personal data from an in-  
6 dividual or device; and

7 (ii) creating, deriving, or inferring  
8 personal data by analyzing data about an  
9 individual or about groups of individuals  
10 similar to the individual.

11 (6) DATA AGGREGATOR.—The term “data  
12 aggregator”—

13 (A) means any person that collects, uses,  
14 or shares, in or affecting interstate commerce,  
15 an amount of personal data that is not de mini-  
16 mis, as well as entities related to that person by  
17 common ownership or corporate control; and

18 (B) does not include an individual who col-  
19 lects, uses, or shares personal data solely for  
20 non-commercial reasons.

21 (7) DEVICE.—The term “device” means any  
22 physical object that—

23 (A) is capable of connecting to the internet  
24 or other communication network; or

1           (B) has computer processing capabilities  
2           that can collect, send, receive, or store data.

3           (8) DIRECTOR.—The term “Director” means  
4           the Director of the Data Protection Agency.

5           (9) ELECTRONIC DATA.—The term “electronic  
6           data” means any information that is in an electronic  
7           or digital format or any electronic or digital ref-  
8           erence that contains information about an individual  
9           or device.

10          (10) FEDERAL PRIVACY LAW.—The term “Fed-  
11          eral privacy law” means the provisions of this Act,  
12          any other rule or order prescribed by the Agency  
13          under this Act, and the following laws (including any  
14          amendments made to such laws):

15                (A) Title V of the Gramm-Leach-Bliley Act  
16                (Public Law 106–102; 113 Stat. 1338).

17                (B) The Fair Credit Reporting Act (15  
18                U.S.C. 1681 et seq.).

19                (C) The Telemarketing and Consumer  
20                Fraud and Abuse Prevention Act (15 U.S.C.  
21                6101 et seq.).

22                (D) The Fair and Accurate Credit Trans-  
23                actions Act of 2003 (Public Law 108–159; 117  
24                Stat. 1952).

1 (E) The CAN–SPAM Act of 2003 (15  
2 U.S.C. 7701 et seq.).

3 (F) Sections 222, 227, 338(l), 631, and  
4 705 of the Communications Act of 1934 (47  
5 U.S.C. 222, 227, 338(l), 551, 705).

6 (G) The Children’s Online Privacy Protec-  
7 tion Act of 1998 (15 U.S.C. 6501 et seq.).

8 (H) The Right to Financial Privacy Act of  
9 1978 (12 U.S.C. 3401 et seq.).

10 (I) The Identity Theft Assumption and  
11 Deterrence Act of 1998 (Public Law 105–318;  
12 117 Stat. 3007).

13 (J) The General Education Provisions Act  
14 (20 U.S.C. 1221 et seq.) (commonly known as  
15 the “Family Educational Rights and Privacy  
16 Act of 1974”).

17 (K) Section 552a of title 5, United States  
18 Code.

19 (L) The E-Government Act of 2002 (Pub-  
20 lic Law 107–347; 116 Stat. 2899).

21 (M) The Computer Security Act of 1987  
22 (40 U.S.C. 1441 note).

23 (N) The Employee Polygraph Protection  
24 Act of 1988 (29 U.S.C. 2001 et seq.).

1           (O) The Communications Assistance for  
2 Law Enforcement Act (Public Law 103–414;  
3 108 Stat. 4279).

4           (P) Sections 1028A, 1030, 1801, 2710,  
5 and 2721 and chapter 119, of title 18, United  
6 States Code.

7           (Q) The Genetic Information Non-  
8 discrimination Act of 2008 (Public Law 110–  
9 233; 122 Stat. 881).

10          (R) The Taxpayer Browsing Protection  
11 Act (Public Law 105–35; 111 Stat. 1104).

12          (S) The Privacy Protection Act of 1980  
13 (42 U.S.C. 2000aa et seq.).

14          (T) The Cable Communications Policy Act  
15 of 1984 (Public Law 98–549; 98 Stat. 2779).

16          (U) The Do-Not-Call Implementation Act  
17 (Public Law 108–10; 117 Stat. 557).

18          (V) The Wireless Communications and  
19 Public Safety Act of 1999 (Public Law 106–81;  
20 113 Stat. 1286).

21          (W) Title XXX of the Public Health Serv-  
22 ice Act (42 U.S.C. 300jj et seq.).

23          (11) HIGH-RISK DATA PRACTICE.—The term  
24 “high-risk data practice” means an action by a data  
25 aggregator that involves—

1 (A) the use of an automated decision sys-  
2 tem;

3 (B) the processing of data in a manner  
4 that involves an individual's protected class, fa-  
5 miliary status, lawful source of income, financial  
6 status such as the individual's income or as-  
7 sets), veteran status, criminal convictions or ar-  
8 rests, citizenship, past, present, or future phys-  
9 ical or mental health or condition, psychological  
10 states, or any other factor used as a proxy for  
11 identifying any of these characteristics;

12 (C) a systematic processing of publicly ac-  
13 cessible data on a large scale;

14 (D) processing involving the use of new  
15 technologies, or combinations of technologies,  
16 that causes or materially contributes to privacy  
17 harm;

18 (E) decisions about an individual's access  
19 to a product, service, opportunity, or benefit  
20 which is based to any extent on automated deci-  
21 sion system processing;

22 (F) any profiling of individuals on a large  
23 scale;

24 (G) any processing of biometric informa-  
25 tion for the purpose of uniquely identifying an



1 individual, with the exception of one-to-one bio-  
2 metric authentication;

3 (H) combining, comparing, or matching  
4 personal data obtained from multiple sources;

5 (I) processing which involves an individ-  
6 ual's precise geolocation;

7 (J) the processing of personal data of chil-  
8 dren and teens under 17 or other vulnerable in-  
9 dividuals such as the elderly, people with dis-  
10 abilities, and other groups known to be suscep-  
11 tible for exploitation for marketing purposes,  
12 profiling, or automated processing; or

13 (K) consumer scoring or other business  
14 practices that pertain to the eligibility of an in-  
15 dividual, and related terms, rights, benefits, and  
16 privileges, for employment (including hiring, fir-  
17 ing, promotion, demotion, and compensation),  
18 credit, insurance, housing, education, profes-  
19 sional certification, or the provision of health  
20 care and related services.

21 (12) HIGH-RISK DATA PRACTICE IMPACT EVAL-  
22 UATION.—The term “high-risk data practice impact  
23 evaluation” means a study conducted after deploy-  
24 ment of a high-risk data practice that includes, at  
25 a minimum—

1 (A) an evaluation of a high-risk data prac-  
 2 tice’s accuracy, disparate impacts on the basis  
 3 of protected class, and privacy harms;

4 (B) an evaluation of the effectiveness of  
 5 measures taken to minimize risks as outlined in  
 6 any prior high-risk data practice risk assess-  
 7 ments; and

8 (C) recommended measures to further min-  
 9 imize risks to accuracy, disparate impacts on  
 10 the basis of protected class, and privacy harms.

11 (13) HIGH-RISK DATA PRACTICE RISK ASSESS-  
 12 MENT.—The term “high-risk data practice risk as-  
 13 sessment” means a study evaluating a high-risk data  
 14 practice and the high-risk data practice’s develop-  
 15 ment process, including the design and training data  
 16 of the high-risk data practice, if applicable, for likeli-  
 17 hood and severity of risks to accuracy, bias, dis-  
 18 crimination, and privacy harms that includes, at a  
 19 minimum—

20 (A) a detailed description of the high-risk  
 21 data practice, including—

- 22 (i) its design and methodologies;
- 23 (ii) training data characteristics;
- 24 (iii) data; and
- 25 (iv) purpose;

1 (B) an assessment of the relative benefits  
2 and costs of the high-risk data practice in light  
3 of its purpose, potential unintended con-  
4 sequences, and taking into account relevant fac-  
5 tors, including—

6 (i) data minimization practices;

7 (ii) the duration and methods for  
8 which personal data and the results of the  
9 high-risk data practice are stored;

10 (iii) what information about the high-  
11 risk data practice is available to individ-  
12 uals;

13 (iv) the extent to which individuals  
14 have access to the results of the high-risk  
15 data practice and may correct or object to  
16 its results; and

17 (v) the recipients of the results of the  
18 high-risk data practice;

19 (C) an assessment of the risks of privacy  
20 harm posed by the high-risk data practice and  
21 the risks that the high-risk data practice may  
22 result in or contribute to inaccurate, biased, or  
23 discriminatory decisions impacting individuals  
24 or groups of individuals;

1 (D) the decision to accept, reject, or miti-  
2 gate and minimize risks and the measures a  
3 data aggregator will employ including to mini-  
4 mize the risks described in subparagraph (C),  
5 including technological and physical safeguards;

6 (E) an assessment of the environmental  
7 footprint on the development and use system in  
8 terms of carbon emissions; and

9 (F) any potential or permitted use of the  
10 outputs of the high-risk data for other decisions  
11 or purposes such as advertising targeting.

12 (14) INDIVIDUAL.—The term “individual”  
13 means a natural person.

14 (15) PERSON.—The term “person” means an  
15 individual, a local, State, or Federal governmental  
16 entity, a partnership, a company, a corporation, an  
17 association (incorporated or unincorporated), a  
18 trust, an estate, a cooperative organization, another  
19 entity, or any other organization or group of such  
20 entities acting in concert.

21 (16) PERSONAL DATA.—The term “personal  
22 data” means electronic data that, alone or in com-  
23 bination with other data—

24 (A) identifies, relates to, describes, is capa-  
25 ble of being associated with, or could reasonably

1 be linked, directly or indirectly, with a par-  
2 ticular individual, household, or device; or

3 (B) could be used to determine that an in-  
4 dividual or household is part of a protected  
5 class.

6 (17) PRECISE GEOLOCATION.—The term “pre-  
7 cise geolocation” means any data that is derived  
8 from a device and that is used or intended to be  
9 used to locate an individual within a geographic area  
10 that is equal to or less than the area of a circle with  
11 a radius of one thousand, eight hundred and fifty  
12 (1,850) feet.

13 (18) PRIVACY HARM.—The term “privacy  
14 harm” means an adverse consequence, or a potential  
15 adverse consequence, to an individual, a group of in-  
16 dividuals, or society caused, in whole or in part, by  
17 the collection, processing, or sharing of personal  
18 data, including—

19 (A) direct or indirect financial loss or eco-  
20 nomic harm, including financial loss or eco-  
21 nomic harm arising from fraudulent activities  
22 or data security breaches;

23 (B) physical harm, harassment, or a threat  
24 to an individual or property;

1 (C) psychological harm, including anxiety,  
2 embarrassment, fear, other trauma, stigmatiza-  
3 tion, reputational harm, or the revealing or ex-  
4 posing of an individual, or a characteristic of an  
5 individual, in an unexpected way;

6 (D) an adverse outcome or decision, in-  
7 cluding relating to the eligibility of an indi-  
8 vidual for the rights, benefits, or privileges in  
9 credit and insurance (including the denial of an  
10 application or obtaining less favorable terms),  
11 housing, education, professional certification,  
12 employment (including hiring, firing, promotion,  
13 demotion, and compensation), or the provision  
14 of health care and related services;

15 (E) discrimination, including both differen-  
16 tial treatment on the basis of a protected class  
17 and disparate impact on a protected class;

18 (F) the chilling of free expression or action  
19 of an individual, or society generally, due to  
20 perceived or actual pervasive and excessive col-  
21 lection, processing, or sharing of personal data;

22 (G) the use of information technology to  
23 covertly influence an individual's decision-mak-  
24 ing, by targeting and exploiting decision-making  
25 vulnerabilities; and

1 (H) any other adverse consequence, or po-  
2 tential adverse consequence, prohibited by or  
3 defined by Federal privacy laws; provisions of  
4 Federal civil rights laws related to the proc-  
5 essing of personal information; provisions of  
6 Federal consumer protection laws related to the  
7 processing of personal information; the First  
8 Amendment; and other constitutional rights  
9 protecting privacy.

10 (19) PROCESS.—The term “process” means to  
11 perform an operation or set of operations on per-  
12 sonal data, either manually or by automated means,  
13 including collecting, recording, organizing, struc-  
14 turing, storing, adapting or altering, retrieving, con-  
15 sulting, using, disclosing by transmission, sorting,  
16 classifying, disseminating or otherwise making avail-  
17 able, aligning or combining, restricting, erasing or  
18 destroying.

19 (20) PROFILE.—The term “profile” means the  
20 use of an automated decision system to process data  
21 (including personal data and other data) to derive,  
22 infer, predict or evaluate information about an indi-  
23 vidual or group, such as the processing of data to  
24 analyze or predict an individual’s identity, at-  
25 tributes, interests or behavior.

1           (21) PROTECTED CLASS.—The term “protected  
2 class” means the actual or perceived race, color, eth-  
3 nicity, national origin, religion, sex, gender, gender  
4 identity or expression, sexual orientation, familial  
5 status, biometric information, genetic information,  
6 or disability of an individual or a group of individ-  
7 uals.

8           (22) SERVICE PROVIDER.—The term “service  
9 provider” means a data aggregator that collects,  
10 uses, or shares personal data only on behalf of an-  
11 other data aggregator in order to carry out a per-  
12 missible purpose, and only to the extent of such ac-  
13 tivity.

14           (23) SHARE.—The term “share” means dis-  
15 seminating, making available, transferring, or other-  
16 wise communicating orally, in writing, or by elec-  
17 tronic or other means, personal data.

18 **SEC. 3. ESTABLISHMENT OF THE DATA PROTECTION AGEN-**  
19 **CY.**

20           (a) AGENCY ESTABLISHED.—There is established in  
21 the Executive branch an independent agency to be known  
22 as the “Data Protection Agency”, which shall regulate  
23 high-risk data practices and the collection, processing, and  
24 sharing of personal data.

25           (b) DIRECTOR AND DEPUTY DIRECTOR.—



1           (1) IN GENERAL.—There is established a posi-  
2           tion of the Director of the Data Protection Agency  
3           (referred to in this Act as the “Director”), who shall  
4           serve as the head of the Agency.

5           (2) APPOINTMENT.—Subject to paragraph (3),  
6           the Director shall be appointed by the President, by  
7           and with the advice and consent of the Senate.

8           (3) QUALIFICATION.—The President shall  
9           nominate the Director from among members of the  
10          public at large who are well qualified for service at  
11          the Agency based on their knowledge and expertise  
12          in—

13                   (A) technology;

14                   (B) protection of personal data;

15                   (C) civil rights and liberties;

16                   (D) law; and

17                   (E) social sciences.

18          (4) COMPENSATION.—

19                   (A) IN GENERAL.—The Director shall be  
20                   compensated at the rate prescribed for level II  
21                   of the Executive Schedule under section 5313  
22                   of title 5, United States Code.

23                   (B) CONFORMING AMENDMENT.—Section  
24                   5313 of title 5, United States Code, is amended  
25                   by inserting after the item relating to the Fed-

1           eral Transit Administrator, the following new  
2           item: “Director of the Data Protection Agen-  
3           cy.”.

4           (5) DEPUTY DIRECTOR.—There is established  
5           the position of Deputy Director, who shall—

6                   (A) be appointed by the Director; and

7                   (B) serve as the acting Director in the ab-  
8           sence or unavailability of the Director.

9           (6) ACTING DIRECTOR.—In the event of the  
10          death, resignation, sickness, or absence of the Direc-  
11          tor, the President shall designate the Deputy Direc-  
12          tor to serve as acting Director until the return of  
13          the Director, or the appointment of a successor pur-  
14          suant to subsection (b).

15          (c) TERM.—

16                  (1) IN GENERAL.—The Director shall serve for  
17          a term of 5 years.

18                  (2) EXPIRATION OF TERM.—An individual may  
19          serve as Director after the expiration of the term for  
20          which appointed until a successor has been ap-  
21          pointed and qualified.

22                  (3) REMOVAL.—The President may remove the  
23          Director at will.

24                  (4) VACANCY.—A vacancy in the position of Di-  
25          rector that occurs before the expiration of the term

1 for which a Director was appointed shall be filled in  
2 the manner established under paragraph (2), and  
3 the Director appointed to fill such vacancy shall be  
4 appointed only for the remainder of such term.

5 (d) SERVICE RESTRICTION.—No Director or Deputy  
6 Director may engage in any other employment during the  
7 period of service of such person as Director or Deputy Di-  
8 rector.

9 (e) OFFICES.—The principal office of the Agency  
10 shall be in the District of Columbia. The Director may  
11 establish regional offices of the Agency.

12 (f) APPLICABILITY OF OTHER LAWS.—Except as  
13 otherwise provided expressly by law, all Federal laws deal-  
14 ing with public or Federal contracts, property, works, offi-  
15 cers, employees, budgets, or funds, including the provi-  
16 sions of chapter 5 and 7 of title 5, United States Codes,  
17 shall apply to the exercise of the powers of the Agency.

18 **SEC. 4. EXECUTIVE AND ADMINISTRATIVE POWERS.**

19 (a) POWERS OF THE AGENCY.—The Director is au-  
20 thorized to establish the general powers of the Agency with  
21 respect to all executive and administrative functions, in-  
22 cluding—

23 (1) the establishment of rules for conducting  
24 the general business of the Agency, in a manner not  
25 inconsistent with this Act;

- 1           (2) to bind the Agency and enter into contracts;
- 2           (3) directing the establishment and maintenance of divisions or other offices within the Agency,  
3           in order to carry out the responsibilities under this  
4           Act and Federal privacy law, and to satisfy the requirements of applicable law;
- 5           (4) to coordinate and oversee the operation of  
6           all administrative, enforcement, and research activities of the Agency;
- 7           (5) to adopt and use a seal;
- 8           (6) to determine the character of and necessity  
9           for the obligations by the Agency;
- 10          (7) the appointment and supervision of personnel employed by the Agency;
- 11          (8) the distribution of business among personnel appointed and supervised by the Agency;
- 12          (9) the use and expenditure of funds;
- 13          (10) implementing this Act and Federal privacy laws through rules, orders, guidance, interpretations,  
14          statements of policy, examinations, and enforcement  
15          actions; and
- 16          (11) performing such other functions as may be  
17          authorized or required by law.

1 (b) DELEGATION OF AUTHORITY.—The Director  
2 may delegate to any duly authorized employee, representa-  
3 tive, or agent any power vested in the Agency by law.

4 (c) OFFICE RESPONSIBILITIES.—Notwithstanding  
5 subsections (a) and (b), section 3(a), and any other provi-  
6 sion of law, with respect to the specific functional units  
7 and offices described in section 5(b), the Director—

8 (1) shall ensure that such functional units and  
9 offices perform the functions, duties, and coordina-  
10 tion assigned to them under the applicable provision  
11 of section 5; and

12 (2) may not reorganize or rename such units or  
13 offices in a manner not provided for under the appli-  
14 cable provisions of section 5.

15 (d) AUTONOMY OF AGENCY.—No officer or agency  
16 of the United States shall have any authority to require  
17 the Director or any other officer of the Agency to submit  
18 legislative recommendations, or testimony or comments on  
19 legislation, to any officer or agency of the United States  
20 for approval, comments, or review prior to the submission  
21 of such recommendations, testimony, or comments to the  
22 Congress, if such recommendations, testimony, or com-  
23 ments to the Congress include a statement indicating that  
24 the views expressed therein are those of the Director or

1 such officer, and do not necessarily reflect the views of  
2 the President.

3 **SEC. 5. ADMINISTRATION.**

4 (a) PERSONNEL.—

5 (1) APPOINTMENT.—

6 (A) IN GENERAL.—The Director may fix  
7 the number of, and appoint and direct, all em-  
8 ployees of the Agency, in accordance with the  
9 applicable provisions of title 5, United States  
10 Code.

11 (B) EMPLOYEES OF THE AGENCY.—The  
12 Director may employ attorneys, compliance ex-  
13 aminers, compliance supervision analysts,  
14 economists, technologists, data scientists, de-  
15 signers, ethicists, privacy experts, statisticians,  
16 and other employees as may be deemed nec-  
17 essary to conduct the business of the Agency.  
18 Unless otherwise provided expressly by law, any  
19 individual appointed under this section shall be  
20 an employee, as defined in section 2105 of title  
21 5, United States Code, and subject to the provi-  
22 sions of such title and other laws generally ap-  
23 plicable to the employees of an Executive agen-  
24 cy.

25 (C) WAIVER AUTHORITY.—

1 (i) IN GENERAL.—In making any ap-  
2 pointment under subparagraph (A), the  
3 Director may waive the requirements of  
4 chapter 33 of title 5, United States Code,  
5 and the regulations implementing such  
6 chapter, to the extent necessary to appoint  
7 employees on terms and conditions that  
8 are consistent with those set forth in sec-  
9 tion 11(1) of the Federal Reserve Act (12  
10 U.S.C. 248(1)), while providing for—

11 (I) fair, credible, and transparent  
12 methods of establishing qualification  
13 requirements for, recruitment for, and  
14 appointments to positions;

15 (II) fair and open competition  
16 and equitable treatment in the consid-  
17 eration and selection of individuals to  
18 positions; and

19 (III) fair, credible, and trans-  
20 parent methods of assigning, reas-  
21 signing, detailing, transferring, and  
22 promoting employees.

23 (ii) VETERANS PREFERENCES.—In  
24 implementing this subparagraph, the Di-  
25 rector shall comply with the provisions of

1 section 2302(b)(11) of title 5, United  
2 States Code, regarding veterans' pref-  
3 erence requirements, in a manner con-  
4 sistent with that in which such provisions  
5 are applied under chapter 33 of that title.  
6 The authority under this subparagraph to  
7 waive the requirements of that chapter 33  
8 shall expire 5 years after the date of enact-  
9 ment of this Act.

10 (D) DUTY TO PROVIDE ADEQUATE STAFF-  
11 ING.—The Director shall ensure that the spe-  
12 cific functional units and offices established  
13 under section 5, as well as other units and of-  
14 fices with supervisory, rulemaking, and enforce-  
15 ment duties, are provided with sufficient staff  
16 to carry out the functions, duties, and coordina-  
17 tion of those units and offices.

18 (E) LIMITATION ON POLITICAL AP-  
19 POINTEES.—

20 (i) IN GENERAL.—In appointing em-  
21 ployees of the Agency who are political ap-  
22 pointees, the Director shall ensure that the  
23 number and duties of such political ap-  
24 pointees are as similar as possible to those  
25 of other Federal regulatory agencies.



1 (ii) POLITICAL APPOINTEES DE-  
2 FINED.—For purposes of this subpara-  
3 graph, the term “political appointee”  
4 means an employee who holds—

5 (I) a position which has been ex-  
6 cepted from the competitive service by  
7 reason of its confidential, policy-deter-  
8 mining, policymaking, or policy-advo-  
9 cating character;

10 (II) a position in the Senior Ex-  
11 ecutive Service as a noncareer ap-  
12 pointee (as such term is defined in  
13 section 3132(a) of title 5, United  
14 States Code); or

15 (III) a position under the Execu-  
16 tive Schedule (subchapter II of chap-  
17 ter 53 of title 5, United States Code).

18 (2) COMPENSATION.—Notwithstanding any oth-  
19 erwise applicable provision of title 5, United States  
20 Code, concerning compensation, including the provi-  
21 sions of chapter 51 and chapter 53, the following  
22 provisions shall apply with respect to employees of  
23 the Agency:

1           (A) The rates of basic pay for all employ-  
2           ees of the Agency may be set and adjusted by  
3           the Director.

4           (B) The Director shall at all times provide  
5           compensation (including benefits) to each class  
6           of employees that, at a minimum, are com-  
7           parable to the compensation and benefits then  
8           being provided by the Board of Governors of  
9           the Federal Reserve System or the Bureau of  
10          Consumer Financial Protection for the cor-  
11          responding class of employees.

12          (C) All such employees shall be com-  
13          pensated (including benefits) on terms and con-  
14          ditions that are consistent with the terms and  
15          conditions set forth in section 11(l) of the Fed-  
16          eral Reserve Act (12 U.S.C. 248(l)).

17          (3) LABOR-MANAGEMENT RELATIONS.—Chap-  
18          ter 71 of title 5, United States Code, shall apply to  
19          the Agency and the employees of the Agency.

20          (b) SPECIFIC FUNCTIONAL UNITS.—

21                (1) OFFICE OF CIVIL RIGHTS.—The Director  
22                shall establish an office whose powers and duties  
23                shall include—

24                        (A) providing oversight and enforcement of  
25                        this Act, rules and orders promulgated under

1 this Act, and Federal privacy laws to ensure  
2 that the collection, processing, and sharing of  
3 personal data is fair, equitable, and non-dis-  
4 criminatory in treatment and effect;

5 (B) developing, establishing, and pro-  
6 moting data processing practices that affirma-  
7 tively further equal opportunity to and expand  
8 access to housing, employment, credit, insur-  
9 ance, education, healthcare, and other aspects  
10 of interstate commerce;

11 (C) coordinating the Agency's civil rights  
12 efforts with other Federal agencies and State  
13 regulators, as appropriate, to promote con-  
14 sistent, efficient, and effective enforcement of  
15 Federal civil rights laws;

16 (D) working with civil rights advocates,  
17 privacy organizations, and data aggregators on  
18 the promotion of compliance with the civil  
19 rights provisions under this Act, rules and or-  
20 ders promulgated under this Act, and Federal  
21 privacy laws;

22 (E) liaising with communities and con-  
23 sumers impacted by practices regulated by this  
24 Act and the Agency, to ensure that their needs  
25 and views are appropriately taken into account;

1 (F) providing annual reports to Congress  
2 on the efforts of the Agency to fulfill its civil  
3 rights mandate; and

4 (G) such additional powers and duties as  
5 the Director may determine are appropriate.

6 (2) RESEARCH.—The Director shall establish a  
7 unit whose functions shall include researching, ana-  
8 lyzing, assessing, and reporting on—

9 (A) the collection and processing of per-  
10 sonal data, including automated decision sys-  
11 tems;

12 (B) the collection and processing of per-  
13 sonal data by government agencies, including  
14 contracts between government agencies and  
15 data aggregators; and

16 (C) unfair, deceptive, or discriminatory  
17 outcomes that result or are likely to result from  
18 the use of automated decision systems, includ-  
19 ing disparate treatment or disparate impact on  
20 the basis of protected class or proxies for pro-  
21 tected class.

22 (3) COLLECTING AND TRACKING COM-  
23 PLAINTS.—

24 (A) IN GENERAL.—

1 (i) ESTABLISHMENT OF UNIT.—The  
2 Director shall establish a unit, the func-  
3 tions of which shall include identifying and  
4 facilitating the development of best prac-  
5 tices for consumers to file a complaint, and  
6 establishing a single toll-free telephone  
7 number, a publicly available website, and a  
8 publicly available database, or utilizing an  
9 existing publicly available database, to fa-  
10 cilitate the centralized collection of, moni-  
11 toring of, and response to complaints re-  
12 garding the collection, processing, and  
13 sharing of personal data.

14 (ii) WEBSITE REQUIREMENTS.—The  
15 Director shall ensure that—

16 (I) the landing page of the main  
17 website of the Agency contains a clear  
18 and conspicuous hyperlink to the com-  
19 plaint database described in clause (i)  
20 and shall ensure that such database is  
21 user-friendly and in plain writing, as  
22 that term is defined in section 3 of  
23 the Plain Writing Act of 2010 (5  
24 U.S.C. 301 note); and

1 (II) that all information on the  
2 website or the database that explains  
3 how a complaint with the Agency, as  
4 well as reports of the Agency with re-  
5 spect to information contained in that  
6 database, shall be provided in each of  
7 the 5 most commonly spoken lan-  
8 guages, other than English, in the  
9 United States, as determined by the  
10 Bureau of the Census on an ongoing  
11 basis, and in formats accessible to in-  
12 dividuals with hearing or vision im-  
13 pairments.

14 (B) PUBLIC AVAILABILITY OF INFORMA-  
15 TION.—

16 (i) IN GENERAL.—The Director  
17 shall—

18 (I) make all complaints available  
19 to the public on a website of the  
20 Agency;

21 (II) place a clear and con-  
22 spicuous hyperlink on the landing  
23 page of the main website of the Agen-  
24 cy to the website described under sub-  
25 clause (I); and

1 (III) ensure that such website—  
2 (aa) is searchable and sort-  
3 able by an data aggregator; and  
4 (bb) is user-friendly and  
5 written in plain language.

6 (ii) REMOVAL OF PERSONAL DATA.—  
7 In making the information described under  
8 clause (i) available to the public, the Direc-  
9 tor shall remove all personal data.

10 (c) AGENCY OMBUDSMAN.—

11 (1) ESTABLISHMENT REQUIRED.—The Director  
12 shall appoint an ombudsman.

13 (2) DUTIES OF OMBUDSMAN.—The ombudsman  
14 appointed in accordance with paragraph (1) shall—

15 (A) act as a liaison between the Agency  
16 and any affected person with respect to any  
17 problem that such person may have in dealing  
18 with the Agency, resulting from the regulatory  
19 activities of the Agency; and

20 (B) assure that safeguards exist to encour-  
21 age complainants to come forward and preserve  
22 confidentiality.

23 **SEC. 6. COORDINATION.**

24 The Agency shall coordinate with the Consumer Fi-  
25 nancial Protection Bureau, the Federal Communications

1 Commission, the Federal Trade Commission, the Depart-  
2 ment of Commerce, the Department of Health and  
3 Human Services, the Department of Housing and Urban  
4 Development, the Department of Education, the Equal  
5 Employment Opportunity Commission, the National Secu-  
6 rity Agency, the National Institute of Standards and  
7 Technology, the White House Office of Science and Tech-  
8 nology Policy, the Cybersecurity and Infrastructure Secu-  
9 rity Agency, and other Federal agencies and State regu-  
10 lators, as appropriate, to promote consistent regulatory  
11 treatment of personal data.

12 **SEC. 7. APPEARANCES BEFORE AND REPORTS TO CON-**  
13 **GRESS.**

14 (a) APPEARANCES BEFORE CONGRESS.—The Direc-  
15 tor of the Agency shall appear before Congress at semi-  
16 annual hearings regarding the reports required under sub-  
17 section (b).

18 (b) REPORTS REQUIRED.—The Agency shall, concur-  
19 rent with each semi-annual hearing referred to in sub-  
20 section (a), prepare and submit to the President and Con-  
21 gress, a report, beginning with the session following the  
22 designated transfer date, and shall publish such report on  
23 the website of the Agency.

24 (c) CONTENTS.—The reports required by subsection  
25 (b) shall include—



1           (1) a discussion of the significant problems  
2           faced by persons in exercising their rights under this  
3           Act and Federal privacy laws;

4           (2) a justification of the budget request of the  
5           previous year;

6           (3) a list of the significant rules and orders  
7           adopted by the Agency, as well as other significant  
8           initiatives conducted by the Agency, during the pre-  
9           ceding year and the plan of the Agency for rules, or-  
10          ders, or other initiatives to be undertaken during the  
11          upcoming period;

12          (4) an analysis of complaints about practices  
13          relating to the collection, processing, or sharing of  
14          personal data that the Agency has received and col-  
15          lected in its central database on complaints during  
16          the preceding year;

17          (5) a list, with a brief statement of the issues,  
18          of the public supervisory and enforcement actions to  
19          which the Agency was a party during the preceding  
20          year;

21          (6) the actions taken regarding rules, orders,  
22          and supervisory actions with respect to data  
23          aggregators;

1           (7) an assessment of significant actions by  
2 State attorneys general or State regulators relating  
3 to this Act or other Federal privacy laws;

4           (8) an analysis of the efforts of the Agency to  
5 fulfill the civil rights mandate of the Agency; and

6           (9) an analysis of the efforts of the Agency to  
7 increase workforce and contracting diversity.

8 **SEC. 8. FUNDING; PENALTIES AND FINES.**

9           (a) FUNDING.—

10           (1) ASSESSMENTS, FEES, CHARGES.—

11           (A) GENERAL AUTHORITY.—The Director  
12 may collect an assessment, fee, or other charge  
13 from a data aggregator that has annual gross  
14 revenues that exceed \$25,000,000 or annually  
15 collects, uses, or shares, alone or in combina-  
16 tion, the personal data of 50,000 or more indi-  
17 viduals, households, or devices.

18           (B) DETERMINATION OF AMOUNT.—In es-  
19 tablishing the amount of any assessment, fee,  
20 or charge collected from a data aggregator  
21 under this section, the Director may take into  
22 account any factor that the Director determines  
23 is appropriate.

24           (2) AUTHORITY OF DIRECTOR.—The Director  
25 shall have sole authority to determine the manner in

1       which the obligations of the Agency shall be incurred  
2       and its disbursements and expenses allowed and  
3       paid, in accordance with this section, except as pro-  
4       vided in chapter 71 of title 5, United States Code  
5       (with respect to compensation).

6       (b) DATA PROTECTION AGENCY FUND.—

7               (1) SEPARATE FUND IN FEDERAL RESERVE ES-  
8       TABLISHED.—There is established in the Federal  
9       Reserve a separate fund, to be known as the “Data  
10      Protection Agency Fund” (referred to in this section  
11     as the “Agency Fund”). The Agency Fund shall be  
12     maintained and established at a Federal reserve  
13     bank, in accordance with such requirements as the  
14     Board of Governors may impose.

15              (2) FUND RECEIPTS.—All amounts transferred  
16     to the Agency under subsection (a) shall be depos-  
17     ited into the Agency Fund.

18              (3) INVESTMENT AUTHORITY.—

19                      (A) AMOUNTS IN AGENCY FUND MAY BE  
20     INVESTED.—The Agency may request the  
21     Board of Governors to direct the investment of  
22     the portion of the Agency Fund that is not, in  
23     the judgment of the Agency, required to meet  
24     the current needs of the Agency.

1           (B) ELIGIBLE INVESTMENTS.—Invest-  
2           ments authorized by this paragraph shall be  
3           made in obligations of the United States or ob-  
4           ligations that are guaranteed as to principal  
5           and interest by the United States, with matu-  
6           rities suitable to the needs of the Agency Fund,  
7           as determined by the Agency.

8           (C) INTEREST AND PROCEEDS CRED-  
9           ITED.—The interest on, and the proceeds from  
10          the sale or redemption of, any obligations held  
11          in the Agency Fund shall be credited to the  
12          Agency Fund.

13       (c) USE OF FUNDS.—

14           (1) IN GENERAL.—Funds obtained by, trans-  
15          ferred to, or credited to the Agency Fund shall be  
16          immediately available to the Agency and under the  
17          control of the Director, and shall remain available  
18          until expended, to pay the expenses of the Agency in  
19          carrying out its duties and responsibilities. The com-  
20          pensation of the Director and other employees of the  
21          Agency and all other expenses thereof may be paid  
22          from, obtained by, transferred to, or credited to the  
23          Agency Fund under this section.

24           (2) FUNDS THAT ARE NOT GOVERNMENT  
25          FUNDS.—Funds obtained by or transferred to the

1 Agency Fund shall not be construed to be Govern-  
2 ment funds or appropriated monies.

3 (3) AMOUNTS NOT SUBJECT TO APPORTION-  
4 MENT.—Notwithstanding any other provision of law,  
5 amounts in the Agency Fund and in the Civil Pen-  
6 alty Fund established under subsection (d) shall not  
7 be subject to apportionment for purposes of chapter  
8 15 of title 31, United States Code, or under any  
9 other authority.

10 (d) PENALTIES AND FINES.—

11 (1) ESTABLISHMENT OF VICTIMS RELIEF FUND  
12 .—There is established in the Federal Reserve a sep-  
13 arate fund, to be known as the “Data Protection  
14 Civil Penalty Fund” (referred to in this section as  
15 the “Civil Penalty Fund”). The Civil Penalty Fund  
16 shall be maintained and established at a Federal re-  
17 serve bank, in accordance with such requirements as  
18 the Board of Governors may impose. If the Agency  
19 obtains a civil penalty against any person in any ju-  
20 dicial or administrative action under Federal laws,  
21 the Agency shall deposit into the Civil Penalty Fund,  
22 the amount of the penalty collected.

23 (2) PAYMENT TO VICTIMS.—Amounts in the  
24 Civil Penalty Fund shall be available to the Agency,  
25 without fiscal year limitation, for payments to the

1 victims of activities for which civil penalties have  
2 been imposed under this Act and for other violations  
3 of other Federal privacy laws. If individual victims  
4 can be identified through reasonable effort, and the  
5 distributions are sufficiently large to make individual  
6 distributions economically viable, penalties should be  
7 distributed directly to individual victims. To the ex-  
8 tent that individuals cannot be located or such re-  
9 dress, payments or compensation, or other monetary  
10 relief are otherwise not practicable or economically  
11 viable, the Agency may—

12 (A) use such funds for the purpose of con-  
13 sumer or business education relating to data  
14 protection or for the purpose of engaging in  
15 technological research that the Agency con-  
16 siders necessary to enforce this Act and Federal  
17 privacy laws; and

18 (B) utilize a cy-pres approach to distribute  
19 funds in order to advance data protection and  
20 privacy in the United States. The Agency may  
21 identify recipients, including charitable and civil  
22 society organizations, whose interests reason-  
23 able approximate those of the victims of the ac-  
24 tivities for which civil penalties have been im-

1           posed and distribute funds from the Civil Pen-  
2           alty Fund to those recipients.

3 **SEC. 9. PURPOSE, OBJECTIVES, AND FUNCTIONS.**

4           (a) PURPOSE.—The Agency shall seek to protect indi-  
5           viduals' privacy, prevent and remediate privacy harms,  
6           prevent, remediate, and reduce discrimination on the basis  
7           of protected class through the processing of personal infor-  
8           mation, including both differential treatment on the basis  
9           of a protected class and disparate impact on a protected  
10          class, and limit the collection, processing, and sharing of  
11          personal data; and is authorized to exercise its authorities  
12          under this Act for such purposes.

13          (b) OBJECTIVES.—The Agency is authorized to exer-  
14          cise its authorities under this Act to—

15               (1) protect individuals from violations of this  
16               Act, other Federal privacy laws, or rules and orders  
17               issued under this Act;

18               (2) promote and affirmatively further equal op-  
19               portunity in all aspects of economic life as it relates  
20               to the fair and non-discriminatory processing of per-  
21               sonal information;

22               (3) oversee the use of high-risk data practices;

23               (4) promote the minimization of collection of  
24               personal data for commercial purposes;

25               (5) prevent and remediate privacy harms; and

1           (6) ensure that Federal privacy law is enforced  
2 consistently and in order to protect individuals' pri-  
3 vacy.

4           (c) FUNCTIONS.—The primary functions of the Agen-  
5 cy are—

6           (1) providing leadership and coordination to the  
7 efforts of all Federal departments and agencies to  
8 enforce all Federal statutes, Executive orders, regu-  
9 lations and policies which involve privacy or data  
10 protection;

11           (2) maximizing effort, promoting efficiency, and  
12 eliminating conflict, competition, duplication, and in-  
13 consistency among the operations, functions, and ju-  
14 risdictions of Federal departments and agencies re-  
15 sponsible for privacy or data protection, and data  
16 protection rights and standards;

17           (3) providing active leadership, guidance, edu-  
18 cation, and appropriate assistance to private sector  
19 businesses, organizations, groups, institutions, and  
20 individuals regarding privacy and data protection  
21 rights and standards;

22           (4) requiring and overseeing ex-ante high-risk  
23 data practice risk assessments and ex-post high-risk  
24 data practice impact evaluations to advance fair and  
25 just data practices, including making the assess-



1       ments available to the public as practical under the  
2       law;

3           (5) protecting individuals and groups of individ-  
4       uals from privacy harms;

5           (6) examining the social, ethical, economic, and  
6       civil rights impacts of data collection and processing  
7       practices and proposing remedies;

8           (7) protecting civil rights, combating unlawful  
9       discrimination, and affirmatively furthering equal  
10      opportunity as they relate to the processing of per-  
11      sonal information;

12          (8) ensuring that high-risk data privacy prac-  
13      tices are fair, just, non-deceptive, and do not dis-  
14      criminate against a protected class;

15          (9) collecting, researching, and responding to  
16      complaints;

17          (10) developing model privacy and data protec-  
18      tion standards, guidelines, and policies for use by  
19      the private sector; and

20          (11) enforcing other privacy statutes and rules  
21      as authorized by Congress.

22 **SEC. 10. RULEMAKING AUTHORITY.**

23       (a) IN GENERAL.—The Agency is authorized to exer-  
24      cise its authorities under this Act to administer, enforce,

1 and otherwise implement the provisions of this Act and  
2 Federal privacy law.

3 (b) RULEMAKING, ORDERS, AND GUIDANCE.—

4 (1) GENERAL AUTHORITY.—The Director may  
5 prescribe rules and issue orders and guidance, as  
6 may be necessary or appropriate to enable the Agen-  
7 cy to administer and carry out the purposes and ob-  
8 jectives of this Act and other Federal privacy laws,  
9 and to prevent evasions of this Act and other Fed-  
10 eral privacy laws.

11 (2) REGULATIONS.—The Agency shall issue  
12 such regulations, after notice and comment in ac-  
13 cordance with section 553 of title 5, United States  
14 Code, as may be necessary to carry out this Act.  
15 The Agency shall prescribe rules applicable to a data  
16 aggregator or service provider identifying—

17 (A) high-risk data practices in connection  
18 with the collection, processing, or sharing of  
19 personal data, which may include requirements  
20 for the purpose of auditing, preventing, or re-  
21 stricting such acts or practices;

22 (B) acts or practices in connection with the  
23 collection, processing, or sharing of personal  
24 data that causes or are likely to cause privacy  
25 harm to individuals or groups of individuals,

1 which may include requirements for the purpose  
2 of preventing or restricting such acts or prac-  
3 tices;

4 (C) unlawful, unfair, deceptive, abusive, or  
5 discriminatory acts or practices in connection  
6 with the collection, processing, or sharing of  
7 personal data, which may include requirements  
8 for the purpose of preventing or restricting such  
9 acts or practices, for the purpose of preventing  
10 disparate impacts on the basis of protected  
11 class, or for the purpose of affirmatively fur-  
12 thering equal opportunity;

13 (D) rights that data aggregators must pro-  
14 vide to individuals, including the right to access  
15 and correct, limit the processing of, and request  
16 deletion of the individual's personal data; and

17 (E) obligations on data aggregators, in-  
18 cluding transparency about business practices,  
19 data collection limitations, processing and dis-  
20 closure limitations, purpose specification and  
21 legal basis for processing requirements, ac-  
22 countability requirements, confidentiality and  
23 security requirements, and data accuracy re-  
24 quirements.

1           (3) NO LIMITATION.—Rules prescribed under  
2 this section shall not limit the authority of the Agen-  
3 cy to administer, enforce, and otherwise implement  
4 the provisions of this Act and Federal privacy law.

5           (4) STANDARDS FOR RULEMAKING.—In pre-  
6 scribing a rule under this Act or Federal privacy  
7 laws—

8                   (A) the Agency shall consider the impact  
9 of proposed rules on an individual or groups of  
10 individuals;

11                   (B) the Agency may provide that a rule  
12 shall only apply to a subcategory of data  
13 aggregators, as defined by the Agency; and

14                   (C) the Agency shall consult with civil soci-  
15 ety groups and members of the public.

16           (5) RULE OF CONSTRUCTION.—Nothing in this  
17 paragraph may be construed to require the Agency  
18 to engage in cost-benefit analysis or submit a rule-  
19 making for review to the President or the Office of  
20 Management and Budget.

21           (6) STANDARD FOR REVIEW.—If this Act is si-  
22 lent or ambiguous, and the Agency has followed the  
23 procedures in section 553 or 554 of title 5, United  
24 States Code, as applicable, a reviewing court shall

1 defer to the Agency’s reasonable or permissible in-  
2 terpretation of this Act.

3 (c) MONITORING.—In order to support its rule-  
4 making and other functions, the Agency shall monitor for  
5 risks to individuals or groups of individuals in the collec-  
6 tion, processing, or sharing of personal data.

7 **SEC. 11. SUPERVISION OF DATA AGGREGATORS.**

8 (a) IN GENERAL.—A large data aggregator is a data  
9 aggregator that satisfies one or more of the following  
10 thresholds:

11 (1) The data aggregator has annual gross reve-  
12 nues that exceed \$25,000,000.

13 (2) The data aggregator annually collects, uses,  
14 or shares, alone or in combination, the personal data  
15 of 50,000 or more individuals, households, or de-  
16 vices.

17 (b) SUPERVISION.—The Agency may require reports  
18 and conduct examinations on a periodic basis of large data  
19 aggregators described in subsection (a) for purposes of—

20 (1) assessing compliance with the requirements  
21 of this Act, rules and orders issued by the Agency,  
22 or other Federal privacy laws;

23 (2) obtaining information about the activities  
24 subject to such laws and the associated compliance  
25 systems or procedures of such entities;

1           (3) detecting and assessing associated risks to  
2 individuals and groups of individuals; and

3           (4) requiring and overseeing high-risk data  
4 practice risk impact assessments and high-risk data  
5 practice impact evaluations to advance fair and just  
6 data practices.

7           (c) PUBLICLY ACCESSIBLE LIST.—The Agency shall  
8 maintain a publicly accessible list of data aggregators that  
9 collect, process, or share personal data of more than  
10 10,000 persons or households, and the permissible pur-  
11 poses for which the data aggregators purport to collect  
12 personal data.

13           (d) MERGER REVIEW.—The Agency shall conduct a  
14 review and submit to the Federal Trade Commission and  
15 Department of Justice a report on the privacy and data  
16 protection implications of—

17           (1) any merger involving a data aggregator de-  
18 scribed in subsection (a); or

19           (2) any merger that proposes the transfer of  
20 personal data of 50,000 or more individuals.

21 **SEC. 12. PROHIBITED ACTS.**

22 It shall be unlawful for—

23           (1) any data aggregator or service provider to  
24 commit any act or omission in violation of this Act,

1 Federal privacy law, or any rule or order issued by  
2 the Agency under this Act;

3 (2) any data aggregator or service provider to  
4 commit any unlawful, unfair, deceptive, abusive, or  
5 discriminatory acts or practices in connection with  
6 the collection, processing, or sharing of personal  
7 data;

8 (3) any data aggregator or service provider to  
9 fail or refuse as required by this Act or Federal pri-  
10 vacy law, or any rule or order issued by the Agency  
11 thereunder—

12 (A) to permit access to or copying of  
13 records;

14 (B) to establish or maintain records; or

15 (C) to make reports or provide information  
16 to the Agency;

17 (4) any person to knowingly or recklessly pro-  
18 vide substantial assistance to a data aggregator or  
19 service provider in violation of this Act or Federal  
20 privacy law, or any rule or order issued thereunder,  
21 and notwithstanding any provision of this Act, the  
22 provider of such substantial assistance shall be  
23 deemed to be in violation of this Act or Federal pri-  
24 vacy law to the same extent as the person to whom  
25 substantial assistance is provided; or

1           (5) any person, data aggregator, or service pro-  
2           vider to re-identify, or attempt to re-identify, an in-  
3           dividual, household, or device from anonymized data,  
4           unless such person, data aggregator, or service pro-  
5           vider is conducting authorized testing to prove per-  
6           sonal data has been anonymized.

7 **SEC. 13. ENFORCEMENT POWERS.**

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

10           (1) AGENCY INVESTIGATION.—The term  
11           “Agency investigation” means any inquiry conducted  
12           by an Agency investigator for the purpose of  
13           ascertaining whether any person is or has been en-  
14           gaged in any conduct that is a violation, as defined  
15           in this section.

16           (2) AGENCY INVESTIGATOR.—The term “Agen-  
17           cy investigator” means any attorney or investigator  
18           employed by the Agency who is charged with the  
19           duty of enforcing or carrying into effect this Act any  
20           other Federal privacy law.

21           (3) CUSTODIAN.—The term “custodian” means  
22           the custodian or any deputy custodian designated by  
23           the Agency.

24           (4) DOCUMENTARY MATERIAL.—The term  
25           “documentary material” includes the original or any



1 copy of any book, document, record, report, memo-  
2 randum, paper, communication, tabulation, chart,  
3 logs, electronic files, or other data or data compila-  
4 tions stored in any medium.

5 (5) VIOLATION.—The term “violation” means  
6 any act or omission that, if proved, would constitute  
7 a violation of any provision of this Act or any other  
8 Federal privacy law.

9 (b) INVESTIGATIONS AND ADMINISTRATIVE DIS-  
10 COVERY.—

11 (1) JOINT INVESTIGATIONS.—

12 (A) IN GENERAL.—The Agency or, where  
13 appropriate, an Agency investigator, may en-  
14 gage in joint investigations and requests for in-  
15 formation, as authorized under this Act.

16 (B) CIVIL RIGHTS.—The authority under  
17 subparagraph (A) includes matters relating to  
18 protection of individuals’ civil rights under this  
19 Act and joint investigations with, and requests  
20 for information from, the Director of the Bu-  
21 reau of Consumer Financial Protection, the  
22 Federal Trade Commission, the Secretary of  
23 Housing and Urban Development, the Depart-  
24 ment of Education, the Equal Employment Op-  
25 portunity Commission, the Department of

1 Health and Human Services, or the Attorney  
2 General.

3 (2) SUBPOENAS.—

4 (A) IN GENERAL.—The Agency or an  
5 Agency investigator may issue subpoenas for  
6 the attendance and testimony of witnesses and  
7 the production of relevant papers, books, docu-  
8 ments, or other material in connection with  
9 hearings under this Act.

10 (B) FAILURE TO OBEY.—In the case of  
11 contumacy or refusal to obey a subpoena issued  
12 pursuant to this subparagraph and served upon  
13 any person, the district court of the United  
14 States for any district in which such person is  
15 found, resides, or transacts business, upon ap-  
16 plication by the Agency or an Agency investi-  
17 gator and after notice to such person, may  
18 issue an order requiring such person to appear  
19 and give testimony or to appear and produce  
20 documents or other material.

21 (C) CONTEMPT.—Any failure to obey an  
22 order of the court under this subparagraph may  
23 be punished by the court as a contempt thereof.

24 (3) DEMANDS.—

1 (A) IN GENERAL.—Whenever the Agency  
2 has reason to believe that any person may be in  
3 possession, custody, or control of any documen-  
4 tary material or tangible things, or may have  
5 any information, relevant to a violation, the  
6 Agency may, before the institution of any pro-  
7 ceedings under this Act, issue in writing, and  
8 cause to be served upon such person, a civil in-  
9 vestigative demand requiring such person to—

10 (i) produce such documentary mate-  
11 rial for inspection and copying or repro-  
12 duction in the form or medium requested  
13 by the Agency;

14 (ii) submit such tangible things;

15 (iii) file written reports or answers to  
16 questions;

17 (iv) give oral testimony concerning  
18 documentary material, tangible things, or  
19 other information; or

20 (v) furnish any combination of such  
21 material, answers, or testimony.

22 (B) REQUIREMENTS.—Each civil investiga-  
23 tive demand shall state the nature of the con-  
24 duct constituting the alleged violation which is

1 under investigation and the provision of law ap-  
2 plicable to such violation.

3 (C) PRODUCTION OF DOCUMENTS.—Each  
4 civil investigative demand for the production of  
5 documentary material shall—

6 (i) describe each class of documentary  
7 material to be produced under the demand  
8 with such definiteness and certainty as to  
9 permit such material to be fairly identified;

10 (ii) prescribe a return date or dates  
11 which will provide a reasonable period of  
12 time within which the material so de-  
13 manded may be assembled and made avail-  
14 able for inspection and copying or repro-  
15 duction; and

16 (iii) identify the custodian to whom  
17 such material shall be made available.

18 (D) PRODUCTION OF THINGS.—Each civil  
19 investigative demand for the submission of tan-  
20 gible things shall—

21 (i) describe each class of tangible  
22 things to be submitted under the demand  
23 with such definiteness and certainty as to  
24 permit such things to be fairly identified;

1           (ii) prescribe a return date or dates  
2           which will provide a reasonable period of  
3           time within which the things so demanded  
4           may be assembled and submitted; and

5           (iii) identify the custodian to whom  
6           such things shall be submitted.

7           (E) DEMAND FOR WRITTEN REPORTS OR  
8           ANSWERS.—Each civil investigative demand for  
9           written reports or answers to questions shall—

10           (i) propound with definiteness and  
11           certainty the reports to be produced or the  
12           questions to be answered;

13           (ii) prescribe a date or dates at which  
14           time written reports or answers to ques-  
15           tions shall be submitted; and

16           (iii) identify the custodian to whom  
17           such reports or answers shall be submitted.

18           (F) ORAL TESTIMONY.—Each civil inves-  
19           tigative demand for the giving of oral testimony  
20           shall—

21           (i) prescribe a date, time, and place at  
22           which oral testimony shall be commenced;  
23           and

24           (ii) identify an Agency investigator  
25           who shall conduct the investigation and the

1           custodian to whom the transcript of such  
2           investigation shall be submitted.

3           (G) SERVICE.—Any civil investigative de-  
4           mand issued, and any enforcement petition  
5           filed, under this paragraph may be served—

6                   (i) by any Agency investigator at any  
7                   place within the territorial jurisdiction of  
8                   any court of the United States; and

9                   (ii) upon any person who is not found  
10                  within the territorial jurisdiction of any  
11                  court of the United States—

12                   (I) in such manner as the Fed-  
13                   eral Rules of Civil Procedure prescribe  
14                   for service in a foreign nation; and

15                   (II) to the extent that the courts  
16                   of the United States have authority to  
17                   assert jurisdiction over such person,  
18                   consistent with due process, the  
19                   United States District Court for the  
20                   District of Columbia shall have the  
21                   same jurisdiction to take any action  
22                   respecting compliance with this sec-  
23                   tion by such person that such district  
24                   court would have if such person were

1                   personally within the jurisdiction of  
2                   such district court.

3                   (H) METHOD OF SERVICE.—Service of any  
4                   civil investigative demand or any enforcement  
5                   petition filed under this paragraph may be  
6                   made upon a person, including any legal entity,  
7                   by—

8                   (i) delivering a duly executed copy of  
9                   such demand or petition to the individual  
10                  or to any partner, executive officer, man-  
11                  aging agent, or general agent of such per-  
12                  son, or to any agent of such person author-  
13                  ized by appointment or by law to receive  
14                  service of process on behalf of such person;

15                  (ii) delivering a duly executed copy of  
16                  such demand or petition to the principal  
17                  office or place of business of the person to  
18                  be served; or

19                  (iii) depositing a duly executed copy in  
20                  the United States mails, by registered or  
21                  certified mail, return receipt requested,  
22                  duly addressed to such person at the prin-  
23                  cipal office or place of business of such  
24                  person.

25                  (I) PROOF OF SERVICE.—

1 (i) IN GENERAL.—A verified return by  
2 the individual serving any civil investiga-  
3 tive demand or any enforcement petition  
4 filed under this paragraph setting forth the  
5 manner of such service shall be proof of  
6 such service.

7 (ii) RETURN RECEIPTS.—In the case  
8 of service by registered or certified mail,  
9 such return shall be accompanied by the  
10 return post office receipt of delivery of  
11 such demand or enforcement petition.

12 (J) PRODUCTION OF DOCUMENTARY MATE-  
13 RIAL.—The production of documentary material  
14 in response to a civil investigative demand shall  
15 be made under a sworn certificate, in such form  
16 as the demand designates, by the person, if a  
17 natural person, to whom the demand is directed  
18 or, if not a natural person, by any person hav-  
19 ing knowledge of the facts and circumstances  
20 relating to such production, to the effect that  
21 all of the documentary material required by the  
22 demand and in the possession, custody, or con-  
23 trol of the person to whom the demand is di-  
24 rected has been produced and made available to  
25 the custodian.



1 (K) SUBMISSION OF TANGIBLE THINGS.—

2 The submission of tangible things in response  
3 to a civil investigative demand shall be made  
4 under a sworn certificate, in such form as the  
5 demand designates, by the person to whom the  
6 demand is directed or, if not a natural person,  
7 by any person having knowledge of the facts  
8 and circumstances relating to such production,  
9 to the effect that all of the tangible things re-  
10 quired by the demand and in the possession,  
11 custody, or control of the person to whom the  
12 demand is directed have been submitted to the  
13 custodian.

14 (L) SEPARATE ANSWERS.—Each reporting  
15 requirement or question in a civil investigative  
16 demand shall be answered separately and fully  
17 in writing under oath, unless it is objected to,  
18 in which event the reasons for the objection  
19 shall be stated in lieu of an answer, and it shall  
20 be submitted under a sworn certificate, in such  
21 form as the demand designates, by the person,  
22 if a natural person, to whom the demand is di-  
23 rected or, if not a natural person, by any per-  
24 son responsible for answering each reporting re-  
25 quirement or question, to the effect that all in-

1           formation required by the demand and in the  
2           possession, custody, control, or knowledge of  
3           the person to whom the demand is directed has  
4           been submitted.

5                   (M) TESTIMONY.—

6                           (i) IN GENERAL.—

7                                   (I) OATH AND RECORDATION.—

8           The examination of any person pursu-  
9           ant to a demand for oral testimony  
10          served under this paragraph shall be  
11          taken before an officer authorized to  
12          administer oaths and affirmations by  
13          the laws of the United States or of  
14          the place at which the examination is  
15          held. The officer before whom oral  
16          testimony is to be taken shall put the  
17          witness on oath or affirmation and  
18          shall personally, or by any individual  
19          acting under the direction of and in  
20          the presence of the officer, record the  
21          testimony of the witness.

22                                   (II) TRANSCRIPTION.—The testi-  
23          mony shall be taken stenographically  
24          and transcribed.

1 (III) TRANSMISSION TO CUSTO-  
2 DIAN.—After the testimony is fully  
3 transcribed, the officer investigator  
4 before whom the testimony is taken  
5 shall promptly transmit a copy of the  
6 transcript of the testimony to the cus-  
7 todian.

8 (ii) PARTIES PRESENT.—Any Agency  
9 investigator before whom oral testimony is  
10 to be taken shall exclude from the place  
11 where the testimony is to be taken all  
12 other persons, except the person giving the  
13 testimony, the attorney for that person,  
14 the officer before whom the testimony is to  
15 be taken, an investigator or representative  
16 of an agency with which the Agency is en-  
17 gaged in a joint investigation, and any ste-  
18 nographer taking such testimony.

19 (iii) LOCATION.—The oral testimony  
20 of any person taken pursuant to a civil in-  
21 vestigative demand shall be taken in the  
22 judicial district of the United States in  
23 which such person resides, is found, or  
24 transacts business, or in such other place  
25 as may be agreed upon by the Agency in-

1           investigator before whom the oral testimony  
2           of such person is to be taken and such per-  
3           son.

4           (iv) ATTORNEY REPRESENTATION.—

5           (I) IN GENERAL.—Any person  
6           compelled to appear under a civil in-  
7           vestigative demand for oral testimony  
8           pursuant to this section may be ac-  
9           companied, represented, and advised  
10          by an attorney.

11          (II) AUTHORITY.—The attorney  
12          may advise a person described in sub-  
13          clause (I), in confidence, either upon  
14          the request of such person or upon  
15          the initiative of the attorney, with re-  
16          spect to any question asked of such  
17          person.

18          (III) OBJECTIONS.—A person de-  
19          scribed in subclause (I), or the attor-  
20          ney for that person, may object on the  
21          record to any question, in whole or in  
22          part, and such person shall briefly  
23          state for the record the reason for the  
24          objection. An objection may properly  
25          be made, received, and entered upon

1 the record when it is claimed that  
2 such person is entitled to refuse to an-  
3 swer the question on grounds of any  
4 constitutional or other legal right or  
5 privilege, including the privilege  
6 against self-incrimination, but such  
7 person shall not otherwise object to or  
8 refuse to answer any question, and  
9 such person or attorney shall not oth-  
10 erwise interrupt the oral examination.

11 (IV) REFUSAL TO ANSWER.—If a  
12 person described in subclause (I) re-  
13 fuses to answer any question—

14 (aa) the Agency may peti-  
15 tion the district court of the  
16 United States pursuant to this  
17 section for an order compelling  
18 such person to answer such ques-  
19 tion; and

20 (bb) if the refusal is on  
21 grounds of the privilege against  
22 self-incrimination, the testimony  
23 of such person may be compelled  
24 in accordance with the provisions

1 of section 6004 of title 18,  
2 United States Code.

3 (v) TRANSCRIPTS.—For purposes of  
4 this paragraph—

5 (I) after the testimony of any  
6 witness is fully transcribed, the Agen-  
7 cy investigator shall afford the witness  
8 (who may be accompanied by an at-  
9 torney) a reasonable opportunity to  
10 examine the transcript;

11 (II) the transcript shall be read  
12 to or by the witness, unless such ex-  
13 amination and reading are waived by  
14 the witness;

15 (III) any changes in form or sub-  
16 stance which the witness desires to  
17 make shall be entered and identified  
18 upon the transcript by the Agency in-  
19 vestigator, with a statement of the  
20 reasons given by the witness for mak-  
21 ing such changes;

22 (IV) the transcript shall be  
23 signed by the witness, unless the wit-  
24 ness in writing waives the signing, is

1 ill, cannot be found, or refuses to  
2 sign; and

3 (V) if the transcript is not signed  
4 by the witness during the 30-day pe-  
5 riod following the date on which the  
6 witness is first afforded a reasonable  
7 opportunity to examine the transcript,  
8 the Agency investigator shall sign the  
9 transcript and state on the record the  
10 fact of the waiver, illness, absence of  
11 the witness, or the refusal to sign, to-  
12 gether with any reasons given for the  
13 failure to sign.

14 (vi) CERTIFICATION BY INVESTI-  
15 GATOR.—The Agency investigator shall  
16 certify on the transcript that the witness  
17 was duly sworn by him or her and that the  
18 transcript is a true record of the testimony  
19 given by the witness, and the Agency in-  
20 vestigator shall promptly deliver the tran-  
21 script or send it by registered or certified  
22 mail to the custodian.

23 (vii) COPY OF TRANSCRIPT.—The  
24 Agency investigator shall furnish a copy of  
25 the transcript (upon payment of reasonable

1 charges for the transcript) to the witness  
2 only, except that the Agency may for good  
3 cause limit such witness to inspection of  
4 the official transcript of his testimony.

5 (viii) WITNESS FEES.—Any witness  
6 appearing for the taking of oral testimony  
7 pursuant to a civil investigative demand  
8 shall be entitled to the same fees and mile-  
9 age which are paid to witnesses in the dis-  
10 trict courts of the United States.

11 (4) CONFIDENTIAL TREATMENT OF DEMAND  
12 MATERIAL.—

13 (A) IN GENERAL.—Documentary materials  
14 and tangible things received as a result of a  
15 civil investigative demand shall be subject to re-  
16 quirements and procedures regarding confiden-  
17 tiality, in accordance with rules established by  
18 the Agency.

19 (B) DISCLOSURE TO CONGRESS.—No rule  
20 established by the Agency regarding the con-  
21 fidentiality of materials submitted to, or other-  
22 wise obtained by, the Agency shall be intended  
23 to prevent disclosure to either House of Con-  
24 gress or to an appropriate committee of the  
25 Congress, except that the Agency is permitted



1 to adopt rules allowing prior notice to any party  
2 that owns or otherwise provided the material to  
3 the Agency and had designated such material  
4 as confidential.

5 (5) PETITION FOR ENFORCEMENT.—

6 (A) IN GENERAL.—Whenever any person  
7 fails to comply with any civil investigative de-  
8 mand duly served upon such person under this  
9 section, or whenever satisfactory copying or re-  
10 production of material requested pursuant to  
11 the demand cannot be accomplished and such  
12 person refuses to surrender such material, the  
13 Agency, through such officers or attorneys as it  
14 may designate, may file, in the district court of  
15 the United States for any judicial district in  
16 which such person resides, is found, or trans-  
17 acts business, and serve upon such person, a  
18 petition for an order of such court for the en-  
19 forcement of this paragraph.

20 (B) SERVICE OF PROCESS.—All process of  
21 any court to which application may be made as  
22 provided in this subparagraph may be served in  
23 any judicial district.

24 (6) PETITION FOR ORDER MODIFYING OR SET-  
25 TING ASIDE DEMAND.—

1           (A) IN GENERAL.—Not later than 20 days  
2 after the service of any civil investigative de-  
3 mand upon any person under subparagraph  
4 (B), or at any time before the return date spec-  
5 ified in the demand, whichever period is short-  
6 er, or within such period exceeding 20 days  
7 after service or in excess of such return date as  
8 may be prescribed in writing, subsequent to  
9 service, by any Agency investigator named in  
10 the demand, such person may file with the  
11 Agency a petition for an order by the Agency  
12 modifying or setting aside the demand.

13           (B) COMPLIANCE DURING PENDENCY.—  
14 The time permitted for compliance with the de-  
15 mand in whole or in part, as determined proper  
16 and ordered by the Agency, shall not run dur-  
17 ing the pendency of a petition under clause (i)  
18 at the Agency, except that such person shall  
19 comply with any portions of the demand not  
20 sought to be modified or set aside.

21           (C) SPECIFIC GROUNDS.—A petition under  
22 subparagraph (A) shall specify each ground  
23 upon which the petitioner relies in seeking re-  
24 lief, and may be based upon any failure of the  
25 demand to comply with the provisions of this

1 section, or upon any constitutional or other  
2 legal right or privilege of such person.

3 (7) CUSTODIAL CONTROL.—At any time during  
4 which any custodian is in custody or control of any  
5 documentary material, tangible things, reports, an-  
6 swers to questions, or transcripts of oral testimony  
7 given by any person in compliance with any civil in-  
8 vestigative demand, such person may file, in the dis-  
9 trict court of the United States for the judicial dis-  
10 trict within which the office of such custodian is sit-  
11 uated, and serve upon such custodian, a petition for  
12 an order of such court requiring the performance by  
13 such custodian of any duty imposed upon him by  
14 this section or rule promulgated by the Agency.

15 (8) JURISDICTION OF COURT.—

16 (A) IN GENERAL.—Whenever any petition  
17 is filed in any district court of the United  
18 States under this paragraph, such court shall  
19 have jurisdiction to hear and determine the  
20 matter so presented, and to enter such order or  
21 orders as may be required to carry out the pro-  
22 visions of this section.

23 (B) APPEAL.—Any final order entered as  
24 described in subparagraph (A) shall be subject

1 to appeal pursuant to section 1291 of title 28,  
2 United States Code.

3 (c) HEARINGS AND ADJUDICATORY PROCEEDINGS.—

4 (1) IN GENERAL.—The Agency is authorized to  
5 conduct hearings and adjudication proceedings with  
6 respect to any person in the manner prescribed by  
7 chapter 5 of title 5, United States Code in order to  
8 ensure or enforce compliance with—

9 (A) the provisions of this Act and other  
10 Federal privacy laws, including any rules pre-  
11 scribed by the Agency under this Act and other  
12 Federal privacy laws; and

13 (B) any other Federal privacy law that the  
14 Agency is authorized to enforce, and any rules  
15 or order prescribed thereunder, unless such  
16 Federal privacy law specifically limits the Agen-  
17 cy from conducting a hearing or adjudication  
18 proceeding and only to the extent of such limi-  
19 tation.

20 (2) SPECIAL RULES FOR CEASE-AND-DESIST  
21 PROCEEDINGS.—

22 (A) ORDERS AUTHORIZED.—

23 (i) IN GENERAL.—If, in the opinion of  
24 the Agency, any data aggregator is engag-  
25 ing or has engaged in an activity that vio-

1           lates a law, rule, or any condition imposed  
2           in writing on the person by the Agency,  
3           the Agency may issue and serve upon the  
4           data aggregator or service provider a no-  
5           tice of charges in respect thereof.

6           (ii) CONTENT OF NOTICE.—The no-  
7           tice under clause (i) shall contain a state-  
8           ment of the facts constituting the alleged  
9           violation or violations, and shall fix a time  
10          and place at which a hearing will be held  
11          to determine whether an order to cease  
12          and desist should issue against the data  
13          aggregator or service provider, such hear-  
14          ing to be held not earlier than 30 days nor  
15          later than 60 days after the date of service  
16          of such notice, unless an earlier or a later  
17          date is set by the Agency, at the request  
18          of any party so served.

19          (iii) CONSENT.—Unless the party or  
20          parties served under clause (ii) appear at  
21          the hearing personally or by a duly author-  
22          ized representative, such person shall be  
23          deemed to have consented to the issuance  
24          of the cease-and-desist order.

1                   (iv) PROCEDURE.—In the event of  
2                   consent under clause (ii), or if, upon the  
3                   record made at any such hearing, the  
4                   Agency finds that any violation specified in  
5                   the notice of charges has been established,  
6                   the Agency may issue and serve upon the  
7                   data aggregator or service provider an  
8                   order to cease and desist from the violation  
9                   or practice. Such order may, by provisions  
10                  which may be mandatory or otherwise, re-  
11                  quire the data aggregator or service pro-  
12                  vider to cease and desist from the subject  
13                  activity, and to take affirmative action to  
14                  correct the conditions resulting from any  
15                  such violation.

16                  (B) EFFECTIVENESS OF ORDER.—A cease-  
17                  and-desist order shall become effective at the  
18                  expiration of 30 days after the date of service  
19                  of an order under subparagraph (A) upon the  
20                  data aggregator or service provider concerned  
21                  (except in the case of a cease-and-desist order  
22                  issued upon consent, which shall become effec-  
23                  tive at the time specified therein), and shall re-  
24                  main effective and enforceable as provided  
25                  therein, except to such extent as the order is

1 stayed, modified, terminated, or set aside by ac-  
2 tion of the Agency or a reviewing court.

3 (C) DECISION AND APPEAL.—Any hearing  
4 provided for in this subsection shall be held in  
5 the Federal judicial district or in the territory  
6 in which the residence or principal office or  
7 place of business of the person is located unless  
8 the person consents to another place, and shall  
9 be conducted in accordance with the provisions  
10 of chapter 5 of title 5 of the United States  
11 Code. After such hearing, and within 90 days  
12 after the Agency has notified the parties that  
13 the case has been submitted to the Agency for  
14 final decision, the Agency shall render its deci-  
15 sion (which shall include findings of fact upon  
16 which its decision is predicated) and shall issue  
17 and serve upon each party to the proceeding an  
18 order or orders consistent with the provisions of  
19 this section. Judicial review of any such order  
20 shall be exclusively as provided in this sub-  
21 section. Unless a petition for review is timely  
22 filed in a court of appeals of the United States,  
23 as provided in subparagraph (D), and there-  
24 after until the record in the proceeding has  
25 been filed as provided in subparagraph (D), the

1 Agency may at any time, upon such notice and  
2 in such manner as the Agency shall determine  
3 proper, modify, terminate, or set aside any such  
4 order. Upon filing of the record as provided, the  
5 Agency may modify, terminate, or set aside any  
6 such order with permission of the court.

7 (D) APPEAL TO COURT OF APPEALS.—Any  
8 party to any proceeding under this subsection  
9 may obtain a review of any order served pursu-  
10 ant to this subparagraph (other than an order  
11 issued with the consent of the person con-  
12 cerned) by the filing in the court of appeals of  
13 the United States for the circuit in which the  
14 principal office of the covered person is located,  
15 or in the United States Court of Appeals for  
16 the District of Columbia Circuit, within 30 days  
17 after the date of service of such order, a written  
18 petition praying that the order of the Agency be  
19 modified, terminated, or set aside. A copy of  
20 such petition shall be forthwith transmitted by  
21 the clerk of the court to the Agency, and there-  
22 upon the Agency shall file in the court the  
23 record in the proceeding, as provided in section  
24 2112 of title 28 of the United States Code.  
25 Upon the filing of such petition, such court



1 shall have jurisdiction, which upon the filing of  
2 the record shall except as provided in the last  
3 sentence of subparagraph (C) be exclusive, to  
4 affirm, modify, terminate, or set aside, in whole  
5 or in part, the order of the Agency. Review of  
6 such proceedings shall be had as provided in  
7 chapter 7 of title 5 of the United States Code.  
8 The judgment and decree of the court shall be  
9 final, except that the same shall be subject to  
10 review by the Supreme Court of the United  
11 States, upon certiorari, as provided in section  
12 1254 of title 28 of the United States Code.

13 (E) NO STAY.—The commencement of pro-  
14 ceedings for judicial review under clause (iv)  
15 shall not, unless specifically ordered by the  
16 court, operate as a stay of any order issued by  
17 the Agency.

18 (3) SPECIAL RULES FOR TEMPORARY CEASE-  
19 AND-DESIST PROCEEDINGS.—

20 (A) IN GENERAL.—Whenever the Agency  
21 determines that the violation specified in the  
22 notice of charges served upon a data  
23 aggregator, including a service provider, pursu-  
24 ant to paragraph (2), or the continuation there-  
25 of, is likely to cause the person to be insolvent

1 or otherwise prejudice the interests of individ-  
2 uals before the completion of the proceedings  
3 conducted pursuant to paragraph (2), the Agen-  
4 cy may issue a temporary order requiring the  
5 data aggregator or service provider to cease and  
6 desist from any such violation or practice and  
7 to take affirmative action to prevent or remedy  
8 such insolvency or other condition pending com-  
9 pletion of such proceedings. Such order may in-  
10 clude any requirement authorized under this  
11 Act. Such order shall become effective upon  
12 service upon the data aggregator or service  
13 provider and, unless set aside, limited, or sus-  
14 pended by a court in proceedings authorized by  
15 clause (ii), shall remain effective and enforce-  
16 able pending the completion of the administra-  
17 tive proceedings pursuant to such notice and  
18 until such time as the Agency shall dismiss the  
19 charges specified in such notice, or if a cease-  
20 and-desist order is issued against the person,  
21 until the effective date of such order.

22 (B) APPEAL.—Not later than 10 days  
23 after the data aggregator or service provider  
24 concerned has been served with a temporary  
25 cease-and-desist order, the data aggregator or

1 service provider may apply to the United States  
2 district court for the judicial district in which  
3 the residence or principal office or place of busi-  
4 ness of such data aggregator or servicer pro-  
5 vider is located, or the United States District  
6 Court for the District of Columbia, for an in-  
7 junction setting aside, limiting, or suspending  
8 the enforcement, operation, or effectiveness of  
9 such order pending the completion of the ad-  
10 ministrative proceedings pursuant to the notice  
11 of charges served upon the data aggregator or  
12 servicer provider under subparagraph (B), and  
13 such court shall have jurisdiction to issue such  
14 injunction.

15 (C) INCOMPLETE OR INACCURATE  
16 RECORDS.—

17 (i) TEMPORARY ORDER.—If a notice  
18 of charges served under paragraph (2)  
19 specifies, on the basis of particular facts  
20 and circumstances, that the books and  
21 records of a data aggregator or service  
22 provider are so incomplete or inaccurate  
23 that the Agency is unable to determine the  
24 financial condition of that data aggregator  
25 or service provider or the details or pur-

1           pose of any transaction or transactions  
2           that may have a material effect on the fi-  
3           nancial condition of that person, the Agen-  
4           cy may issue a temporary order requir-  
5           ing—

6                   (I) the cessation of any activity  
7                   or practice which gave rise, whether in  
8                   whole or in part, to the incomplete or  
9                   inaccurate state of the books or  
10                  records; or

11                  (II) affirmative action to restore  
12                  such books or records to a complete  
13                  and accurate state, until the comple-  
14                  tion of the proceedings under para-  
15                  graph (2)(A).

16           (ii) EFFECTIVE PERIOD.—Any tem-  
17           porary order issued under clause (i)—

18                   (I) shall become effective upon  
19                   service; and

20                   (II) unless set aside, limited, or  
21                   suspended by a court in proceedings  
22                   under subparagraph (B), shall remain  
23                   in effect and enforceable until the ear-  
24                   lier of—

1 (aa) the completion of the  
2 proceeding initiated under para-  
3 graph (2) in connection with the  
4 notice of charges; or

5 (bb) the date the Agency de-  
6 termines, by examination or oth-  
7 erwise, that the books and  
8 records of the covered person or  
9 service provider are accurate and  
10 reflect the financial condition  
11 thereof.

12 (4) SPECIAL RULES FOR ENFORCEMENT OF OR-  
13 DERS.—

14 (A) IN GENERAL.—The Agency may in its  
15 discretion apply to the United States district  
16 court within the jurisdiction of which the prin-  
17 cipal office or place of business of the person is  
18 located, for the enforcement of any effective  
19 and outstanding notice or order issued under  
20 this section, and such court shall have jurisdic-  
21 tion and power to order and require compliance  
22 herewith.

23 (B) EXCEPTION.—Except as otherwise  
24 provided in this subparagraph, no court shall  
25 have jurisdiction to affect by injunction or oth-

1           erwise the issuance or enforcement of any no-  
2           tice or order or to review, modify, suspend, ter-  
3           minate, or set aside any such notice or order.

4           (5) RULES.—The Agency shall prescribe rules  
5           establishing such procedures as may be necessary to  
6           carry out this paragraph.

7           (d) LITIGATION AUTHORITY.—

8           (1) IN GENERAL.—If any person violates this  
9           Act, a rule or order issued under this Act, or a Fed-  
10          eral privacy law, the Agency may commence a civil  
11          action against such person to impose a civil penalty  
12          or to seek all appropriate legal and equitable relief  
13          including a permanent or temporary injunction as  
14          permitted by law.

15          (2) REPRESENTATION.—The Agency may act in  
16          its own name and through its own attorneys in en-  
17          forcing any provision of this Act, rules thereunder,  
18          or any other law or regulation, or in any action, suit,  
19          or proceeding to which the Agency is a party.

20          (3) COMPROMISE OF ACTIONS.—The Agency  
21          may compromise or settle any action if such com-  
22          promise is approved by the court.

23          (4) NOTICE TO THE ATTORNEY GENERAL.—

24                (A) IN GENERAL.—When commencing a  
25          civil action under this Act or any Federal pri-

1           vacy law, or any rule thereunder, the Agency  
2           shall notify the Attorney General.

3           (B) NOTICE AND COORDINATION.—

4           (i) NOTICE OF OTHER ACTIONS.—In  
5           addition to any notice required under sub-  
6           paragraph (A), the Agency shall notify the  
7           Attorney General concerning any action,  
8           suit, or proceeding to which the Agency is  
9           a party, except an action, suit, or pro-  
10          ceeding that involves a violation of this Act  
11          or a Federal privacy law.

12          (ii) COORDINATION.—In order to  
13          avoid conflicts and promote consistency re-  
14          garding litigation of matters under Federal  
15          law, the Attorney General and the Agency  
16          shall consult regarding the coordination of  
17          investigations and proceedings, including  
18          by negotiating an agreement for coordina-  
19          tion by not later than 180 days after the  
20          designated transfer date. The agreement  
21          under this subclause shall include provi-  
22          sions to ensure that parallel investigations  
23          and proceedings involving the Federal pri-  
24          vacy laws are conducted in a manner that  
25          avoids conflicts and does not impede the

1 ability of the Attorney General to pros-  
2 ecute violations of Federal criminal laws.

3 (iii) RULE OF CONSTRUCTION.—Noth-  
4 ing in this paragraph shall be construed to  
5 limit the authority of the Agency under  
6 this title, including the authority to inter-  
7 pret Federal privacy law.

8 (5) APPEARANCE BEFORE THE SUPREME  
9 COURT.—The Agency may represent itself in its own  
10 name before the Supreme Court of the United  
11 States, if the Agency makes a written request to the  
12 Attorney General within the 10-day period that be-  
13 gins on the date of entry of the judgment that would  
14 permit any party to file a petition for writ of certio-  
15 rari, and the Attorney General concurs with such re-  
16 quest or fails to take action within 60 days of the  
17 request of the Agency.

18 (6) FORUM.—Any civil action brought under a  
19 Federal privacy law may be brought in a United  
20 States district court or in any court of competent ju-  
21 risdiction of a State in a district in which the de-  
22 fendant is located or resides or is doing business,  
23 and such court shall have jurisdiction to enjoin such  
24 person and to require compliance with any Federal  
25 privacy law.



1           (7) TIME FOR BRINGING ACTION.—Except as  
2 otherwise permitted by law or equity, no action may  
3 be brought under this Act or other Federal privacy  
4 law more than 5 years after the date of discovery of  
5 the violation to which an action relates.

6           (e) RELIEF AVAILABLE.—

7           (1) ADMINISTRATIVE PROCEEDINGS OR COURT  
8 ACTIONS.—

9           (A) JURISDICTION.—The court (or the  
10 Agency, as the case may be) in an action or ad-  
11 judication proceeding brought under this Act or  
12 a Federal privacy law, shall have jurisdiction to  
13 grant any appropriate legal or equitable relief  
14 with respect to a violation of this Act or Fed-  
15 eral privacy law, including a violation of a rule  
16 or order prescribed under this Act or Federal  
17 privacy law.

18           (B) RELIEF.—Relief under this section  
19 may include, without limitation—

20           (i) rescission or reformation of con-  
21 tracts;

22           (ii) refund of moneys or return of real  
23 property;

24           (iii) restitution;

1 (iv) disgorgement of any revenue,  
2 data, or technologies, including automated  
3 decision systems, data sets, or algorithms,  
4 attributable to a violation of this Act, Fed-  
5 eral privacy law, or any rule or order  
6 issued by the Agency under this Act;

7 (v) payment of damages or other mon-  
8 etary relief;

9 (vi) public notification regarding the  
10 violation, including the costs of notifica-  
11 tion;

12 (vii) limits on the activities or func-  
13 tions of the person; and

14 (viii) civil money penalties, as set  
15 forth more fully in paragraph (3).

16 (C) NO EXEMPLARY OR PUNITIVE DAM-  
17 AGES.—Nothing in this subparagraph shall be  
18 construed as authorizing the imposition of ex-  
19 emplary or punitive damages in an action  
20 brought by the Agency.

21 (2) RECOVERY OF COSTS.—In any action  
22 brought by the Agency, a State attorney general, or  
23 any State regulator to enforce this Act or any Fed-  
24 eral privacy law, the Agency, the State attorney gen-  
25 eral, or the State regulator may recover its costs in

1 connection with prosecuting such action if the Agen-  
2 cy, the State attorney general, or the State regulator  
3 is the prevailing party in the action.

4 (3) CIVIL MONEY PENALTY IN COURT AND AD-  
5 MINISTRATIVE ACTIONS.—

6 (A) IN GENERAL.—Any person that vio-  
7 lates, through any act or omission, any provi-  
8 sion of this Act or any Federal privacy law shall  
9 forfeit and pay a civil penalty pursuant to this  
10 subparagraph.

11 (B) PENALTY AMOUNTS.—

12 (i) FIRST TIER.—For any violation of  
13 a law, rule, or final order or condition im-  
14 posed in writing by the Agency, a civil pen-  
15 alty may not exceed—

16 (I) \$5,000 for each day during  
17 which such violation or failure to pay  
18 continues; or

19 (II) \$15,000 for each day during  
20 which such violation or failure to pay  
21 continues if such violation involves the  
22 personal data of individuals under the  
23 age of 13.

24 (ii) SECOND TIER.—Notwithstanding  
25 clause (i), for any person that recklessly

1 engages in a violation of this Act or any  
2 Federal privacy law, a civil penalty may  
3 not exceed—

4 (I) \$25,000 for each day during  
5 which such violation or failure to pay  
6 continues; or

7 (II) \$75,000 for each day during  
8 which such violation or failure to pay  
9 continues if such violation involves the  
10 personal data of individuals under the  
11 age of 13.

12 (iii) THIRD TIER.—Notwithstanding  
13 clauses (i) and (ii), for any person that  
14 knowingly violates this Act or any Federal  
15 privacy law, a civil penalty may not ex-  
16 ceed—

17 (I) \$1,000,000 for each day dur-  
18 ing which such violation continues; or

19 (II) \$3,000,000 for each day dur-  
20 ing which such violation or failure to  
21 pay continues if such violation in-  
22 volves the personal data of individuals  
23 under the age of 13.

24 (C) PENALTIES FOR RE-IDENTIFYING  
25 DATA.—Any person that re-identifies, or at-

1           tempts to re-identify, anonymized data shall be  
2           assessed a third tier civil penalty under sub-  
3           paragraph (B), unless conducting authorized  
4           testing to prove personal data has been  
5           anonymized.

6           (D) MITIGATING FACTORS.—In deter-  
7           mining the amount of any penalty assessed  
8           under subparagraph (B), the Agency or the  
9           court shall take into account the appropriate-  
10          ness of the penalty with respect to—

11                   (i) the size of financial resources and  
12                   good faith of the person charged;

13                   (ii) the gravity of the violation or fail-  
14                   ure to pay;

15                   (iii) the severity of the risks or harms  
16                   to individuals;

17                   (iv) the history of previous violations;

18                   and

19                   (v) such other matters as justice may  
20                   require.

21           (E) AUTHORITY TO MODIFY OR REMIT  
22           PENALTY.—The Agency may compromise, mod-  
23           ify, or remit any penalty which may be assessed  
24           or had already been assessed under subpara-  
25           graph (B). The amount of such penalty, when

1 finally determined, shall be exclusive of any  
2 sums owed by the person to the United States  
3 in connection with the costs of the proceeding,  
4 and may be deducted from any sums owed by  
5 the United States to the person charged.

6 (F) NOTICE AND HEARING.—No civil pen-  
7 alty may be assessed under this subsection with  
8 respect to a violation of this Act or any Federal  
9 privacy law, unless—

10 (i) the Agency gives notice and an op-  
11 portunity for a hearing to the person ac-  
12 cused of the violation; or

13 (ii) the appropriate court has ordered  
14 such assessment and entered judgment in  
15 favor of the Agency.

16 (f) REFERRALS FOR CRIMINAL PROCEEDINGS.—If  
17 the Agency obtains evidence that any person, domestic or  
18 foreign, has engaged in conduct that may constitute a vio-  
19 lation of Federal criminal law, the Agency shall transmit  
20 such evidence to the Attorney General of the United  
21 States, who may institute criminal proceedings under ap-  
22 propriate law. Nothing in this section affects any other  
23 authority of the Agency to disclose information.

1 **SEC. 14. TRANSFERS OF FUNCTIONS.**

2 (a) FEDERAL TRADE COMMISSION.—The authority  
3 of the Federal Trade Commission under a Federal privacy  
4 law to prescribe rules, issue guidelines, or conduct a study  
5 or issue a report mandated under such law shall be trans-  
6 ferred to the Agency on the transfer date. Nothing in this  
7 Act shall be construed to require a mandatory transfer  
8 of any employee of the Federal Trade Commission.

9 (b) AGENCY AUTHORITY.—

10 (1) IN GENERAL.—The Agency shall have all  
11 powers and duties under the Federal privacy laws to  
12 prescribe rules, issue guidelines, or to conduct stud-  
13 ies or issue reports mandated by such laws, that  
14 were vested in the Federal Trade Commission on the  
15 day before the transfer date.

16 (2) FEDERAL TRADE COMMISSION ACT.—The  
17 Agency may enforce a rule prescribed under the  
18 Federal Trade Commission Act (15 U.S.C. 41 et  
19 seq.) by the Federal Trade Commission with respect  
20 to the collection, disclosure, processing and misuse  
21 of personal data.

22 (c) AUTHORITY OF THE FEDERAL TRADE COMMIS-  
23 SION.—No provision of this Act shall be construed as  
24 modifying, limiting, or otherwise affecting the authority  
25 of the Federal Trade Commission, including the authority  
26 with respect to large data collectors described in section

1 11(a)(1) of this Act, under the Federal Trade Commission  
2 Act (15 U.S.C. 41 et seq.), or any other law, other than  
3 the authority under a Federal privacy law to prescribe  
4 rules, issue official guidelines, or conduct a study or issue  
5 a report mandated under such law.

6 (d) AUTHORITY OF THE BUREAU OF CONSUMER FI-  
7 NANCIAL PROTECTION.—No provision of this Act shall be  
8 construed as modifying, limiting, or otherwise affecting  
9 the authority of the Bureau of Consumer Financial Pro-  
10 tection under the Dodd-Frank Wall Street Reform and  
11 Consumer Protection Act (12 U.S.C. 5301 et seq.) or any  
12 other law.

13 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated to the Agen-  
15 cy such sums as may be necessary to carry out this Act.

16 **SEC. 16. RELATION TO FEDERAL AND STATE LAW.**

17 (a) RELATION TO STATE LAW.—

18 (1) RULE OF CONSTRUCTION.—This Act may  
19 not be construed as annulling, altering, or affecting,  
20 or exempting any person subject to the provisions of  
21 this title from complying with, the statutes, regula-  
22 tions, orders, or interpretations in effect in any  
23 State, except to the extent that any such provision  
24 of law is inconsistent with the provisions of this title,  
25 and then only to the extent of the inconsistency.



1           (2) GREATER PROTECTION UNDER STATE  
2           LAW.—For purposes of this paragraph, a statute,  
3           regulation, order, or interpretation in effect in any  
4           State is not inconsistent with the provisions of this  
5           title if the protection that such statute, regulation,  
6           order, or interpretation affords to individuals is  
7           greater than the protection provided under this Act.  
8           A determination regarding whether a statute, regu-  
9           lation, order, or interpretation in effect in any State  
10          is inconsistent with the provisions of this title may  
11          be made by the Agency on its own motion or in re-  
12          sponse to a nonfrivolous petition initiated by any in-  
13          terested person.

14          (b) RELATION TO OTHER PROVISIONS OF FEDERAL  
15          PRIVACY LAWS THAT RELATE TO STATE LAW.—No pro-  
16          vision of this Act shall be construed as modifying, limiting,  
17          or superseding the operation of any provision of a Federal  
18          privacy law that relates to the application of a law in effect  
19          in any State with respect to such Federal law.

20          (c) PRESERVATION OF ENFORCEMENT POWERS OF  
21          STATES.—The attorney general (or the equivalent thereof)  
22          of any State may bring a civil action in the name of such  
23          State in any district court of the United States in that  
24          State or in State court that is located in that State and  
25          that has jurisdiction over the defendant, to enforce provi-

1 sions of this title or rules or orders issued under this Act,  
2 and to secure remedies under provisions of this title or  
3 remedies otherwise provided under other law. A State reg-  
4 ulator may bring a civil action or other appropriate pro-  
5 ceeding to enforce the provisions of this title or rules or  
6 orders issued under this Act with respect to any entity  
7 that is State-chartered, incorporated, licensed, or other-  
8 wise authorized to do business under State law (except as  
9 provided in paragraph (2)), and to secure remedies under  
10 provisions of this title or remedies otherwise provided  
11 under other provisions of law with respect to such an enti-  
12 ty.

13 (d) PRESERVATION OF STATE AUTHORITY.—

14 (1) STATE CLAIMS.—No provision of this sec-  
15 tion shall be construed as altering, limiting, or af-  
16 fecting the authority of a State attorney general or  
17 any other regulatory or enforcement agency or au-  
18 thority to bring an action or other regulatory pro-  
19 ceeding arising solely under the law in effect in that  
20 State.

21 (2) STATE CONSUMER PROTECTION, PRIVACY,  
22 AND DATA REGULATORS.—No provision of this title  
23 shall be construed as altering, limiting, or affecting  
24 the authority of a State consumer protection, data  
25 protection, or privacy agency (or any agency or of-

1        fice performing like functions) under State law to  
2        adopt rules, initiate enforcement proceedings, or  
3        take any other action with respect to a person regu-  
4        lated by such commission or authority.

5        **SEC. 17. INSPECTOR GENERAL.**

6        Section 12 of the Inspector General Act of 1978 (5  
7        U.S.C. App.) is amended—

8                (1) in paragraph (1), by inserting “the Director  
9                of the Data Protection Agency;” after “the Presi-  
10              dent of the Export-Import Bank;”; and

11              (2) in paragraph (2), by inserting “the Data  
12              Protection Agency,” after “the Export-Import  
13              Bank,”.

○