

117TH CONGRESS
1ST SESSION

S. 2134

To establish the Data Protection Agency.

IN THE SENATE OF THE UNITED STATES

JUNE 17, 2021

Mrs. GILLIBRAND (for herself and Mr. BROWN) introduced the following bill;
which was read twice and referred to the Committee on Commerce,
Science, and Transportation

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 2021”.

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 makes a decision, or fa-
 13 cilitates human decision making.

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 biological
10 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 milial 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; and

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

8 (15) PERSON.—The term “person” means an
9 individual, a local, State, or Federal governmental
10 entity, a partnership, a company, a corporation, an
11 association (incorporated or unincorporated), a
12 trust, an estate, a cooperative organization, another
13 entity, or any other organization or group of such
14 entities acting in concert.

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

18 (A) identifies, relates to, describes, is capa-
19 ble of being associated with, or could reasonably
20 be linked, directly or indirectly, with a par-
21 ticular individual, household, or device; or

22 (B) could be used to determine that an in-
23 dividual or household is part of a protected
24 class.

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

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

14 (A) direct or indirect financial loss or eco-
15 nomic harm, including financial loss or eco-
16 nomic harm arising from fraudulent activities
17 or data security breaches;

18 (B) physical harm, harassment, or a threat
19 to an individual or property;

20 (C) psychological harm, including anxiety,
21 embarrassment, fear, other trauma, stigmatiza-
22 tion, reputational harm, or the revealing or ex-
23 posing of an individual, or a characteristic of an
24 individual, in an unexpected way;

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

10 (E) discrimination, including both differen-
11 tial treatment on the basis of a protected class
12 and disparate impact on a protected class;

13 (F) the chilling of free expression or action
14 of an individual, or society generally, due to
15 perceived or actual pervasive and excessive col-
16 lection, processing, or sharing of personal data;

17 (G) the use of information technology to
18 covertly influence an individual's decision-mak-
19 ing, by targeting and exploiting decision-making
20 vulnerabilities; and

21 (H) any other adverse consequence, or po-
22 tential adverse consequence, prohibited by or
23 defined by Federal privacy laws; provisions of
24 Federal civil rights laws related to the proc-
25 essing of personal information; provisions of

1 Federal consumer protection laws related to the
2 processing of personal information; the First
3 Amendment; and other constitutional rights
4 protecting privacy.

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

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

21 (21) PROTECTED CLASS.—The term “protected
22 class” means the actual or perceived race, color, eth-
23 nicity, national origin, religion, sex, gender, gender
24 identity or expression, sexual orientation, familial
25 status, biometric information, genetic information,

1 or disability of an individual or a group of individ-
2 uals.

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

9 (23) SHARE.—The term “share” means dis-
10 seminating, making available, transferring, or other-
11 wise communicating orally, in writing, or by elec-
12 tronic or other means, personal data.

13 **SEC. 3. ESTABLISHMENT OF THE DATA PROTECTION AGEN-**
14 **CY.**

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

20 (b) DIRECTOR AND DEPUTY DIRECTOR.—

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

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

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

9 (A) technology;

10 (B) protection of personal data;

11 (C) civil rights and liberties;

12 (D) law; and

13 (E) social sciences.

14 (4) COMPENSATION.—

15 (A) IN GENERAL.—The Director shall be
 16 compensated at the rate prescribed for level II
 17 of the Executive Schedule under section 5313
 18 of title 5, United States Code.

19 (B) CONFORMING AMENDMENT.—Section
 20 5313 of title 5, United States Code, is amended
 21 by inserting after the item relating to the Fed-
 22 eral Transit Administrator, the following new
 23 item: “Director of the Data Protection Agen-
 24 cy.”.

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

3 (A) be appointed by the Director; and

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

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

12 (c) TERM.—

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

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

19 (3) REMOVAL.—The President may remove the
20 Director at will.

21 (4) VACANCY.—A vacancy in the position of Di-
22 rector that occurs before the expiration of the term
23 for which a Director was appointed shall be filled in
24 the manner established under paragraph (2), and

1 the Director appointed to fill such vacancy shall be
2 appointed only for the remainder of such term.

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

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

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

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

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

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

24 (2) to bind the Agency and enter into contracts;

1 (3) directing the establishment and mainte-
2 nance 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 re-
5 quirements of applicable law;

6 (4) to coordinate and oversee the operation of
7 all administrative, enforcement, and research activi-
8 ties of the Agency;

9 (5) to adopt and use a seal;

10 (6) to determine the character of and necessity
11 for the obligations by the Agency;

12 (7) the appointment and supervision of per-
13 sonnel employed by the Agency;

14 (8) the distribution of business among per-
15 sonnel appointed and supervised by the Agency;

16 (9) the use and expenditure of funds;

17 (10) implementing this Act and Federal privacy
18 laws through rules, orders, guidance, interpretations,
19 statements of policy, examinations, and enforcement
20 actions; and

21 (11) performing such other functions as may be
22 authorized or required by law.

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

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

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

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

12 (d) AUTONOMY OF AGENCY.—No officer or agency
13 of the United States shall have any authority to require
14 the Director or any other officer of the Agency to submit
15 legislative recommendations, or testimony or comments on
16 legislation, to any officer or agency of the United States
17 for approval, comments, or review prior to the submission
18 of such recommendations, testimony, or comments to the
19 Congress, if such recommendations, testimony, or com-
20 ments to the Congress include a statement indicating that
21 the views expressed therein are those of the Director or
22 such officer, and do not necessarily reflect the views of
23 the President.

24 **SEC. 5. ADMINISTRATION.**

25 (a) PERSONNEL.—

1 (1) APPOINTMENT.—

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

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

21 (C) WAIVER AUTHORITY.—

22 (i) IN GENERAL.—In making any ap-
23 pointment under subparagraph (A), the
24 Director may waive the requirements of
25 chapter 33 of title 5, United States Code,

1 and the regulations implementing such
2 chapter, to the extent necessary to appoint
3 employees on terms and conditions that
4 are consistent with those set forth in sec-
5 tion 11(1) of the Federal Reserve Act (12
6 U.S.C. 248(1)), while providing for—

7 (I) fair, credible, and transparent
8 methods of establishing qualification
9 requirements for, recruitment for, and
10 appointments to positions;

11 (II) fair and open competition
12 and equitable treatment in the consid-
13 eration and selection of individuals to
14 positions; and

15 (III) fair, credible, and trans-
16 parent methods of assigning, reas-
17 signing, detailing, transferring, and
18 promoting employees.

19 (ii) VETERANS PREFERENCES.—In
20 implementing this subparagraph, the Di-
21 rector shall comply with the provisions of
22 section 2302(b)(11) of title 5, United
23 States Code, regarding veterans' pref-
24 erence requirements, in a manner con-
25 sistent with that in which such provisions

are applied under chapter 33 of that title.

The authority under this subparagraph to waive the requirements of that chapter 33 shall expire 5 years after the date of enactment of this Act.

(D) DUTY TO PROVIDE ADEQUATE STAFFING.—The Director shall ensure that the specific functional units and offices established under section 5, as well as other units and offices with supervisory, rulemaking, and enforcement duties, are provided with sufficient staff to carry out the functions, duties, and coordination of those units and offices.

(E) LIMITATION ON POLITICAL APPOINTEES.—

(i) IN GENERAL.—In appointing employees of the Agency who are political appointees, the Director shall ensure that the number and duties of such political appointees are as similar as possible to those of other Federal regulatory agencies.

(ii) POLITICAL APPOINTEES DEFINED.—For purposes of this subparagraph, the term “political appointee” means an employee who holds—

1 (I) a position which has been ex-
2 cepted from the competitive service by
3 reason of its confidential, policy-deter-
4 mining, policymaking, or policy-advo-
5 cating character;

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

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

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

20 (A) The rates of basic pay for all employ-
21 ees of the Agency may be set and adjusted by
22 the Director.

23 (B) The Director shall at all times provide
24 compensation (including benefits) to each class
25 of employees that, at a minimum, are com-

parable to the compensation and benefits then being provided by the Board of Governors of the Federal Reserve System or the Bureau of Consumer Financial Protection for the corresponding class of employees.

(C) All such employees shall be compensated (including benefits) on terms and conditions that are consistent with the terms and conditions set forth in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)).

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

(b) SPECIFIC FUNCTIONAL UNITS.—

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

(A) providing oversight and enforcement of this Act, rules and orders promulgated under this Act, and Federal privacy laws to ensure that the collection, processing, and sharing of personal data is fair, equitable, and non-discriminatory in treatment and effect;

(B) developing, establishing, and promoting data processing practices that affirma-

1 tively further equal opportunity to and expand
2 access to housing, employment, credit, insur-
3 ance, education, healthcare, and other aspects
4 of interstate commerce;

5 (C) coordinating the Agency's civil rights
6 efforts with other Federal agencies and State
7 regulators, as appropriate, to promote con-
8 sistent, efficient, and effective enforcement of
9 Federal civil rights laws;

10 (D) working with civil rights advocates,
11 privacy organizations, and data aggregators on
12 the promotion of compliance with the civil
13 rights provisions under this Act, rules and or-
14 ders promulgated under this Act, and Federal
15 privacy laws;

16 (E) liaising with communities and con-
17 sumers impacted by practices regulated by this
18 Act and the Agency, to ensure that their needs
19 and views are appropriately taken into account;

20 (F) providing annual reports to Congress
21 on the efforts of the Agency to fulfill its civil
22 rights mandate; and

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

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

4 (A) the collection and processing of per-
 5 sonal data, including automated decision sys-
 6 tems;

7 (B) the collection and processing of per-
 8 sonal data by government agencies, including
 9 contracts between government agencies and
 10 data aggregators; and

11 (C) unfair, deceptive, or discriminatory
 12 outcomes that result or are likely to result from
 13 the use of automated decision systems, includ-
 14 ing disparate treatment or disparate impact on
 15 the basis of protected class or proxies for pro-
 16 tected class.

17 (3) COLLECTING AND TRACKING COM-
 18 PLAINTS.—

19 (A) IN GENERAL.—

20 (i) ESTABLISHMENT OF UNIT.—The
 21 Director shall establish a unit, the func-
 22 tions of which shall include identifying and
 23 facilitating the development of best prac-
 24 tices for consumers to file a complaint, and
 25 establishing a single toll-free telephone

1 number, a publicly available website, and a
2 publicly available database, or utilizing an
3 existing publicly available database, to fa-
4 cilitate the centralized collection of, moni-
5 toring of, and response to complaints re-
6 garding the collection, processing, and
7 sharing of personal data.

8 (ii) WEBSITE REQUIREMENTS.—The
9 Director shall ensure that—

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

19 (II) that all information on the
20 website or the database that explains
21 how a complaint with the Agency, as
22 well as reports of the Agency with re-
23 spect to information contained in that
24 database, shall be provided in each of
25 the 5 most commonly spoken lan-

guages, other than English, in the United States, as determined by the Bureau of the Census on an ongoing basis, and in formats accessible to individuals with hearing or vision impairments.

(B) PUBLIC AVAILABILITY OF INFORMATION.—

(i) IN GENERAL.—The Director shall—

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

(II) place a clear and conspicuous hyperlink on the landing page of the main website of the Agency to the website described under subclause (I); and

(III) ensure that such website—

(aa) is searchable and sortable by an data aggregator; and

(bb) is user-friendly and written in plain language.

(ii) REMOVAL OF PERSONAL DATA.—

In making the information described under

1 clause (i) available to the public, the Direc-
2 tor shall remove all personal data.

3 (c) AGENCY OMBUDSMAN.—

4 (1) ESTABLISHMENT REQUIRED.—The Director
5 shall appoint an ombudsman.

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

8 (A) act as a liaison between the Agency
9 and any affected person with respect to any
10 problem that such person may have in dealing
11 with the Agency, resulting from the regulatory
12 activities of the Agency; and

13 (B) assure that safeguards exist to encour-
14 age complainants to come forward and preserve
15 confidentiality.

16 **SEC. 6. COORDINATION.**

17 The Agency shall coordinate with the Consumer Fi-
18 nancial Protection Bureau, the Federal Communications
19 Commission, the Federal Trade Commission, the Depart-
20 ment of Commerce, the Department of Health and
21 Human Services, the Department of Housing and Urban
22 Development, the Department of Education, the Equal
23 Employment Opportunity Commission, the National Secu-
24 rity Agency, the National Institute of Standards and
25 Technology, the White House Office of Science and Tech-

1 nology Policy, the Cybersecurity and Infrastructure Secu-
 2 rity Agency, and other Federal agencies and State regu-
 3 lators, as appropriate, to promote consistent regulatory
 4 treatment of personal data.

5 **SEC. 7. APPEARANCES BEFORE AND REPORTS TO CON-**
 6 **GRESS.**

7 (a) APPEARANCES BEFORE CONGRESS.—The Direc-
 8 tor of the Agency shall appear before Congress at semi-
 9 annual hearings regarding the reports required under sub-
 10 section (b).

11 (b) REPORTS REQUIRED.—The Agency shall, concur-
 12 rent with each semi-annual hearing referred to in sub-
 13 section (a), prepare and submit to the President and Con-
 14 gress, a report, beginning with the session following the
 15 designated transfer date, and shall publish such report on
 16 the website of the Agency.

17 (c) CONTENTS.—The reports required by subsection
 18 (b) shall include—

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

22 (2) a justification of the budget request of the
 23 previous year;

24 (3) a list of the significant rules and orders
 25 adopted by the Agency, as well as other significant

1 initiatives conducted by the Agency, during the pre-
 2 ceding year and the plan of the Agency for rules, or-
 3 ders, or other initiatives to be undertaken during the
 4 upcoming period;

5 (4) an analysis of complaints about practices
 6 relating to the collection, processing, or sharing of
 7 personal data that the Agency has received and col-
 8 lected in its central database on complaints during
 9 the preceding year;

10 (5) a list, with a brief statement of the issues,
 11 of the public supervisory and enforcement actions to
 12 which the Agency was a party during the preceding
 13 year;

14 (6) the actions taken regarding rules, orders,
 15 and supervisory actions with respect to data
 16 aggregators;

17 (7) an assessment of significant actions by
 18 State attorneys general or State regulators relating
 19 to this Act or other Federal privacy laws;

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

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

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

25 (a) FUNDING.—

1 (1) ASSESSMENTS, FEES, CHARGES.—

2 (A) GENERAL AUTHORITY.—The Director
3 may collect an assessment, fee, or other charge
4 from a data aggregator that has annual gross
5 revenues that exceed \$25,000,000 or annually
6 collects, uses, or shares, alone or in combina-
7 tion, the personal data of 50,000 or more indi-
8 viduals, households, or devices.

9 (B) DETERMINATION OF AMOUNT.—In es-
10 tablishing the amount of any assessment, fee,
11 or charge collected from a data aggregator
12 under this section, the Director may take into
13 account any factor that the Director determines
14 is appropriate.

15 (2) AUTHORITY OF DIRECTOR.—The Director
16 shall have sole authority to determine the manner in
17 which the obligations of the Agency shall be incurred
18 and its disbursements and expenses allowed and
19 paid, in accordance with this section, except as pro-
20 vided in chapter 71 of title 5, United States Code
21 (with respect to compensation).

22 (b) DATA PROTECTION AGENCY FUND.—

23 (1) SEPARATE FUND IN FEDERAL RESERVE ES-
24 TABLISHED.—There is established in the Federal
25 Reserve a separate fund, to be known as the “Data

1 Protection Agency Fund” (referred to in this section
 2 as the “Agency Fund”). The Agency Fund shall be
 3 maintained and established at a Federal reserve
 4 bank, in accordance with such requirements as the
 5 Board of Governors may impose.

6 (2) FUND RECEIPTS.—All amounts transferred
 7 to the Agency under subsection (a) shall be depos-
 8 ited into the Agency Fund.

9 (3) INVESTMENT AUTHORITY.—

10 (A) AMOUNTS IN AGENCY FUND MAY BE
 11 INVESTED.—The Agency may request the
 12 Board of Governors to direct the investment of
 13 the portion of the Agency Fund that is not, in
 14 the judgment of the Agency, required to meet
 15 the current needs of the Agency.

16 (B) ELIGIBLE INVESTMENTS.—Invest-
 17 ments authorized by this paragraph shall be
 18 made in obligations of the United States or ob-
 19 ligations that are guaranteed as to principal
 20 and interest by the United States, with matu-
 21 rities suitable to the needs of the Agency Fund,
 22 as determined by the Agency.

23 (C) INTEREST AND PROCEEDS CRED-
 24 ITED.—The interest on, and the proceeds from
 25 the sale or redemption of, any obligations held

1 in the Agency Fund shall be credited to the
2 Agency Fund.

3 (c) USE OF FUNDS.—

4 (1) IN GENERAL.—Funds obtained by, trans-
5 ferred to, or credited to the Agency Fund shall be
6 immediately available to the Agency and under the
7 control of the Director, and shall remain available
8 until expended, to pay the expenses of the Agency in
9 carrying out its duties and responsibilities. The com-
10 pensation of the Director and other employees of the
11 Agency and all other expenses thereof may be paid
12 from, obtained by, transferred to, or credited to the
13 Agency Fund under this section.

14 (2) FUNDS THAT ARE NOT GOVERNMENT
15 FUNDS.—Funds obtained by or transferred to the
16 Agency Fund shall not be construed to be Govern-
17 ment funds or appropriated monies.

18 (3) AMOUNTS NOT SUBJECT TO APPORTION-
19 MENT.—Notwithstanding any other provision of law,
20 amounts in the Agency Fund and in the Civil Pen-
21 alty Fund established under subsection (d) shall not
22 be subject to apportionment for purposes of chapter
23 15 of title 31, United States Code, or under any
24 other authority.

25 (d) PENALTIES AND FINES.—

1 (1) ESTABLISHMENT OF VICTIMS RELIEF
2 FUND.—There is established in the Federal Reserve
3 a separate fund, to be known as the “Data Protec-
4 tion Civil Penalty Fund” (referred to in this section
5 as the “Civil Penalty Fund”). The Civil Penalty
6 Fund shall be maintained and established at a Fed-
7 eral reserve bank, in accordance with such require-
8 ments as the Board of Governors may impose. If the
9 Agency obtains a civil penalty against any person in
10 any judicial or administrative action under Federal
11 laws, the Agency shall deposit into the Civil Penalty
12 Fund, the amount of the penalty collected.

13 (2) PAYMENT TO VICTIMS.—Amounts in the
14 Civil Penalty Fund shall be available to the Agency,
15 without fiscal year limitation, for payments to the
16 victims of activities for which civil penalties have
17 been imposed under this Act and for other violations
18 of other Federal privacy laws. If individual victims
19 can be identified through reasonable effort, and the
20 distributions are sufficiently large to make individual
21 distributions economically viable, penalties should be
22 distributed directly to individual victims. To the ex-
23 tent that individuals cannot be located or such re-
24 dress, payments or compensation, or other monetary

1 relief are otherwise not practicable or economically
2 viable, the Agency may—

3 (A) use such funds for the purpose of con-
4 sumer or business education relating to data
5 protection or for the purpose of engaging in
6 technological research that the Agency con-
7 siders necessary to enforce this Act and Federal
8 privacy laws; and

9 (B) utilize a cy-pres approach to distribute
10 funds in order to advance data protection and
11 privacy in the United States. The Agency may
12 identify recipients, including charitable and civil
13 society organizations, whose interests reason-
14 able approximate those of the victims of the ac-
15 tivities for which civil penalties have been im-
16 posed and distribute funds from the Civil Pen-
17 alty Fund to those recipients.

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

19 (a) **PURPOSE.**—The Agency shall seek to protect indi-
20 viduals’ privacy, prevent and remediate privacy harms,
21 prevent, remediate, and reduce discrimination on the basis
22 of protected class through the processing of personal infor-
23 mation, including both differential treatment on the basis
24 of a protected class and disparate impact on a protected
25 class, and limit the collection, processing, and sharing of

1 personal data; and is authorized to exercise its authorities
2 under this Act for such purposes.

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

5 (1) protect individuals from violations of this
6 Act, other Federal privacy laws, or rules and orders
7 issued under this Act;

8 (2) promote and affirmatively further equal op-
9 portunity in all aspects of economic life as it relates
10 to the fair and non-discriminatory processing of per-
11 sonal information;

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

13 (4) promote the minimization of collection of
14 personal data for commercial purposes;

15 (5) prevent and remediate privacy harms; and

16 (6) ensure that Federal privacy law is enforced
17 consistently and in order to protect individuals' pri-
18 vacy.

19 (c) FUNCTIONS.—The primary functions of the Agen-
20 cy are—

21 (1) providing leadership and coordination to the
22 efforts of all Federal departments and agencies to
23 enforce all Federal statutes, Executive orders, regu-
24 lations and policies which involve privacy or data
25 protection;

1 (2) maximizing effort, promoting efficiency, and
2 eliminating conflict, competition, duplication, and in-
3 consistency among the operations, functions, and ju-
4 risdictions of Federal departments and agencies re-
5 sponsible for privacy or data protection, and data
6 protection rights and standards;

7 (3) providing active leadership, guidance, edu-
8 cation, and appropriate assistance to private sector
9 businesses, organizations, groups, institutions, and
10 individuals regarding privacy and data protection
11 rights and standards;

12 (4) requiring and overseeing ex-ante high-risk
13 data practice risk assessments and ex-post high-risk
14 data practice impact evaluations to advance fair and
15 just data practices;

16 (5) protecting individuals and groups of individ-
17 uals from privacy harms;

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

21 (7) protecting civil rights, combating unlawful
22 discrimination, and affirmatively furthering equal
23 opportunity as they relate to the processing of per-
24 sonal information;

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

4 (9) collecting, researching, and responding to
5 complaints;

6 (10) developing model privacy and data protec-
7 tion standards, guidelines, and policies for use by
8 the private sector; and

9 (11) enforcing other privacy statutes and rules
10 as authorized by Congress.

11 **SEC. 10. RULEMAKING AUTHORITY.**

12 (a) IN GENERAL.—The Agency is authorized to exer-
13 cise its authorities under this Act to administer, enforce,
14 and otherwise implement the provisions of this Act and
15 Federal privacy law.

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

17 (1) GENERAL AUTHORITY.—The Director may
18 prescribe rules and issue orders and guidance, as
19 may be necessary or appropriate to enable the Agen-
20 cy to administer and carry out the purposes and ob-
21 jectives of this Act and other Federal privacy laws,
22 and to prevent evasions of this Act and other Fed-
23 eral privacy laws.

24 (2) REGULATIONS.—The Agency shall issue
25 such regulations, after notice and comment in ac-

1 cordance with section 553 of title 5, United States
2 Code, as may be necessary to carry out this Act.
3 The Agency shall prescribe rules applicable to a data
4 aggregator or service provider identifying—

5 (A) high-risk data practices in connection
6 with the collection, processing, or sharing of
7 personal data, which may include requirements
8 for the purpose of auditing, preventing, or re-
9 stricting such acts or practices;

10 (B) acts or practices in connection with the
11 collection, processing, or sharing of personal
12 data that causes or are likely to cause privacy
13 harm to individuals or groups of individuals,
14 which may include requirements for the purpose
15 of preventing or restricting such acts or prac-
16 tices;

17 (C) unlawful, unfair, deceptive, abusive, or
18 discriminatory acts or practices in connection
19 with the collection, processing, or sharing of
20 personal data, which may include requirements
21 for the purpose of preventing or restricting such
22 acts or practices, for the purpose of preventing
23 disparate impacts on the basis of protected
24 class, or for the purpose of affirmatively fur-
25 thering equal opportunity;

1 (D) rights that data aggregators must pro-
 2 vide to individuals, including the right to access
 3 and correct, limit the processing of, and request
 4 deletion of the individual's personal data; and

5 (E) obligations on data aggregators, in-
 6 cluding transparency about business practices,
 7 data collection limitations, processing and dis-
 8 closure limitations, purpose specification and
 9 legal basis for processing requirements, ac-
 10 countability requirements, confidentiality and
 11 security requirements, and data accuracy re-
 12 quirements.

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

17 (4) STANDARDS FOR RULEMAKING.—In pre-
 18 scribing a rule under this Act or Federal privacy
 19 laws—

20 (A) the Agency shall consider the impact
 21 of proposed rules on an individual or groups of
 22 individuals;

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

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

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

8 (6) STANDARD FOR REVIEW.—If this Act is si-
9 lent or ambiguous, and the Agency has followed the
10 procedures in section 553 or 554 of title 5, United
11 States Code, as applicable, a reviewing court shall
12 defer to the Agency’s reasonable or permissible in-
13 terpretation of this Act.

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

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

19 (a) IN GENERAL.—A large data aggregator is a data
20 aggregator that satisfies one or more of the following
21 thresholds:

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

24 (2) The data aggregator annually collects, uses,
25 or shares, alone or in combination, the personal data

1 of 50,000 or more individuals, households, or de-
2 vices.

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

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

9 (2) obtaining information about the activities
10 subject to such laws and the associated compliance
11 systems or procedures of such entities;

12 (3) detecting and assessing associated risks to
13 individuals and groups of individuals; and

14 (4) requiring and overseeing high-risk data
15 practice risk impact assessments and high-risk data
16 practice impact evaluations to advance fair and just
17 data practices.

18 (c) PUBLICLY ACCESSIBLE LIST.—The Agency shall
19 maintain a publicly accessible list of data aggregators that
20 collect, process, or share personal data of more than
21 10,000 persons or households, and the permissible pur-
22 poses for which the data aggregators purport to collect
23 personal data.

24 (d) MERGER REVIEW.—The Agency shall conduct a
25 review and submit to the Federal Trade Commission and

1 Department of Justice a report on the privacy and data
2 protection implications of—

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

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

7 **SEC. 12. PROHIBITED ACTS.**

8 It shall be unlawful for—

9 (1) any data aggregator or service provider to
10 commit any act or omission in violation of this Act,
11 Federal privacy law, or any rule or order issued by
12 the Agency under this Act;

13 (2) any data aggregator or service provider to
14 commit any unlawful, unfair, deceptive, abusive, or
15 discriminatory acts or practices in connection with
16 the collection, processing, or sharing of personal
17 data;

18 (3) any data aggregator or service provider to
19 fail or refuse as required by this Act or Federal pri-
20 vacy law, or any rule or order issued by the Agency
21 thereunder—

22 (A) to permit access to or copying of
23 records;

24 (B) to establish or maintain records; or

1 (C) to make reports or provide information
 2 to the Agency;

3 (4) any person to knowingly or recklessly pro-
 4 vide substantial assistance to a data aggregator or
 5 service provider in violation of this Act or Federal
 6 privacy law, or any rule or order issued thereunder,
 7 and notwithstanding any provision of this Act, the
 8 provider of such substantial assistance shall be
 9 deemed to be in violation of this Act or Federal pri-
 10 vacy law to the same extent as the person to whom
 11 substantial assistance is provided; or

12 (5) any person, data aggregator, or service pro-
 13 vider to re-identify, or attempt to re-identify, an in-
 14 dividual, household, or device from anonymized data,
 15 unless such person, data aggregator, or service pro-
 16 vider is conducting authorized testing to prove per-
 17 sonal data has been anonymized.

18 **SEC. 13. ENFORCEMENT POWERS.**

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

21 (1) AGENCY INVESTIGATION.—The term
 22 “Agency investigation” means any inquiry conducted
 23 by an Agency investigator for the purpose of
 24 ascertaining whether any person is or has been en-

1 gaged in any conduct that is a violation, as defined
 2 in this section.

3 (2) AGENCY INVESTIGATOR.—The term “Agen-
 4 cy investigator” means any attorney or investigator
 5 employed by the Agency who is charged with the
 6 duty of enforcing or carrying into effect this Act any
 7 other Federal privacy law.

8 (3) CUSTODIAN.—The term “custodian” means
 9 the custodian or any deputy custodian designated by
 10 the Agency.

11 (4) DOCUMENTARY MATERIAL.—The term
 12 “documentary material” includes the original or any
 13 copy of any book, document, record, report, memo-
 14 randum, paper, communication, tabulation, chart,
 15 logs, electronic files, or other data or data compila-
 16 tions stored in any medium.

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

21 (b) INVESTIGATIONS AND ADMINISTRATIVE DIS-
 22 COVERY.—

23 (1) JOINT INVESTIGATIONS.—

24 (A) IN GENERAL.—The Agency or, where
 25 appropriate, an Agency investigator, may en-

1 gage in joint investigations and requests for in-
2 formation, as authorized under this Act.

3 (B) CIVIL RIGHTS.—The authority under
4 subparagraph (A) includes matters relating to
5 protection of individuals' civil rights under this
6 Act and joint investigations with, and requests
7 for information from, the Director of the Bu-
8 reau of Consumer Financial Protection, the
9 Federal Trade Commission, the Secretary of
10 Housing and Urban Development, the Depart-
11 ment of Education, the Equal Employment Op-
12 portunity Commission, the Department of
13 Health and Human Services, or the Attorney
14 General.

15 (2) SUBPOENAS.—

16 (A) IN GENERAL.—The Agency or an
17 Agency investigator may issue subpoenas for
18 the attendance and testimony of witnesses and
19 the production of relevant papers, books, docu-
20 ments, or other material in connection with
21 hearings under this Act.

22 (B) FAILURE TO OBEY.—In the case of
23 contumacy or refusal to obey a subpoena issued
24 pursuant to this subparagraph and served upon
25 any person, the district court of the United

1 States for any district in which such person is
2 found, resides, or transacts business, upon ap-
3 plication by the Agency or an Agency investi-
4 gator and after notice to such person, may
5 issue an order requiring such person to appear
6 and give testimony or to appear and produce
7 documents or other material.

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

11 (3) DEMANDS.—

12 (A) IN GENERAL.—Whenever the Agency
13 has reason to believe that any person may be in
14 possession, custody, or control of any documen-
15 tary material or tangible things, or may have
16 any information, relevant to a violation, the
17 Agency may, before the institution of any pro-
18 ceedings under this Act, issue in writing, and
19 cause to be served upon such person, a civil in-
20 vestigative demand requiring such person to—

21 (i) produce such documentary mate-
22 rial for inspection and copying or repro-
23 duction in the form or medium requested
24 by the Agency;

25 (ii) submit such tangible things;

1 (iii) file written reports or answers to
2 questions;

3 (iv) give oral testimony concerning
4 documentary material, tangible things, or
5 other information; or

6 (v) furnish any combination of such
7 material, answers, or testimony.

8 (B) REQUIREMENTS.—Each civil investiga-
9 tive demand shall state the nature of the con-
10 duct constituting the alleged violation which is
11 under investigation and the provision of law ap-
12 plicable to such violation.

13 (C) PRODUCTION OF DOCUMENTS.—Each
14 civil investigative demand for the production of
15 documentary material shall—

16 (i) describe each class of documentary
17 material to be produced under the demand
18 with such definiteness and certainty as to
19 permit such material to be fairly identified;

20 (ii) prescribe a return date or dates
21 which will provide a reasonable period of
22 time within which the material so de-
23 manded may be assembled and made avail-
24 able for inspection and copying or repro-
25 duction; and

1 (iii) identify the custodian to whom
2 such material shall be made available.

3 (D) PRODUCTION OF THINGS.—Each civil
4 investigative demand for the submission of tan-
5 gible things shall—

6 (i) describe each class of tangible
7 things to be submitted under the demand
8 with such definiteness and certainty as to
9 permit such things 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 things so demanded
13 may be assembled and submitted; and

14 (iii) identify the custodian to whom
15 such things shall be submitted.

16 (E) DEMAND FOR WRITTEN REPORTS OR
17 ANSWERS.—Each civil investigative demand for
18 written reports or answers to questions shall—

19 (i) propound with definiteness and
20 certainty the reports to be produced or the
21 questions to be answered;

22 (ii) prescribe a date or dates at which
23 time written reports or answers to ques-
24 tions shall be submitted; and

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

3 (F) ORAL TESTIMONY.—Each civil inves-
4 tigative demand for the giving of oral testimony
5 shall—

6 (i) prescribe a date, time, and place at
7 which oral testimony shall be commenced;
8 and

9 (ii) identify an Agency investigator
10 who shall conduct the investigation and the
11 custodian to whom the transcript of such
12 investigation shall be submitted.

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

16 (i) by any Agency investigator at any
17 place within the territorial jurisdiction of
18 any court of the United States; and

19 (ii) upon any person who is not found
20 within the territorial jurisdiction of any
21 court of the United States—

22 (I) in such manner as the Fed-
23 eral Rules of Civil Procedure prescribe
24 for service in a foreign nation; and

1 (II) to the extent that the courts
2 of the United States have authority to
3 assert jurisdiction over such person,
4 consistent with due process, the
5 United States District Court for the
6 District of Columbia shall have the
7 same jurisdiction to take any action
8 respecting compliance with this sec-
9 tion by such person that such district
10 court would have if such person were
11 personally within the jurisdiction of
12 such district court.

13 (H) METHOD OF SERVICE.—Service of any
14 civil investigative demand or any enforcement
15 petition filed under this paragraph may be
16 made upon a person, including any legal entity,
17 by—

18 (i) delivering a duly executed copy of
19 such demand or petition to the individual
20 or to any partner, executive officer, man-
21 aging agent, or general agent of such per-
22 son, or to any agent of such person author-
23 ized by appointment or by law to receive
24 service of process on behalf of such person;

1 (ii) delivering a duly executed copy of
 2 such demand or petition to the principal
 3 office or place of business of the person to
 4 be served; or

5 (iii) depositing a duly executed copy in
 6 the United States mails, by registered or
 7 certified mail, return receipt requested,
 8 duly addressed to such person at the prin-
 9 cipal office or place of business of such
 10 person.

11 (I) PROOF OF SERVICE.—

12 (i) IN GENERAL.—A verified return by
 13 the individual serving any civil investiga-
 14 tive demand or any enforcement petition
 15 filed under this paragraph setting forth the
 16 manner of such service shall be proof of
 17 such service.

18 (ii) RETURN RECEIPTS.—In the case
 19 of service by registered or certified mail,
 20 such return shall be accompanied by the
 21 return post office receipt of delivery of
 22 such demand or enforcement petition.

23 (J) PRODUCTION OF DOCUMENTARY MATE-
 24 RIAL.—The production of documentary material
 25 in response to a civil investigative demand shall

1 be made under a sworn certificate, in such form
2 as the demand designates, by the person, if a
3 natural person, to whom the demand is directed
4 or, if not a natural person, by any person hav-
5 ing knowledge of the facts and circumstances
6 relating to such production, to the effect that
7 all of the documentary material required by the
8 demand and in the possession, custody, or con-
9 trol of the person to whom the demand is di-
10 rected has been produced and made available to
11 the custodian.

12 (K) SUBMISSION OF TANGIBLE THINGS.—
13 The submission of tangible things in response
14 to a civil investigative demand shall be made
15 under a sworn certificate, in such form as the
16 demand designates, by the person to whom the
17 demand is directed or, if not a natural person,
18 by any person having knowledge of the facts
19 and circumstances relating to such production,
20 to the effect that all of the tangible things re-
21 quired by the demand and in the possession,
22 custody, or control of the person to whom the
23 demand is directed have been submitted to the
24 custodian.

1 (L) SEPARATE ANSWERS.—Each reporting
2 requirement or question in a civil investigative
3 demand shall be answered separately and fully
4 in writing under oath, unless it is objected to,
5 in which event the reasons for the objection
6 shall be stated in lieu of an answer, and it shall
7 be submitted under a sworn certificate, in such
8 form as the demand designates, by the person,
9 if a natural person, to whom the demand is di-
10 rected or, if not a natural person, by any per-
11 son responsible for answering each reporting re-
12 quirement or question, to the effect that all in-
13 formation required by the demand and in the
14 possession, custody, control, or knowledge of
15 the person to whom the demand is directed has
16 been submitted.

17 (M) TESTIMONY.—

18 (i) IN GENERAL.—

19 (I) OATH AND RECORDATION.—

20 The examination of any person pursu-
21 ant to a demand for oral testimony
22 served under this paragraph shall be
23 taken before an officer authorized to
24 administer oaths and affirmations by
25 the laws of the United States or of

1 the place at which the examination is
2 held. The officer before whom oral
3 testimony is to be taken shall put the
4 witness on oath or affirmation and
5 shall personally, or by any individual
6 acting under the direction of and in
7 the presence of the officer, record the
8 testimony of the witness.

9 (II) TRANSCRIPTION.—The testi-
10 mony shall be taken stenographically
11 and transcribed.

12 (III) TRANSMISSION TO CUSTO-
13 DIAN.—After the testimony is fully
14 transcribed, the officer investigator
15 before whom the testimony is taken
16 shall promptly transmit a copy of the
17 transcript of the testimony to the cus-
18 todian.

19 (ii) PARTIES PRESENT.—Any Agency
20 investigator before whom oral testimony is
21 to be taken shall exclude from the place
22 where the testimony is to be taken all
23 other persons, except the person giving the
24 testimony, the attorney for that person,
25 the officer before whom the testimony is to

1 be taken, an investigator or representative
2 of an agency with which the Agency is en-
3 gaged in a joint investigation, and any ste-
4 nographer taking such testimony.

5 (iii) LOCATION.—The oral testimony
6 of any person taken pursuant to a civil in-
7 vestigative demand shall be taken in the
8 judicial district of the United States in
9 which such person resides, is found, or
10 transacts business, or in such other place
11 as may be agreed upon by the Agency in-
12 vestigator before whom the oral testimony
13 of such person is to be taken and such per-
14 son.

15 (iv) ATTORNEY REPRESENTATION.—

16 (I) IN GENERAL.—Any person
17 compelled to appear under a civil in-
18 vestigative demand for oral testimony
19 pursuant to this section may be ac-
20 companied, represented, and advised
21 by an attorney.

22 (II) AUTHORITY.—The attorney
23 may advise a person described in sub-
24 clause (I), in confidence, either upon
25 the request of such person or upon

1 the initiative of the attorney, with re-
2 spect to any question asked of such
3 person.

4 (III) OBJECTIONS.—A person de-
5 scribed in subclause (I), or the attor-
6 ney for that person, may object on the
7 record to any question, in whole or in
8 part, and such person shall briefly
9 state for the record the reason for the
10 objection. An objection may properly
11 be made, received, and entered upon
12 the record when it is claimed that
13 such person is entitled to refuse to an-
14 swer the question on grounds of any
15 constitutional or other legal right or
16 privilege, including the privilege
17 against self-incrimination, but such
18 person shall not otherwise object to or
19 refuse to answer any question, and
20 such person or attorney shall not oth-
21 erwise interrupt the oral examination.

22 (IV) REFUSAL TO ANSWER.—If a
23 person described in subclause (I) re-
24 fuses to answer any question—

1 (aa) the Agency may peti-
2 tion the district court of the
3 United States pursuant to this
4 section for an order compelling
5 such person to answer such ques-
6 tion; and

7 (bb) if the refusal is on
8 grounds of the privilege against
9 self-incrimination, the testimony
10 of such person may be compelled
11 in accordance with the provisions
12 of section 6004 of title 18,
13 United States Code.

14 (v) TRANSCRIPTS.—For purposes of
15 this paragraph—

16 (I) after the testimony of any
17 witness is fully transcribed, the Agen-
18 cy investigator shall afford the witness
19 (who may be accompanied by an at-
20 torney) a reasonable opportunity to
21 examine the transcript;

22 (II) the transcript shall be read
23 to or by the witness, unless such ex-
24 amination and reading are waived by
25 the witness;

1 (III) any changes in form or sub-
2 stance which the witness desires to
3 make shall be entered and identified
4 upon the transcript by the Agency in-
5 vestigator, with a statement of the
6 reasons given by the witness for mak-
7 ing such changes;

8 (IV) the transcript shall be
9 signed by the witness, unless the wit-
10 ness in writing waives the signing, is
11 ill, cannot be found, or refuses to
12 sign; and

13 (V) if the transcript is not signed
14 by the witness during the 30-day pe-
15 riod following the date on which the
16 witness is first afforded a reasonable
17 opportunity to examine the transcript,
18 the Agency investigator shall sign the
19 transcript and state on the record the
20 fact of the waiver, illness, absence of
21 the witness, or the refusal to sign, to-
22 gether with any reasons given for the
23 failure to sign.

24 (vi) CERTIFICATION BY INVESTI-
25 GATOR.—The Agency investigator shall

1 certify on the transcript that the witness
2 was duly sworn by him or her and that the
3 transcript is a true record of the testimony
4 given by the witness, and the Agency in-
5 vestigator shall promptly deliver the tran-
6 script or send it by registered or certified
7 mail to the custodian.

8 (vii) COPY OF TRANSCRIPT.—The
9 Agency investigator shall furnish a copy of
10 the transcript (upon payment of reasonable
11 charges for the transcript) to the witness
12 only, except that the Agency may for good
13 cause limit such witness to inspection of
14 the official transcript of his testimony.

15 (viii) WITNESS FEES.—Any witness
16 appearing for the taking of oral testimony
17 pursuant to a civil investigative demand
18 shall be entitled to the same fees and mile-
19 age which are paid to witnesses in the dis-
20 trict courts of the United States.

21 (4) CONFIDENTIAL TREATMENT OF DEMAND
22 MATERIAL.—

23 (A) IN GENERAL.—Documentary materials
24 and tangible things received as a result of a
25 civil investigative demand shall be subject to re-

1 quirements and procedures regarding confiden-
2 tiality, in accordance with rules established by
3 the Agency.

4 (B) DISCLOSURE TO CONGRESS.—No rule
5 established by the Agency regarding the con-
6 fidentiality of materials submitted to, or other-
7 wise obtained by, the Agency shall be intended
8 to prevent disclosure to either House of Con-
9 gress or to an appropriate committee of the
10 Congress, except that the Agency is permitted
11 to adopt rules allowing prior notice to any party
12 that owns or otherwise provided the material to
13 the Agency and had designated such material
14 as confidential.

15 (5) PETITION FOR ENFORCEMENT.—

16 (A) IN GENERAL.—Whenever any person
17 fails to comply with any civil investigative de-
18 mand duly served upon such person under this
19 section, or whenever satisfactory copying or re-
20 production of material requested pursuant to
21 the demand cannot be accomplished and such
22 person refuses to surrender such material, the
23 Agency, through such officers or attorneys as it
24 may designate, may file, in the district court of
25 the United States for any judicial district in

1 which such person resides, is found, or trans-
2 acts business, and serve upon such person, a
3 petition for an order of such court for the en-
4 forcement of this paragraph.

5 (B) SERVICE OF PROCESS.—All process of
6 any court to which application may be made as
7 provided in this subparagraph may be served in
8 any judicial district.

9 (6) PETITION FOR ORDER MODIFYING OR SET-
10 TING ASIDE DEMAND.—

11 (A) IN GENERAL.—Not later than 20 days
12 after the service of any civil investigative de-
13 mand upon any person under subparagraph
14 (B), or at any time before the return date spec-
15 ified in the demand, whichever period is short-
16 er, or within such period exceeding 20 days
17 after service or in excess of such return date as
18 may be prescribed in writing, subsequent to
19 service, by any Agency investigator named in
20 the demand, such person may file with the
21 Agency a petition for an order by the Agency
22 modifying or setting aside the demand.

23 (B) COMPLIANCE DURING PENDENCY.—
24 The time permitted for compliance with the de-
25 mand in whole or in part, as determined proper

1 and ordered by the Agency, shall not run dur-
2 ing the pendency of a petition under clause (i)
3 at the Agency, except that such person shall
4 comply with any portions of the demand not
5 sought to be modified or set aside.

6 (C) SPECIFIC GROUNDS.—A petition under
7 subparagraph (A) shall specify each ground
8 upon which the petitioner relies in seeking re-
9 lief, and may be based upon any failure of the
10 demand to comply with the provisions of this
11 section, or upon any constitutional or other
12 legal right or privilege of such person.

13 (7) CUSTODIAL CONTROL.—At any time during
14 which any custodian is in custody or control of any
15 documentary material, tangible things, reports, an-
16 swers to questions, or transcripts of oral testimony
17 given by any person in compliance with any civil in-
18 vestigative demand, such person may file, in the dis-
19 trict court of the United States for the judicial dis-
20 trict within which the office of such custodian is sit-
21 uated, and serve upon such custodian, a petition for
22 an order of such court requiring the performance by
23 such custodian of any duty imposed upon him by
24 this section or rule promulgated by the Agency.

25 (8) JURISDICTION OF COURT.—

1 (A) IN GENERAL.—Whenever any petition
2 is filed in any district court of the United
3 States under this paragraph, such court shall
4 have jurisdiction to hear and determine the
5 matter so presented, and to enter such order or
6 orders as may be required to carry out the pro-
7 visions of this section.

8 (B) APPEAL.—Any final order entered as
9 described in subparagraph (A) shall be subject
10 to appeal pursuant to section 1291 of title 28,
11 United States Code.

12 (c) HEARINGS AND ADJUDICATORY PROCEEDINGS.—

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

18 (A) the provisions of this Act and other
19 Federal privacy laws, including any rules pre-
20 scribed by the Agency under this Act and other
21 Federal privacy laws; and

22 (B) any other Federal privacy law that the
23 Agency is authorized to enforce, and any rules
24 or order prescribed thereunder, unless such
25 Federal privacy law specifically limits the Agen-

cy from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

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

(A) ORDERS AUTHORIZED.—

(i) IN GENERAL.—If, in the opinion of the Agency, any data aggregator is engaging or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the Agency, the Agency may issue and serve upon the data aggregator or service provider a notice of charges in respect thereof.

(ii) CONTENT OF NOTICE.—The notice under clause (i) shall contain a statement of the facts constituting the alleged violation or violations, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the data aggregator or service provider, such hearing to be held not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later

1 date is set by the Agency, at the request
2 of any party so served.

3 (iii) CONSENT.—Unless the party or
4 parties served under clause (ii) appear at
5 the hearing personally or by a duly author-
6 ized representative, such person shall be
7 deemed to have consented to the issuance
8 of the cease-and-desist order.

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

24 (B) EFFECTIVENESS OF ORDER.—A cease-
25 and-desist order shall become effective at the

1 expiration of 30 days after the date of service
2 of an order under subparagraph (A) upon the
3 data aggregator or service provider concerned
4 (except in the case of a cease-and-desist order
5 issued upon consent, which shall become effective
6 at the time specified therein), and shall remain
7 effective and enforceable as provided
8 therein, except to such extent as the order is
9 stayed, modified, terminated, or set aside by action
10 of the Agency or a reviewing court.

11 (C) DECISION AND APPEAL.—Any hearing
12 provided for in this subsection shall be held in
13 the Federal judicial district or in the territory
14 in which the residence or principal office or
15 place of business of the person is located unless
16 the person consents to another place, and shall
17 be conducted in accordance with the provisions
18 of chapter 5 of title 5 of the United States
19 Code. After such hearing, and within 90 days
20 after the Agency has notified the parties that
21 the case has been submitted to the Agency for
22 final decision, the Agency shall render its decision
23 (which shall include findings of fact upon
24 which its decision is predicated) and shall issue
25 and serve upon each party to the proceeding an

1 order or orders consistent with the provisions of
2 this section. Judicial review of any such order
3 shall be exclusively as provided in this sub-
4 section. Unless a petition for review is timely
5 filed in a court of appeals of the United States,
6 as provided in subparagraph (D), and there-
7 after until the record in the proceeding has
8 been filed as provided in subparagraph (D), the
9 Agency may at any time, upon such notice and
10 in such manner as the Agency shall determine
11 proper, modify, terminate, or set aside any such
12 order. Upon filing of the record as provided, the
13 Agency may modify, terminate, or set aside any
14 such order with permission of the court.

15 (D) APPEAL TO COURT OF APPEALS.—Any
16 party to any proceeding under this subsection
17 may obtain a review of any order served pursu-
18 ant to this subparagraph (other than an order
19 issued with the consent of the person con-
20 cerned) by the filing in the court of appeals of
21 the United States for the circuit in which the
22 principal office of the covered person is located,
23 or in the United States Court of Appeals for
24 the District of Columbia Circuit, within 30 days
25 after the date of service of such order, a written

1 petition praying that the order of the Agency be
2 modified, terminated, or set aside. A copy of
3 such petition shall be forthwith transmitted by
4 the clerk of the court to the Agency, and there-
5 upon the Agency shall file in the court the
6 record in the proceeding, as provided in section
7 2112 of title 28 of the United States Code.
8 Upon the filing of such petition, such court
9 shall have jurisdiction, which upon the filing of
10 the record shall except as provided in the last
11 sentence of subparagraph (C) be exclusive, to
12 affirm, modify, terminate, or set aside, in whole
13 or in part, the order of the Agency. Review of
14 such proceedings shall be had as provided in
15 chapter 7 of title 5 of the United States Code.
16 The judgment and decree of the court shall be
17 final, except that the same shall be subject to
18 review by the Supreme Court of the United
19 States, upon certiorari, as provided in section
20 1254 of title 28 of the United States Code.

21 (E) NO STAY.—The commencement of pro-
22 ceedings for judicial review under clause (iv)
23 shall not, unless specifically ordered by the
24 court, operate as a stay of any order issued by
25 the Agency.

1 (3) SPECIAL RULES FOR TEMPORARY CEASE-
2 AND-DESIST PROCEEDINGS.—

3 (A) IN GENERAL.—Whenever the Agency
4 determines that the violation specified in the
5 notice of charges served upon a data
6 aggregator, including a service provider, pursu-
7 ant to paragraph (2), or the continuation there-
8 of, is likely to cause the person to be insolvent
9 or otherwise prejudice the interests of individ-
10 uals before the completion of the proceedings
11 conducted pursuant to paragraph (2), the Agen-
12 cy may issue a temporary order requiring the
13 data aggregator or service provider to cease and
14 desist from any such violation or practice and
15 to take affirmative action to prevent or remedy
16 such insolvency or other condition pending com-
17 pletion of such proceedings. Such order may in-
18 clude any requirement authorized under this
19 Act. Such order shall become effective upon
20 service upon the data aggregator or service
21 provider and, unless set aside, limited, or sus-
22 pended by a court in proceedings authorized by
23 clause (ii), shall remain effective and enforce-
24 able pending the completion of the administra-
25 tive proceedings pursuant to such notice and

1 until such time as the Agency shall dismiss the
2 charges specified in such notice, or if a cease-
3 and-desist order is issued against the person,
4 until the effective date of such order.

5 (B) APPEAL.—Not later than 10 days
6 after the data aggregator or service provider
7 concerned has been served with a temporary
8 cease-and-desist order, the data aggregator or
9 service provider may apply to the United States
10 district court for the judicial district in which
11 the residence or principal office or place of busi-
12 ness of such data aggregator or servicer pro-
13 vider is located, or the United States District
14 Court for the District of Columbia, for an in-
15 junction setting aside, limiting, or suspending
16 the enforcement, operation, or effectiveness of
17 such order pending the completion of the ad-
18 ministrative proceedings pursuant to the notice
19 of charges served upon the data aggregator or
20 servicer provider under subparagraph (B), and
21 such court shall have jurisdiction to issue such
22 injunction.

23 (C) INCOMPLETE OR INACCURATE
24 RECORDS.—

1 (i) TEMPORARY ORDER.—If a notice
2 of charges served under paragraph (2)
3 specifies, on the basis of particular facts
4 and circumstances, that the books and
5 records of a data aggregator or service
6 provider are so incomplete or inaccurate
7 that the Agency is unable to determine the
8 financial condition of that data aggregator
9 or service provider or the details or pur-
10 pose of any transaction or transactions
11 that may have a material effect on the fi-
12 nancial condition of that person, the Agen-
13 cy may issue a temporary order requir-
14 ing—

15 (I) the cessation of any activity
16 or practice which gave rise, whether in
17 whole or in part, to the incomplete or
18 inaccurate state of the books or
19 records; or

20 (II) affirmative action to restore
21 such books or records to a complete
22 and accurate state, until the comple-
23 tion of the proceedings under para-
24 graph (2)(A).

(ii) EFFECTIVE PERIOD.—Any temporary order issued under clause (i)—

(I) shall become effective upon service; and

(II) unless set aside, limited, or suspended by a court in proceedings under subparagraph (B), shall remain in effect and enforceable until the earlier of—

(aa) the completion of the proceeding initiated under paragraph (2) in connection with the notice of charges; or

(bb) the date the Agency determines, by examination or otherwise, that the books and records of the covered person or service provider are accurate and reflect the financial condition thereof.

(4) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(A) IN GENERAL.—The Agency may in its discretion apply to the United States district court within the jurisdiction of which the prin-

1 cial office or place of business of the person is
 2 located, for the enforcement of any effective
 3 and outstanding notice or order issued under
 4 this section, and such court shall have jurisdic-
 5 tion and power to order and require compliance
 6 herewith.

7 (B) EXCEPTION.—Except as otherwise
 8 provided in this subparagraph, no court shall
 9 have jurisdiction to affect by injunction or oth-
 10 erwise the issuance or enforcement of any no-
 11 tice or order or to review, modify, suspend, ter-
 12 minate, or set aside any such notice or order.

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

16 (d) LITIGATION AUTHORITY.—

17 (1) IN GENERAL.—If any person violates this
 18 Act, a rule or order issued under this Act, or a Fed-
 19 eral privacy law, the Agency may commence a civil
 20 action against such person to impose a civil penalty
 21 or to seek all appropriate legal and equitable relief
 22 including a permanent or temporary injunction as
 23 permitted by law.

24 (2) REPRESENTATION.—The Agency may act in
 25 its own name and through its own attorneys in en-

1 forcing any provision of this Act, rules thereunder,
2 or any other law or regulation, or in any action, suit,
3 or proceeding to which the Agency is a party.

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

7 (4) NOTICE TO THE ATTORNEY GENERAL.—

8 (A) IN GENERAL.—When commencing a
9 civil action under this Act or any Federal pri-
10 vacy law, or any rule thereunder, the Agency
11 shall notify the Attorney General.

12 (B) NOTICE AND COORDINATION.—

13 (i) NOTICE OF OTHER ACTIONS.—In
14 addition to any notice required under sub-
15 paragraph (A), the Agency shall notify the
16 Attorney General concerning any action,
17 suit, or proceeding to which the Agency is
18 a party, except an action, suit, or pro-
19 ceeding that involves a violation of this Act
20 or a Federal privacy law.

21 (ii) COORDINATION.—In order to
22 avoid conflicts and promote consistency re-
23 garding litigation of matters under Federal
24 law, the Attorney General and the Agency
25 shall consult regarding the coordination of

1 investigations and proceedings, including
 2 by negotiating an agreement for coordina-
 3 tion by not later than 180 days after the
 4 designated transfer date. The agreement
 5 under this subclause shall include provi-
 6 sions to ensure that parallel investigations
 7 and proceedings involving the Federal pri-
 8 vacy laws are conducted in a manner that
 9 avoids conflicts and does not impede the
 10 ability of the Attorney General to pros-
 11 ecute violations of Federal criminal laws.

12 (iii) RULE OF CONSTRUCTION.—Noth-
 13 ing in this paragraph shall be construed to
 14 limit the authority of the Agency under
 15 this title, including the authority to inter-
 16 pret Federal privacy law .

17 (5) APPEARANCE BEFORE THE SUPREME
 18 COURT.—The Agency may represent itself in its own
 19 name before the Supreme Court of the United
 20 States, if the Agency makes a written request to the
 21 Attorney General within the 10-day period that be-
 22 gins on the date of entry of the judgment that would
 23 permit any party to file a petition for writ of certio-
 24 rari, and the Attorney General concurs with such re-

1 quest or fails to take action within 60 days of the
2 request of the Agency.

3 (6) FORUM.—Any civil action brought under a
4 Federal privacy law may be brought in a United
5 States district court or in any court of competent ju-
6 risdiction of a State in a district in which the de-
7 fendant is located or resides or is doing business,
8 and such court shall have jurisdiction to enjoin such
9 person and to require compliance with any Federal
10 privacy law.

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

16 (e) RELIEF AVAILABLE.—

17 (1) ADMINISTRATIVE PROCEEDINGS OR COURT
18 ACTIONS.—

19 (A) JURISDICTION.—The court (or the
20 Agency, as the case may be) in an action or ad-
21 judication proceeding brought under this Act or
22 a Federal privacy law, shall have jurisdiction to
23 grant any appropriate legal or equitable relief
24 with respect to a violation of this Act or Fed-
25 eral privacy law, including a violation of a rule

1 or order prescribed under this Act or Federal
2 privacy law.

3 (B) RELIEF.—Relief under this section
4 may include, without limitation—

5 (i) rescission or reformation of con-
6 tracts;

7 (ii) refund of moneys or return of real
8 property;

9 (iii) restitution;

10 (iv) disgorgement of any revenue,
11 data, or technologies, including automated
12 decision systems, data sets, or algorithms,
13 attributable to a violation of this Act, Fed-
14 eral privacy law, or any rule or order
15 issued by the Agency under this Act;

16 (v) payment of damages or other mon-
17 etary relief;

18 (vi) public notification regarding the
19 violation, including the costs of notifica-
20 tion;

21 (vii) limits on the activities or func-
22 tions of the person; and

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

1 (C) NO EXEMPLARY OR PUNITIVE DAM-
2 AGES.—Nothing in this subparagraph shall be
3 construed as authorizing the imposition of ex-
4 emplary or punitive damages in an action
5 brought by the Agency.

6 (2) RECOVERY OF COSTS.—In any action
7 brought by the Agency, a State attorney general, or
8 any State regulator to enforce this Act or any Fed-
9 eral privacy law, the Agency, the State attorney gen-
10 eral, or the State regulator may recover its costs in
11 connection with prosecuting such action if the Agen-
12 cy, the State attorney general, or the State regulator
13 is the prevailing party in the action.

14 (3) CIVIL MONEY PENALTY IN COURT AND AD-
15 MINISTRATIVE ACTIONS.—

16 (A) IN GENERAL.—Any person that vio-
17 lates, through any act or omission, any provi-
18 sion of this Act or any Federal privacy law shall
19 forfeit and pay a civil penalty pursuant to this
20 subparagraph.

21 (B) PENALTY AMOUNTS.—

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

1 (I) \$5,000 for each day during
2 which such violation or failure to pay
3 continues; or

4 (II) \$15,000 for each day during
5 which such violation or failure to pay
6 continues if such violation involves the
7 personal data of individuals under the
8 age of 13.

9 (ii) SECOND TIER.—Notwithstanding
10 clause (i), for any person that recklessly
11 engages in a violation of this Act or any
12 Federal privacy law, a civil penalty may
13 not exceed—

14 (I) \$25,000 for each day during
15 which such violation or failure to pay
16 continues; or

17 (II) \$75,000 for each day during
18 which such violation or failure to pay
19 continues if such violation involves the
20 personal data of individuals under the
21 age of 13.

22 (iii) THIRD TIER.—Notwithstanding
23 clauses (i) and (ii), for any person that
24 knowingly violates this Act or any Federal

1 privacy law, a civil penalty may not ex-
2 ceed—

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

5 (II) \$3,000,000 for each day dur-
6 ing which such violation or failure to
7 pay continues if such violation in-
8 volves the personal data of individuals
9 under the age of 13.

10 (C) PENALTIES FOR RE-IDENTIFYING
11 DATA.—Any person that re-identifies, or at-
12 tempts to re-identify, anonymized data shall be
13 assessed a third tier civil penalty under sub-
14 paragraph (B), unless conducting authorized
15 testing to prove personal data has been
16 anonymized.

17 (D) MITIGATING FACTORS.—In deter-
18 mining the amount of any penalty assessed
19 under subparagraph (B), the Agency or the
20 court shall take into account the appropriate-
21 ness of the penalty with respect to—

22 (i) the size of financial resources and
23 good faith of the person charged;

24 (ii) the gravity of the violation or fail-
25 ure to pay;

- 1 (iii) the severity of the risks or harms
2 to individuals;
3 (iv) the history of previous violations;
4 and
5 (v) such other matters as justice may
6 require.

7 (E) AUTHORITY TO MODIFY OR REMIT
8 PENALTY.—The Agency may compromise, mod-
9 ify, or remit any penalty which may be assessed
10 or had already been assessed under subpara-
11 graph (B). The amount of such penalty, when
12 finally determined, shall be exclusive of any
13 sums owed by the person to the United States
14 in connection with the costs of the proceeding,
15 and may be deducted from any sums owed by
16 the United States to the person charged.

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

- 21 (i) the Agency gives notice and an op-
22 portunity for a hearing to the person ac-
23 cused of the violation; or

1 (ii) the appropriate court has ordered
2 such assessment and entered judgment in
3 favor of the Agency.

4 (f) REFERRALS FOR CRIMINAL PROCEEDINGS.—If
5 the Agency obtains evidence that any person, domestic or
6 foreign, has engaged in conduct that may constitute a vio-
7 lation of Federal criminal law, the Agency shall transmit
8 such evidence to the Attorney General of the United
9 States, who may institute criminal proceedings under ap-
10 propriate law. Nothing in this section affects any other
11 authority of the Agency to disclose information.

12 **SEC. 14. TRANSFERS OF FUNCTIONS.**

13 (a) FEDERAL TRADE COMMISSION.—The authority
14 of the Federal Trade Commission under a Federal privacy
15 law to prescribe rules, issue guidelines, or conduct a study
16 or issue a report mandated under such law shall be trans-
17 ferred to the Agency on the transfer date. Nothing in this
18 Act shall be construed to require a mandatory transfer
19 of any employee of the Federal Trade Commission.

20 (b) AGENCY AUTHORITY.—

21 (1) IN GENERAL.—The Agency shall have all
22 powers and duties under the Federal privacy laws to
23 prescribe rules, issue guidelines, or to conduct stud-
24 ies or issue reports mandated by such laws, that

1 were vested in the Federal Trade Commission on the
2 day before the transfer date.

3 (2) FEDERAL TRADE COMMISSION ACT.—The
4 Agency may enforce a rule prescribed under the
5 Federal Trade Commission Act (15 U.S.C. 41 et
6 seq.) by the Federal Trade Commission with respect
7 to the collection, disclosure, processing and misuse
8 of personal data.

9 (c) AUTHORITY OF THE FEDERAL TRADE COMMIS-
10 SION.—No provision of this Act shall be construed as
11 modifying, limiting, or otherwise affecting the authority
12 of the Federal Trade Commission, including the authority
13 with respect to large data collectors described in section
14 11(a)(1) of this Act, under the Federal Trade Commission
15 Act (15 U.S.C. 41 et seq.), or any other law, other than
16 the authority under a Federal privacy law to prescribe
17 rules, issue official guidelines, or conduct a study or issue
18 a report mandated under such law.

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

1 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

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

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

5 (a) RELATION TO STATE LAW.—

6 (1) RULE OF CONSTRUCTION.—This Act may
7 not be construed as annulling, altering, or affecting,
8 or exempting any person subject to the provisions of
9 this title from complying with, the statutes, regula-
10 tions, orders, or interpretations in effect in any
11 State, except to the extent that any such provision
12 of law is inconsistent with the provisions of this title,
13 and then only to the extent of the inconsistency.

14 (2) GREATER PROTECTION UNDER STATE
15 LAW.—For purposes of this paragraph, a statute,
16 regulation, order, or interpretation in effect in any
17 State is not inconsistent with the provisions of this
18 title if the protection that such statute, regulation,
19 order, or interpretation affords to individuals is
20 greater than the protection provided under this Act.
21 A determination regarding whether a statute, regu-
22 lation, order, or interpretation in effect in any State
23 is inconsistent with the provisions of this title may
24 be made by the Agency on its own motion or in re-
25 sponse to a nonfrivolous petition initiated by any in-
26 terested person.

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

7 (c) PRESERVATION OF ENFORCEMENT POWERS OF
8 STATES.—The attorney general (or the equivalent thereof)
9 of any State may bring a civil action in the name of such
10 State in any district court of the United States in that
11 State or in State court that is located in that State and
12 that has jurisdiction over the defendant, to enforce provi-
13 sions of this title or rules or orders issued under this Act,
14 and to secure remedies under provisions of this title or
15 remedies otherwise provided under other law. A State reg-
16 ulator may bring a civil action or other appropriate pro-
17 ceeding to enforce the provisions of this title or rules or
18 orders issued under this Act with respect to any entity
19 that is State-chartered, incorporated, licensed, or other-
20 wise authorized to do business under State law (except as
21 provided in paragraph (2)), and to secure remedies under
22 provisions of this title or remedies otherwise provided
23 under other provisions of law with respect to such an enti-
24 ty.

25 (d) PRESERVATION OF STATE AUTHORITY.—

1 (1) STATE CLAIMS.—No provision of this sec-
 2 tion shall be construed as altering, limiting, or af-
 3 fecting the authority of a State attorney general or
 4 any other regulatory or enforcement agency or au-
 5 thority to bring an action or other regulatory pro-
 6 ceeding arising solely under the law in effect in that
 7 State.

8 (2) STATE CONSUMER PROTECTION, PRIVACY,
 9 AND DATA REGULATORS.—No provision of this title
 10 shall be construed as altering, limiting, or affecting
 11 the authority of a State consumer protection, data
 12 protection, or privacy agency (or any agency or of-
 13 fice performing like functions) under State law to
 14 adopt rules, initiate enforcement proceedings, or
 15 take any other action with respect to a person regu-
 16 lated by such commission or authority.

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

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

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

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

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