

116TH CONGRESS
2D SESSION

S. _____

To provide for data accountability and transparency.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To provide for data accountability and transparency.

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 Accountability
5 and Transparency Act of 2020”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) privacy is a fundamental individual right
9 protected by the Constitution of the United States;

10 (2) the right of privacy is widely recognized in
11 international legal instruments that the United
12 States has endorsed, ratified, or promoted;

1 (3) the right to privacy protects the individual
2 against intrusions into seclusion, protects individual
3 autonomy, safeguards fair use of data that pertains
4 to the individual, advances the just use of data, and
5 contributes to respect for civil rights and funda-
6 mental freedoms;

7 (4) privacy protections not only protect and
8 benefit the individual, but also advance other societal
9 interests, including—

10 (A) the protection of marginalized and vul-
11 nerable groups of individuals; and

12 (B) the safeguarding of—

13 (i) other foundational values of the
14 democracy of the United States, such as
15 freedom of information, freedom of speech,
16 justice, and human ingenuity and dignity;
17 and

18 (ii) the integrity of democratic institu-
19 tions, including fair and open elections;

20 (5) in order to protect the privacy of individ-
21 uals, groups of individuals, and support society, it is
22 necessary and proper for Congress to regulate the
23 collection, maintenance, use, processing, storage, and
24 dissemination of information; and

1 (6) this Act protects these rights and concrete
2 interests and is intended to prevent harm to individ-
3 uals that would otherwise be caused by the unre-
4 stricted collection, use, or sharing of personal data.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

7 (1) **AFFILIATE.**—The term “affiliate” means
8 any person that controls, is controlled by, or is
9 under common control with another person.

10 (2) **AGENCY.**—The term “Agency” means the
11 Data Accountability and Transparency Agency es-
12 tablished under section 301.

13 (3) **ANONYMIZED DATA.**—The term
14 “anonymized data” means information that has been
15 proven to not identify, relate to, describe, reference,
16 be capable of being associated with, or be linked or
17 reasonably linkable to a particular individual or de-
18 vice.

19 (4) **AUTOMATED DECISION SYSTEM.**—The term
20 “automated decision system” means a computational
21 process, including one derived from machine learn-
22 ing, statistics, or other data processing or artificial
23 intelligence techniques, that makes a decision, or fa-
24 cilitates human decisionmaking.

1 (5) AUTOMATED DECISION SYSTEM IMPACT
2 EVALUATION.—The term “automated decision sys-
3 tem impact evaluation” means a study conducted
4 after deployment of an automated decision system
5 that includes, at a minimum—

6 (A) an evaluation of an automated decision
7 system’s accuracy, bias on the basis of pro-
8 tected class, and impact on privacy on individ-
9 uals or groups of individuals;

10 (B) an evaluation of the effectiveness of
11 measures taken to minimize risks as outlined in
12 any prior automated decision system risk as-
13 sessments; and

14 (C) recommended measures to further min-
15 imize risks to accuracy, bias on the basis of
16 protected class, and privacy on individuals or
17 groups of individuals.

18 (6) AUTOMATED DECISION SYSTEM RISK AS-
19 SESSMENT.—The term “automated decision system
20 risk assessment” means a study evaluating an auto-
21 mated decision system and the automated decision
22 system’s development process, including the design
23 and training data of the automated decision system,
24 for potential risks to accuracy, bias, discrimination,

1 and privacy on individuals or groups of individuals
2 that includes, at a minimum—

3 (A) a detailed description of the automated
4 decision system, including—

5 (i) its design and methodologies;

6 (ii) training data characteristics;

7 (iii) data; and

8 (iv) purpose;

9 (B) an assessment of the automated deci-
10 sion system governance in light of its purpose,
11 potential unintended consequences, and taking
12 into account relevant factors, including—

13 (i) the duration and methods for
14 which personal data and the results of the
15 automated decision system are stored;

16 (ii) what information about the auto-
17 mated decision system (including inputs,
18 features, and results) is available to indi-
19 viduals; and

20 (iii) the recipients of the results of the
21 automated decision system;

22 (C) an assessment of the risks posed by
23 the automated decision system—

24 (i) poses to individuals or groups of
25 individuals of privacy harm; and

1 (ii) may result in or contribute to in-
2 accurate, biased, or discriminatory deci-
3 sions impacting individuals or groups of in-
4 dividuals;

5 (D) the measures a data aggregator will
6 employ to minimize the risks described in sub-
7 paragraph (C), including technological and
8 physical safeguards.

9 (7) COLLECT.—The term “collect”—

10 (A) means buying, renting, gathering, ob-
11 taining, receiving, or accessing any personal
12 data by any means; and

13 (B) includes—

14 (i) receiving personal data from an in-
15 dividual or device; and

16 (ii) creating, deriving, or inferring
17 personal data by observing the behavior of
18 an individual.

19 (8) DATA AGGREGATOR.—The term “data
20 aggregator”—

21 (A) means any person that collects, uses,
22 or shares an amount of personal data that is
23 not de minimis; and

1 (B) does not include an individual who col-
2 lects, uses, or shares personal data solely for
3 personal reasons.

4 (9) DEVICE.—The term “device” means any
5 physical object that—

6 (A) is capable of connecting to the internet
7 or other communication network; or

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

10 (10) DIRECTOR.—The term “Director” means
11 the Director of the Data Accountability and Trans-
12 parency Agency.

13 (11) ELECTRONIC DATA.—The term “electronic
14 data” means any information that is in an electronic
15 or digital format or any electronic or digital ref-
16 erence that contains information about an individual
17 or device.

18 (12) FACIAL RECOGNITION TECHNOLOGY.—The
19 term “facial recognition technology” means an auto-
20 mated or semiautomated process that assists in
21 identifying or verifying an individual based on the
22 characteristics of the face of an individual.

23 (13) FEDERAL PRIVACY LAW.—The term “Fed-
24 eral privacy law” means the provisions of this Act,
25 any other rule or order prescribed by the Agency

1 under this Act, and the following laws (including any
2 amendments made by such laws):

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

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

7 (C) The Telemarketing and Consumer
8 Fraud and Abuse Prevention Act (15 U.S.C.
9 6101 et seq.).

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

13 (E) The CAN-SPAM Act of 2003 (15
14 U.S.C. 7701 et seq.).

15 (F) Sections 222, 227, 338(l), 631, and
16 705 of the Communications Act of 1934 (47
17 U.S.C. 222, 227, 338(l), 551, 705).

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

20 (H) The Right to Financial Privacy Act of
21 1978 (12 U.S.C. 3401 et seq.).

22 (I) The Identity Theft Assumption and
23 Deterrence Act of 1998 (Public Law 105–318;
24 117 Stat. 3007).

1 (J) The General Education Provisions Act
2 (20 U.S.C. 1221 et seq.) (commonly known as
3 the “Family Educational Rights and Privacy
4 Act of 1974”).

5 (K) The Health Insurance Portability and
6 Accountability Act of 1996 (Public Law 104–
7 191; 110 Stat 2033).

8 (L) Section 552a of title 5, United States
9 Code.

10 (M) The E-Government Act of 2002 (Pub-
11 lic Law 107–347; 116 Stat. 2899).

12 (N) The Computer Security Act of 1987
13 (40 U.S.C. 1441 note).

14 (O) The Employee Polygraph Protection
15 Act of 1988 (29 U.S.C. 2001 et seq.).

16 (P) The Communications Assistance for
17 Law Enforcement Act (Public Law 103–414;
18 108 Stat. 4279).

19 (Q) Sections 1028A, 1030, 1801, 2710,
20 and 2721 and chapter 119, of title 18, United
21 States Code.

22 (R) The Genetic Information Non-
23 discrimination Act of 2008 (Public Law 110–
24 233; 122 Stat. 881).

1 (S) The Taxpayer Browsing Protection Act
2 (Public Law 105–35; 111 Stat. 1104).

3 (T) The Census Confidentiality Statute of
4 1954. **[Note: Unclear what this is meant to ref-**
5 **erence -- I can't find a match for this short title.**
6 **Please clarify]]**

7 (U) The Privacy Protection Act of 1980
8 (42 U.S.C. 2000aa et seq.).

9 (V) The Cable Communications Policy Act
10 of 1984 (Public Law 98–549; 98 Stat. 2779).

11 (W) The Do-Not-Call Implementation Act
12 (Public Law 108–10; 117 Stat. 557).

13 (X) The Wireless Communications and
14 Public Safety Act of 1999 (Public Law 106–81;
15 113 Stat. 1286).

16 (Y) Title XXX of the Public Health Serv-
17 ice Act (42 U.S.C. 300jj et seq.).

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

20 (15) INTENTIONAL INTERACTION.—The term
21 “intentional interaction” means an interaction in
22 which an individual engages in 1 or more actions to
23 demonstrate that the individual intends to interact
24 with a data aggregator.

25 (16) JOURNALISM.—The term “journalism”—

1 (A) means the gathering, preparing, col-
2 lecting, photographing, recording, writing, edit-
3 ing, reporting, or publishing of news or infor-
4 mation that concerns local, national, or inter-
5 national events or other matters of public inter-
6 est for dissemination to the public; and

7 (B) includes the collection or use of per-
8 sonal data about a public individual or official,
9 or that otherwise concerns matters of public in-
10 terest, for dissemination to the public.

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

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

21 (A) could be linked or reasonably linkable
22 to an individual, household, or device; or

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

1 (19) PRIVACY HARM.—The term “privacy
2 harm” means an adverse consequence, or a potential
3 adverse consequence, to an individual, a group of in-
4 dividuals, or society caused, or potentially caused, in
5 whole or in part, by the collection, use, or sharing
6 of personal data, including—

7 (A) direct or indirect financial loss or eco-
8 nomic harm, including financial loss or eco-
9 nomic harm arising from fraudulent activities
10 or data security breaches;

11 (B) physical harm, harassment, or a threat
12 to an individual or property;

13 (C) psychological harm, including anxiety,
14 embarrassment, fear, other trauma, stigmatiza-
15 tion, reputational harm, or the revealing or ex-
16 posing of an individual, or a characteristic of an
17 individual, in an unexpected way;

18 (D) an adverse outcome or decision, in-
19 cluding relating to the eligibility of an indi-
20 vidual for the rights, benefits, or privileges in
21 credit and insurance (including the denial of an
22 application or obtaining less favorable terms),
23 housing, education, professional certification,
24 employment (including hiring, firing, promotion,

1 demotion, and compensation), or the provision
2 of health care and related services;

3 (E) discrimination or the otherwise unfair
4 or unethical differential treatment with respect
5 to an individual, including in a manner that is
6 prohibited under section 104;

7 (F) the interference with, or the surveil-
8 lance of, activities that are protected by the
9 First Amendment to the Constitution of the
10 United States;

11 (G) the chilling of free expression or action
12 of an individual, or society generally, due to
13 perceived or actual pervasive and excessive col-
14 lection, use, or sharing of personal data;

15 (H) the impairment of the autonomy of an
16 individual or society generally; and

17 (I) any harm fairly traceable to an inva-
18 sion of privacy tort; and

19 (J) any other adverse consequence, or po-
20 tential adverse consequence, consistent with the
21 provisions of this Act, as determined by the Di-
22 rector.

23 (20) PROTECTED CLASS.—The term “protected
24 class” means the actual or perceived race, color, eth-
25 nicity, national origin, religion, sex, gender, gender

1 identity, sexual orientation, familial status, biometric
2 information, lawful source of income, or disability of
3 an individual or a group of individuals.

4 (21) PUBLIC ACCOMMODATION.—The term
5 “public accommodation” means any type of business
6 considered a place of public accommodation pursu-
7 ant to section 201(b) of the Civil Rights Act of 1964
8 (42 U.S.C. 2000a(b)) or section 301(7) of the Amer-
9 icans with Disabilities Act of 1990 (42 U.S.C.
10 12181(7)) or a business that offers goods or services
11 through the internet to the general public.

12 (22) SERVICE PROVIDER.—The term “service
13 provider” means a data aggregator that collects,
14 uses, or shares personal data only on behalf of an-
15 other data aggregator in order to carry out a per-
16 missible purpose.

17 (23) SHARE.—The term “share” means dis-
18 seminating, making available, transferring, or other-
19 wise communicating orally, in writing, or by elec-
20 tronic or other means, personal data, except for as
21 required under section 201 of this Act.

22 (24) USE.—The term “use” means to perform
23 an operation or a set of operations on personal data,
24 either manually or by automated means, after the
25 collection of the data, including—

1 (A) the analysis, organization, storage, re-
2 tention, or maintenance of the data; and

3 (B) the derivation or inference of informa-
4 tion from the personal data.

5 (25) VERIFIABLE REQUEST.—The term
6 “verifiable request” means a request that a data
7 aggregator can reasonably verify is made—

8 (A) by an individual;

9 (B) by an individual on behalf of the indi-
10 vidual’s minor child; or

11 (C) by a person registered with the Sec-
12 retary of State authorized by the individual to
13 act on the individual’s behalf.

14 **SEC. 4. SEVERABILITY.**

15 If any provision of this Act, an amendment made by
16 this Act, or the application of such provision or amend-
17 ment to any person or circumstance is held to be unconsti-
18 tutional, the remainder of this Act, the amendments made
19 by this Act, and the application of the provisions of such
20 to any person or circumstances shall not be affected there-
21 by.

1 **TITLE I—REQUIREMENTS FOR**
2 **DATA AGGREGATORS**

3 **SEC. 101. BAN ON DATA PRACTICES WITHOUT A PERMISSIBLE PURPOSE.**
4

5 A data aggregator shall not collect, use, or share, or
6 cause to be collected, used, or shared any personal data,
7 unless the data aggregator can demonstrate that such per-
8 sonal data is strictly necessary to carry out a permissible
9 purpose under section 102.

10 **SEC. 102. PERMISSIBLE PURPOSES.**

11 (a) **PERMISSIBLE PURPOSES.**—A data aggregator
12 may not collect, use, or share personal data unless strictly
13 necessary to carry out one or more of the following permis-
14 sible purposes:

15 (1) To provide a good, service, or specific fea-
16 ture requested by an individual in an intentional
17 interaction.

18 (2) To engage in journalism, provided that the
19 data aggregator has reasonable safeguards and proc-
20 esses that prevent the collection, use, or sharing of
21 personal data for commercial purposes other than
22 journalism.

23 (3) To conduct public or peer-reviewed sci-
24 entific, historical, or statistical research in the public

1 interest, but only to the extent such research is not
2 possible using anonymized data.

3 (4) To employ an individual, including for ad-
4 ministration of wages and benefits, except that a
5 data aggregator may not invasively collect, use, or
6 share the employee's personal data in carrying out
7 this paragraph.

8 (5) Where mandated to comply with Federal,
9 State, or local law.

10 (6) Consistent with due process, direct compli-
11 ance with a civil, criminal, or regulatory inquiry, in-
12 vestigation, subpoena, or summons.

13 (7) To bring or defend legal claims, provided
14 that the parties or potential parties take all nec-
15 essary measures, including, as applicable, obtaining
16 a protective order, to protect against unnecessary
17 public disclosure of personal data.

18 (8) To detect or respond to security incidents,
19 protect against malicious, deceptive, fraudulent, or
20 illegal activity, or prosecute those responsible for
21 that activity.

22 (9) Free expression by individuals on a social
23 network or media platform.

24 (10) In exigent circumstances, if first respond-
25 ers or medical personnel, in good faith, believe dan-

1 ger of death or serious physical injury to an indi-
2 vidual, or danger of serious and unlawful injury to
3 property, requires collection, use, or sharing of per-
4 sonal data relating to the exigent circumstances.

5 (11) The development and delivery of advertise-
6 ments—

7 (A) based on the content of the website,
8 online service, or application to which the indi-
9 vidual or device is connected; and

10 (B) excludes advertising based on the use
11 of any personal data collected or stored from
12 previous interactions with the individual or de-
13 vice, a profile of the individual or device, or the
14 previous online or offline behavior of the indi-
15 vidual or device.

16 (12) To offer discounted or free goods or serv-
17 ices to an individual if—

18 (A) the offering is in connection with the
19 voluntary participation by the individual in a
20 program that rewards individuals for patronage;
21 and

22 (B) personal data is only collected to track
23 purchases for loyalty rewards under the pro-
24 gram described in subparagraph (A).

1 (b) RESTRICTIONS ON PERMISSIBLE PURPOSES.—

2 Except where strictly necessary to carry out a permissible

3 purpose, a data aggregator shall not—

4 (1) share personal data with affiliated entities,
5 service providers, or third parties;

6 (2) use personal data for any purpose other
7 than to carry out a permissible purpose;

8 (3) retain personal data for any time longer
9 than strictly necessary to carry out a permissible
10 purpose; or

11 (4) derive or infer data from any element or set
12 of personal data.

13 (c) RULE OF CONSTRUCTION.—Collecting, using, or
14 sharing personal data to generate advertising revenue to
15 support or carry out a permissible purpose is not a permis-
16 sible purpose.

17 **SEC. 103. UNLAWFUL DATA PRACTICES.**

18 (a) IN GENERAL.—It is unlawful for a person to en-
19 gage or cause to be engaged in the following practices:

20 (1) Charge an extra fee or raise the price for
21 a good, service, or feature when a person exercises
22 the rights of the person under this Act.

23 (2) Terminate, refuse to provide, degrade goods
24 or services to, or otherwise retaliate against, a per-

1 son that exercises the rights of the person under this
2 Act.

3 (3) Re-identify, or attempt to re-identify, an in-
4 dividual, household, or device from anonymized data
5 (unless conducting authorized testing to prove per-
6 sonal data has been anonymized).

7 (4) Commingle personal data from multiple ap-
8 plications, services, affiliates, or independent busi-
9 ness lines.

10 (b) FACIAL RECOGNITION TECHNOLOGY.—It is un-
11 lawful for any data aggregator to—

12 (1) use facial recognition technology; or

13 (2) collect, use, or share any personal data ob-
14 tained from facial recognition technology.

15 (c) RULE OF CONSTRUCTION.—A person is prohib-
16 ited from engaging in the unlawful data practices in sub-
17 section (a) regardless of whether such person has a per-
18 missible purpose for collecting, using, or sharing personal
19 data.

20 (d) DAMAGES.—In addition to the relief available
21 under section 401(c), a data aggregator shall be subject
22 to treble damages for a violation of this section.

1 **SEC. 104. PROHIBITION ON DISCRIMINATORY USE OF PER-**
2 **SONAL DATA.**

3 (a) PROHIBITION ON DISCRIMINATION IN ECONOMIC
4 OPPORTUNITIES.—It is unlawful for a data aggregator to
5 collect, use, or share personal data for advertising, mar-
6 keting, soliciting, offering, selling, leasing, licensing, rent-
7 ing, or otherwise commercially contracting for housing,
8 employment, credit, or insurance in a manner that dis-
9 criminate against or otherwise makes the opportunity un-
10 available or offered on different terms on the basis of a
11 protected class or otherwise materially contributes to un-
12 lawful discrimination.

13 (b) PROHIBITION ON DISCRIMINATION IN PUBLIC
14 ACCOMMODATIONS.—

15 (1) IN GENERAL.—It is unlawful for a data
16 aggregator to collect, use, or share personal data in
17 a manner that segregates, discriminates in, or other-
18 wise makes unavailable the goods, services, facilities,
19 privileges, advantages, or accommodations of any
20 place of public accommodation on the basis of a pro-
21 tected class.

22 (2) BURDEN OF PROOF.—The burden of proof
23 for disparate impact cases set forth in subsection
24 (a)(2) applies to cases with respect to this sub-
25 section.

1 (3) INTERFERENCE WITH RIGHTS AND PRIVI-
2 LEGES.—It is unlawful for a data aggregator to—

3 (A) withhold, deny, deprive, or attempt to
4 withhold, deny, or deprive any individual of any
5 right or privilege secured by this subsection;

6 (B) intimidate, threaten, or coerce, or at-
7 tempt to intimidate, threaten, or coerce any in-
8 dividual with the purpose of interfering with
9 any right or privilege secured by this sub-
10 section; or

11 (C) punish or attempt to punish any indi-
12 vidual for exercising or attempting to exercise
13 any right or privilege secured by this sub-
14 section.

15 (c) PROHIBITION ON USE OF PERSONAL DATA FOR
16 VOTER SUPPRESSION.—It is unlawful for a person to use
17 personal data in a manner that deprives, defrauds, or at-
18 tempts to deprive or defraud an individual of the free and
19 fair exercise of the right to vote in a Federal, State, or
20 local election. Intentionally depriving, defrauding, or at-
21 tempting to deprive or defraud includes—

22 (1) deception as to—

23 (A) the times, places, or methods of voting;

24 (B) eligibility to vote;

25 (C) counting of ballots;

1 (D) adjudication of elections;

2 (E) explicit endorsements by any person of
3 a candidate; or

4 (F) other material information pertaining
5 to the procedures or requirements for voting or
6 registering to vote in a Federal, state, or local
7 election; or

8 (2) using deception, threats, intimidation, or co-
9 ercion to prevent, interfere with, retaliate against,
10 deter, or attempt to prevent, interfere with, retaliate
11 against, or deter—

12 (A) voting or registering to vote in a Fed-
13 eral, State, or local election; or

14 (B) giving support or advocacy in a legal
15 manner toward a candidate in a Federal, State,
16 or local election.

17 (d) DISCRIMINATION AGAINST AN INDIVIDUAL FOR
18 EXERCISE OF RIGHTS.—

19 (1) IN GENERAL.—It is unlawful for any data
20 aggregator to discriminate against an individual be-
21 cause the individual exercised any of their rights
22 under this title, or did not agree to the use of their
23 personal data for a separate product or service, in-
24 cluding by—

25 (A) denying goods or services;

1 (B) charging different prices or rates for
2 goods or services, including through the use of
3 discounts or other benefits or imposing pen-
4 alties;

5 (C) providing a different level or quality of
6 goods or services; and

7 (D) suggesting that an individual will re-
8 ceive a different price or rate for goods or serv-
9 ices or a different level or quality of goods or
10 services.

11 (e) BURDEN OF PROOF FOR DISPARATE IMPACT.—

12 If the use of personal data causes a disparate impact on
13 the basis of a protected class under subsection (a) or (b),
14 the data aggregator has the burden of demonstrating that
15 such use of personal data—

16 (1) is not intentionally discriminatory;

17 (2) is strictly necessary to achieve one or more
18 substantial, legitimate, nondiscriminatory interests;

19 and

20 (3) there is no reasonable alternative policy or
21 practice that could serve the interest described in
22 paragraph (2) with a less discriminatory effect.

1 **SEC. 105. ALGORITHMIC ACCOUNTABILITY.**

2 (a) IN GENERAL.—If a data aggregator utilizes auto-
3 mated decision systems, the data aggregator shall per-
4 form—

5 (1) continuous and automated testing for bias
6 on the basis of a protected class; and

7 (2) continuous and automated testing for dis-
8 parate impact on the basis of a protected class as re-
9 quired by the Agency.

10 (b) REQUIREMENT FOR SIMILAR METHODOLOGY.—

11 When evaluating an automated decision system against
12 other less discriminatory alternatives, similar methodology
13 shall be used to create the alternatives.

14 (c) REPORTING REQUIREMENTS.—For any auto-
15 mated decision system, a data aggregator shall provide the
16 Agency—

17 (1) an automated decision system risk assess-
18 ment—

19 (A) within 90 days for any automated deci-
20 sion system currently in use;

21 (B) prior to the deployment of any new
22 automated decision system; or

23 (C) as determined by the Director.

24 (2) an automated decision system impact eval-
25 uation on a periodic basis as determined by the Di-
26 rector, but no less than annually.

1 (d) PUBLICLY AVAILABLE.—The Agency shall make
2 automated decision system impact evaluations publicly
3 available.

4 **TITLE II—INDIVIDUAL RIGHTS**

5 **SEC. 201. RIGHT TO ACCESS AND PORTABILITY.**

6 Upon receipt of a verifiable request, a data
7 aggregator shall provide the—

8 (1) specific pieces of personal data that the
9 data aggregator has collected, used, or shared about
10 the individual;

11 (2) permissible purposes for such collection,
12 use, or sharing of an individual’s personal data at
13 the time of its collection, use, or sharing;

14 (3) service providers or third parties with which
15 it has shared the personal data; and

16 (4) individual’s personal data in an electronic,
17 portable, machine-readable, and readily useable for-
18 mat or formats to the individual, or to another per-
19 son of the individual’s choice.

20 **SEC. 202. RIGHT TO TRANSPARENCY.**

21 A data aggregator shall disclose the following infor-
22 mation, including in its online privacy policy:

23 (1) A description of an individual’s rights under
24 this Act and designated methods for submitting
25 verifiable requests.

1 (2) A description of the personal data that the
2 data aggregator collects, uses, or shares.

3 (3) The specific sources from which personal
4 data is collected.

5 (4) A description of the sources from which per-
6 sonal data is collected.

7 (5) The permissible purposes for which personal
8 data is collected, used, or shared.

9 (6) The affiliates, service providers, or third
10 parties with which the data aggregator shares per-
11 sonal data, and the permissible purpose for such
12 sharing.

13 (7) A description of the length of time for
14 which personal data is retained.

15 (8) If personal data is collected and retained as
16 anonymized data, a description of the techniques
17 and methods used to create the anonymized data.

18 **SEC. 203. RIGHT TO ACCURACY AND CORRECTION.**

19 (a) IN GENERAL.—A data aggregator shall maintain
20 reasonable policies and procedures to ensure that any per-
21 sonal data that it collects, uses, or shares is accurate.

22 (b) REQUEST BY INDIVIDUAL.—An individual has the
23 right to require that a data aggregator that retains the
24 individual's personal data correct any inaccurate or incom-
25 plete personal data.

1 (c) CORRECTION BY DATA AGGREGATOR.—Upon re-
2 ceipt of a verifiable request, a data aggregator shall cor-
3 rect any inaccurate or incomplete personal data, as di-
4 rected by that individual, and direct any service provider
5 to correct the individual’s personal data in its records.

6 **SEC. 204. RIGHT TO DELETION.**

7 (a) REQUEST BY INDIVIDUAL.—An individual has the
8 right to request that a data aggregator delete any personal
9 data that the data aggregator has collected about the indi-
10 vidual.

11 (b) DELETION BY DATA AGGREGATOR.—Unless
12 strictly necessary to carry out a permissible purpose under
13 section 102, upon receipt of a verifiable request, a data
14 aggregator shall delete the personal data of such indi-
15 vidual, and direct any service providers to delete such indi-
16 vidual’s personal data from its records.

17 **SEC. 205. RIGHT TO OBJECT TO CLAIMED PERMISSIBLE**
18 **PURPOSE.**

19 (a) REQUEST BY AN INDIVIDUAL.—An individual has
20 the right to object to the claimed permissible purpose for
21 any personal data that a data aggregator has collected,
22 used, or shared of such individual.

23 (b) RESPONSE BY DATA AGGREGATOR.—Upon re-
24 ceipt of an individual’s verifiable request that objects to
25 the data aggregator’s claimed permissible purpose for col-

1 lecting, using, or sharing such individual’s personal data,
2 a data aggregator shall produce evidence supporting the
3 data aggregator’s claim that the collection, use, or sharing
4 of such individual’s personal data—

5 (1) was strictly necessary to carry out a permis-
6 sible purpose;

7 (2) was not used or shared for any other pur-
8 pose; and

9 (3) has not been retained for any time longer
10 than strictly necessary to carry out a permissible
11 purpose.

12 **SEC. 206. RIGHT TO HUMAN REVIEW OF AUTOMATED DECI-**
13 **SIONS.**

14 For any material decision by a data aggregator based
15 on automated processing of personal data of an individual,
16 a data aggregator shall—

17 (1) inform the individual of the specific per-
18 sonal data that was used for such a decision;

19 (2) make available an easily available mecha-
20 nism by which the individual may request human re-
21 view of such decisions; and

22 (3) upon receipt of a verifiable request for a
23 human review of a material decision, conduct such
24 a review within 15 days of the date of the request.

1 **SEC. 207. DUTY OF CARE.**

2 (a) IN GENERAL.—A data aggregator shall imple-
3 ment and maintain reasonable security procedures and
4 practices, including administrative, physical, and technical
5 safeguards, appropriate to the nature of the personal data
6 and the purposes for which the personal data will be col-
7 lected, used, or shared, to ensure that personal data—

8 (1) is only collected, used, or shared where
9 strictly necessary to carry out a permissible purpose
10 under section 102;

11 (2) is not retained for any time longer than
12 strictly necessary to carry out a permissible purpose
13 under section 102; and

14 (3) is protected from unauthorized collection,
15 use, sharing, or disclosure.

16 (b) DUTY OVER SERVICE PROVIDERS.—A data
17 aggregator—

18 (1) shall ensure that the service providers of the
19 data aggregator comply with the requirements of
20 this Act; and

21 (2) is liable for any violation of this Act by its
22 service providers.

1 **SEC. 208. DUTIES OF DATA AGGREGATOR UPON RECEIPT**
2 **OF VERIFIABLE REQUEST.**

3 (a) NO CHARGE.—A data aggregator is prohibited
4 from charging any fee to carry out a verifiable request
5 under this title.

6 (b) TIMING.—A data aggregator shall carry out a
7 verifiable request within 30 days of receiving the verifiable
8 request.

9 (c) FRIVOLOUS OR IRRELEVANT REQUEST.—The re-
10 quirements of this title shall not apply if the data
11 aggregator receiving a verifiable request determines that
12 the verifiable request is frivolous or irrelevant, including
13 by reason of—

14 (1) the failure of the individual to provide suffi-
15 cient information to carry out the verifiable request;
16 or

17 (2) the verifiable request is substantially the
18 same as a verifiable request previously submitted by
19 the individual, with respect to which the person has
20 already performed the data aggregator's duties
21 under this title.

1 **TITLE III—DATA ACCOUNT-**
2 **ABILITY AND TRANSPARENCY**
3 **AGENCY**

4 **SEC. 301. ESTABLISHMENT OF THE DATA ACCOUNTABILITY**
5 **AND TRANSPARENCY AGENCY.**

6 (a) AGENCY ESTABLISHED.—There is established in
7 the Executive branch an independent agency to be known
8 as the “Data Accountability and Transparency Agency”,
9 which shall regulate the collection, use, and sharing of per-
10 sonal data.

11 (b) DIRECTOR AND DEPUTY DIRECTOR.—

12 (1) IN GENERAL.—There is established a posi-
13 tion of the Director of the Data Accountability and
14 Transparency Agency (referred to in this Act as the
15 “Director”), who shall serve as the head of the
16 Agency.

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

20 (3) QUALIFICATION.—The President shall
21 nominate the Director from among members of the
22 public at large who are well qualified for service at
23 the Agency based on their knowledge and expertise
24 in—

25 (A) technology;

- 1 (B) protection of personal data;
2 (C) civil rights and liberties;
3 (D) law;
4 (E) social sciences; and
5 (F) business.

6 (4) COMPENSATION.—

7 (A) IN GENERAL.—The Director shall be
8 compensated at the rate prescribed for level II
9 of the Executive Schedule under section 5313
10 of title 5, United States Code.

11 (B) CONFORMING AMENDMENT.—Section
12 5313 of title 5, United States Code, is amended
13 by inserting after the item relating to the Fed-
14 eral Transit Administrator, the following new
15 item: “Director of the Data Accountability and
16 Transparency Agency.”.

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

19 (A) be appointed by the Director; and

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

22 (c) TERM.—

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

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

5 (3) REMOVAL FOR CAUSE.—The President may
6 remove the Director for inefficiency, neglect of duty,
7 or malfeasance in office.

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

12 (e) OFFICES.—The principal office of the Agency
13 shall be in the District of Columbia. The Director may
14 establish regional offices of the Agency.

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

21 **SEC. 302. EXECUTIVE AND ADMINISTRATIVE POWERS.**

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

- 1 (1) the establishment of rules for conducting
- 2 the general business of the Agency, in a manner not
- 3 inconsistent with this Act;
- 4 (2) to bind the Agency and enter into contracts;
- 5 (3) directing the establishment and mainte-
- 6 nance of divisions or other offices within the Agency,
- 7 in order to carry out the responsibilities under this
- 8 Act and Federal privacy law, and to satisfy the re-
- 9 quirements of applicable law;
- 10 (4) to coordinate and oversee the operation of
- 11 all administrative, enforcement, and research activi-
- 12 ties of the Agency;
- 13 (5) to adopt and use a seal;
- 14 (6) to determine the character of and necessity
- 15 for the obligations by the Agency;
- 16 (7) the appointment and supervision of per-
- 17 sonnel employed by the Agency;
- 18 (8) the distribution of business among per-
- 19 sonnel appointed and supervised by the Agency;
- 20 (9) the use and expenditure of funds;
- 21 (10) implementing this Act through rules, or-
- 22 ders, guidance, interpretations, statements of policy,
- 23 examinations, and enforcement actions; and
- 24 (11) performing such other functions as may be
- 25 authorized or required by law.

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

4 (c) OFFICE RESPONSIBILITIES.—Notwithstanding
5 subsections (a) and (b), section 303(a), and any other pro-
6 vision of law, with respect to the specific functional units
7 and offices described in section 303(b), the Director—

8 (1) shall ensure that such functional units and
9 offices perform the functions, duties, and coordina-
10 tion assigned to them under the applicable provision
11 of section 303; and

12 (2) may not reorganize or rename such units or
13 offices in a manner not provided for under the appli-
14 cable provisions of section 303.

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

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

3 **SEC. 303. ADMINISTRATION.**

4 (a) PERSONNEL.—

5 (1) APPOINTMENT.—

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

11 (B) EMPLOYEES OF THE AGENCY.—The
12 Director may employ attorneys, compliance ex-
13 aminers, compliance supervision analysts,
14 economists, statisticians, and other employees
15 as may be deemed necessary to conduct the
16 business of the Agency. Unless otherwise pro-
17 vided expressly by law, any individual appointed
18 under this section shall be an employee, as de-
19 fined in section 2105 of title 5, United States
20 Code, and subject to the provisions of such title
21 and other laws generally applicable to the em-
22 ployees of an Executive agency.

23 (C) WAIVER AUTHORITY.—

24 (i) IN GENERAL.—In making any ap-
25 pointment under subparagraph (A), the

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

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

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

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

21 (ii) **VETERANS PREFERENCES.**—In
22 implementing this subparagraph, the Di-
23 rector shall comply with the provisions of
24 section 2302(b)(11) of title 5, United
25 States Code, regarding veterans' pref-

1 erence requirements, in a manner con-
2 sistent with that in which such provisions
3 are applied under chapter 33 of that title.
4 The authority under this subparagraph to
5 waive the requirements of that chapter 33
6 shall expire 5 years after the date of enact-
7 ment of this Act.

8 (D) DUTY TO PROVIDE ADEQUATE STAFF-
9 ING.—The Director shall ensure that the spe-
10 cific functional units and offices established
11 under section 303, as well as other units and
12 offices with supervisory, rulemaking, and en-
13 forcement duties, are provided with sufficient
14 staff to carry out the functions, duties, and co-
15 ordination of those units and offices.

16 (E) LIMITATION ON POLITICAL AP-
17 POINTEES.—

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

24 (ii) POLITICAL APPOINTEES DE-
25 FINED.—For purposes of this subpara-

1 graph, the term “political appointee”
2 means an employee who holds—

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

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

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

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

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

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

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

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

17 (b) SPECIFIC FUNCTIONAL UNITS.—

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

21 (A) providing oversight and enforcement of
22 this Act to ensure that the collection, use, and
23 sharing of personal data is fair, equitable, and
24 nondiscriminatory;

1 (B) coordinating the Agency's civil rights
2 efforts with other Federal agencies and State
3 regulators, as appropriate, to promote con-
4 sistent, efficient, and effective enforcement of
5 Federal civil rights laws;

6 (C) working with civil rights, privacy orga-
7 nizations, and industry on the promotion of
8 compliance with the civil rights compliance
9 under this Act;

10 (D) providing annual reports to Congress
11 on the efforts of the Agency to fulfill its civil
12 rights mandate; and

13 (E) such additional powers and duties as
14 the Director may determine are appropriate.

15 (2) RESEARCH.—The Director shall establish a
16 unit whose functions shall include researching, ana-
17 lyzing, and reporting relating to the collection and
18 use of personal data, including use of automated de-
19 cision systems.

20 (3) COLLECTING AND TRACKING COM-
21 PLAINTS.—

22 (A) IN GENERAL.—

23 (i) ESTABLISHMENT OF UNIT.—The
24 Director shall establish a unit, the func-
25 tions of which shall include establishing a

1 single toll-free telephone number, a pub-
2 licly available website, and a publicly avail-
3 able database, or utilizing an existing pub-
4 licly available database, to facilitate the
5 centralized collection of, monitoring of, and
6 response to complaints regarding the col-
7 lection, use, and 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-

1 guages, other than English, in the
2 United States, as determined by the
3 Bureau of the Census on an ongoing
4 basis, and in formats accessible to in-
5 dividuals with hearing or vision im-
6 pairments.

7 (B) PUBLIC AVAILABILITY OF INFORMA-
8 TION.—

9 (i) IN GENERAL.—The Director
10 shall—

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

14 (II) place a clear and con-
15 spicuous hyperlink on the landing
16 page of the main website of the Agen-
17 cy to the website described under sub-
18 clause (I); and

19 (III) ensure that such website—

20 (aa) is searchable and sort-
21 able by an data aggregator; and

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

24 (ii) REMOVAL OF PERSONAL DATA.—

25 In making the information described under

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

3 **SEC. 304. COORDINATION.**

4 The Agency shall coordinate with the Consumer Fi-
5 nancial Protection Bureau, the Federal Trade Commis-
6 sion, the Department of Health and Human Services, the
7 Department of Education, and other Federal agencies and
8 State regulators, as appropriate, to promote consistent
9 regulatory treatment of personal data.

10 **SEC. 305. APPEARANCES BEFORE AND REPORTS TO CON-**
11 **GRESS.**

12 (a) APPEARANCES BEFORE CONGRESS.—The Direc-
13 tor of the Agency shall appear before the Committee on
14 Banking, Housing, and Urban Affairs of the Senate and
15 the Committee on Financial Services of the House of Rep-
16 resentatives at semi-annual hearings regarding the reports
17 required under subsection (b).

18 (b) REPORTS REQUIRED.—The Agency shall, concur-
19 rent with each semi-annual hearing referred to in sub-
20 section (a), prepare and submit to the President and to
21 the Committee on Banking, Housing, and Urban Affairs
22 of the Senate and the Committee on Financial Services
23 of the House of Representatives, a report, beginning with
24 the session following the designated transfer date.

1 (c) CONTENTS.—The reports required by subsection

2 (b) shall include—

3 (1) a discussion of the significant problems
4 faced by individuals in exercising their rights under
5 this Act;

6 (2) a justification of the budget request of the
7 previous year;

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

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

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

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

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

4 (8) an analysis of the efforts of the Agency to
5 fulfill the civil rights in data mission of the Agency;
6 and

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

9 **SEC. 306. FUNDING; PENALTIES AND FINES.**

10 (a) FUNDING.—

11 (1) ASSESSMENTS, FEES, CHARGES.—

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

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

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

8 (b) DATA ACCOUNTABILITY AND TRANSPARENCY
9 AGENCY FUND.—

10 (1) SEPARATE FUND IN FEDERAL RESERVE ES-
11 TABLISHED.—There is established in the Federal
12 Reserve a separate fund, to be known as the “Data
13 Accountability and Transparency Agency Fund” (re-
14 ferred to in this section as the “Agency Fund”). The
15 Agency Fund shall be maintained and established at
16 a Federal reserve bank, in accordance with such re-
17 quirements as the Board of Governors may impose.

18 (2) FUND RECEIPTS.—All amounts transferred
19 to the Agency under subsection (a) shall be depos-
20 ited into the Agency Fund.

21 (3) INVESTMENT AUTHORITY.—

22 (A) AMOUNTS IN AGENCY FUND MAY BE
23 INVESTED.—The Agency may request the
24 Board of Governors to direct the investment of
25 the portion of the Agency Fund that is not, in

1 the judgment of the Agency, required to meet
2 the current needs of the Agency.

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

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

15 (c) USE OF FUNDS.—

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

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

5 (3) AMOUNTS NOT SUBJECT TO APPORTION-
6 MENT.—Notwithstanding any other provision of law,
7 amounts in the Agency Fund and in the Civil Pen-
8 alty Fund established under subsection (d) shall not
9 be subject to apportionment for purposes of chapter
10 15 of title 31, United States Code, or under any
11 other authority.

12 (d) PENALTIES AND FINES.—

13 (1) ESTABLISHMENT OF VICTIMS RELIEF
14 FUND.—There is established in the Federal Reserve
15 a separate fund, to be known as the “Data Protec-
16 tion Civil Penalty Fund” (referred to in this section
17 as the “Civil Penalty Fund”). The Civil Penalty
18 Fund shall be maintained and established at a Fed-
19 eral reserve bank, in accordance with such require-
20 ments as the Board of Governors may impose. If the
21 Agency obtains a civil penalty against any person in
22 any judicial or administrative action under Federal
23 laws, the Agency shall deposit into the Civil Penalty
24 Fund, the amount of the penalty collected.

1 (2) PAYMENT TO VICTIMS.—Amounts in the
2 Civil Penalty Fund shall be available to the Agency,
3 without fiscal year limitation, for payments to the
4 victims of activities for which civil penalties have
5 been imposed under this Act and for other violations
6 of other Federal privacy laws.

7 **SEC. 307. PURPOSE, OBJECTIVES, AND FUNCTIONS.**

8 (a) PURPOSE.—The Agency shall seek to protect indi-
9 viduals' privacy and enforce this Act's limitations on the
10 collection, use, and sharing of personal data and other
11 Federal privacy law, and is authorized to exercise its au-
12 thorities under this Act for such purposes.

13 (b) OBJECTIVES.—The Agency is authorized to exer-
14 cise its authorities under this Act for the following pur-
15 poses:

16 (1) Protect individuals from violations of this
17 Act or other Federal privacy laws or unfair, decep-
18 tive, abusive, or discriminatory data practices.

19 (2) Ensure that Federal privacy law is enforced
20 consistently and in order to protect individuals and
21 ensure fair competition.

22 (c) FUNCTIONS.—The primary functions of the Agen-
23 cy are—

24 (1) providing leadership and coordination to the
25 efforts of all Federal departments and agencies to

1 enforce all Federal statutes, Executive orders, regu-
2 lations and policies which involve privacy or data
3 protection;

4 (2) maximizing effort, promoting efficiency, and
5 eliminating conflict, competition, duplication, and in-
6 consistency among the operations, functions, and ju-
7 risdictions of Federal departments and agencies re-
8 sponsible for privacy or data protection, data protec-
9 tion rights and standards, and fair information prac-
10 tices and principles;

11 (3) providing active leadership, guidance, edu-
12 cation, and appropriate assistance to private sector
13 businesses, and organizations, groups, institutions,
14 and individuals regarding privacy, data protection
15 rights and standards, and fair information practices
16 and principles;

17 (4) requiring and overseeing ex-ante impact as-
18 sessments and ex-post outcomes audits of high-risk
19 data practices by covered entities to advance fair
20 and just data practices;

21 (5) examining the social, ethical, economic, and
22 civil rights impacts of high-risk data practices and
23 propose remedies;

1 (6) ensuring that data privacy practices are
2 fair, just, and nondiscriminatory, and comply with
3 fair information practices;

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

6 (8) developing model privacy, data protection,
7 and fair information practices, standards, guidelines,
8 policies, and routine uses for use by the private sec-
9 tor;

10 (9) issuing rules, orders, and guidance imple-
11 menting this Act; and

12 (10) enforcing other privacy statutes and rules
13 as authorized by Congress.

14 **SEC. 308. RULEMAKING AUTHORITY.**

15 (a) IN GENERAL.—The Agency is authorized to exer-
16 cise its authorities under this Act and Federal privacy law
17 to administer, enforce, and otherwise implement the provi-
18 sions of this Act.

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

20 (1) GENERAL AUTHORITY.—The Director may
21 prescribe rules and issue orders and guidance, as
22 may be necessary or appropriate to enable the Agen-
23 cy to administer and carry out the purposes and ob-
24 jectives of this Act, and to prevent evasions of this
25 Act.

1 (2) REGULATIONS.—The Agency may issue
2 such regulations, after notice and comment in ac-
3 cordance with section 553 of title 5, United States
4 Code, as may be necessary to carry out this Act.

5 (3) STANDARDS FOR RULEMAKING.—In pre-
6 scribing a rule under this Act—

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

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

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

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

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

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

5 **SEC. 309. SUPERVISION OF DATA AGGREGATORS.**

6 (a) IN GENERAL.—This section shall apply to any
7 data aggregator that satisfies one or more of the following
8 thresholds:

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

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

15 (b) SUPERVISION.—The Agency may require reports
16 and conduct examinations on a periodic basis of data
17 aggregators described in paragraph (1) for purposes of—

18 (1) assessing compliance with the requirements
19 of this Act or other Federal privacy laws;

20 (2) obtaining information about the activities
21 subject to such laws and the associated compliance
22 systems or procedures of such entities;

23 (3) detecting and assessing associated risks to
24 individuals and groups of individuals; and

1 (4) requiring and overseeing ex-ante impact as-
2 sessments and ex-post outcome audits of automated
3 decision systems to advance fair and just data prac-
4 tices.

5 **SEC. 310. SPECIFIC AGENCY AUTHORITIES.**

6 (a) PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE
7 ACTS AND PRACTICES.—

8 (1) IN GENERAL.—The Agency may take any
9 action authorized under this Act to prevent a data
10 aggregator or service provider from committing or
11 engaging in any unfair, deceptive, or abusive act or
12 practice in connection with the collection, use, or
13 sharing of personal data.

14 (2) RULEMAKING.—The Agency may prescribe
15 rules applicable to a data aggregator identifying un-
16 lawful, unfair, deceptive, or abusive acts or practices
17 in connection with the collection, use, or sharing of
18 personal data, which may include requirements for
19 the purpose of preventing such acts or practices.
20 Rules under this section shall not limit, or be inter-
21 preted to limit, the scope of unlawful, deceptive, or
22 abusive acts or practices in connection with the col-
23 lection, use, or sharing of personal data.

24 (3) UNFAIRNESS.—

1 (A) IN GENERAL.—The Agency may de-
2clare an act or practice in connection with the
3collection, use, or sharing of personal data to be
4unlawful on the grounds that such act or prac-
5tice is unfair if the Agency has a reasonable
6basis to conclude that—

7 (i) the act or practice causes or is
8likely to cause privacy harm or other sub-
9stantial injury to individuals which is not
10reasonably avoidable by individuals; and

11 (ii) such privacy harm or substantial
12injury is not outweighed by countervailing
13benefits to individuals or to competition.

14 (B) CONSIDERATION OF PUBLIC POLI-
15CIES.—In determining whether an act or prac-
16tice is unfair, the Agency may consider estab-
17lished public policies as evidence to be consid-
18ered with all other evidence. Such public policy
19considerations may not serve as a primary basis
20for such determination.

21 (4) ABUSIVE.—The Agency may declare an act
22or practice abusive in connection with the collection,
23use, or sharing of personal data if the act or prac-
24tice—

1 (A) materially interferes with the ability of
2 an individual to understand a term of condition
3 of a good or service; or

4 (B) takes unreasonable advantage of—

5 (i) a lack of understanding on the
6 part of the individual of the material risks,
7 costs, or conditions of the product or serv-
8 ice;

9 (ii) the inability of the individual to
10 protect their interests in selecting or using
11 a product or service; or

12 (iii) the reasonable reliance by the in-
13 dividual on a data aggregator or service
14 provider to act in the interests of the indi-
15 vidual.

16 (b) DATABASE.—The Agency shall create and main-
17 tain a publicly available database through which—

18 (1) data aggregators report the types of per-
19 sonal data that those data aggregators collect, use,
20 or share; and

21 (2) an individual may exercise rights, including
22 rights under title II, with respect to the personal
23 data of the individual.

24 (c) PUBLICLY ACCESSIBLE LIST.—The Agency shall
25 maintain a publicly accessible list of data aggregators that

1 collect, use, or share personal data of more than 10,000
2 persons or households, and the permissible purposes for
3 which the data aggregators purport to collect personal
4 data.

5 (d) LIMITATION ON LINES OF BUSINESS.—The
6 Agency shall—

7 (1) limit or require the divestment of any lines
8 of business in which any data aggregator partici-
9 pates based on antitrust or competition concerns;
10 and

11 (2) have the authority to review and approve
12 any merger between a data aggregator and any
13 other company.

14 **SEC. 311. PROHIBITED ACTS.**

15 It shall be unlawful for—

16 (1) any data aggregator or service provider—

17 (A) to commit any act or omission in viola-
18 tion of this Act or Federal privacy law; or

19 (B) to engage in any unfair, deceptive, or
20 abusive act or practice relating to personal
21 data;

22 (2) any data aggregator or service provider to
23 fail or refuse as required by this Act or Federal pri-
24 vacy law, or any rule or order issued by the Agency
25 thereunder—

1 (A) to permit access to or copying of
2 records;

3 (B) to establish or maintain records; or

4 (C) to make reports or provide information
5 to the Agency; or

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

15 **SEC. 312. ENFORCEMENT POWERS.**

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

18 (1) AGENCY INVESTIGATION.—The term
19 “Agency investigation” means any inquiry conducted
20 by an Agency investigator for the purpose of
21 ascertaining whether any person is or has been en-
22 gaged in any conduct that is a violation, as defined
23 in this section.

24 (2) AGENCY INVESTIGATOR.—The term “Agen-
25 cy investigator” means any attorney or investigator

1 employed by the Agency who is charged with the
2 duty of enforcing or carrying into effect this Act any
3 other Federal privacy law.

4 (3) CUSTODIAN.—The term “custodian” means
5 the custodian or any deputy custodian designated by
6 the Agency.

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

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

17 (b) INVESTIGATIONS AND ADMINISTRATIVE DIS-
18 COVERY.—

19 (1) JOINT INVESTIGATIONS.—

20 (A) IN GENERAL.—The Agency or, where
21 appropriate, an Agency investigator, may en-
22 gage in joint investigations and requests for in-
23 formation, as authorized under this Act.

24 (B) CIVIL RIGHTS.—The authority under
25 subparagraph (A) includes matters relating to

1 protection of individuals' civil rights under this
2 Act and joint investigations with, and requests
3 for information from, the Director of the Bu-
4 reau of Consumer Financial Protection, the
5 Federal Trade Commission, the Secretary of
6 Housing and Urban Development, the Depart-
7 ment of Education, the Equal Employment Op-
8 portunity Commission, the Department of
9 Health and Human Services, or the Attorney
10 General.

11 (2) SUBPOENAS.—

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

18 (B) FAILURE TO OBEY.—In the case of
19 contumacy or refusal to obey a subpoena issued
20 pursuant to this subparagraph and served upon
21 any person, the district court of the United
22 States for any district in which such person is
23 found, resides, or transacts business, upon ap-
24 plication by the Agency or an Agency investi-
25 gator and after notice to such person, may

1 issue an order requiring such person to appear
2 and give testimony or to appear and produce
3 documents or other material.

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

7 (3) DEMANDS.—

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

17 (i) produce such documentary mate-
18 rial for inspection and copying or repro-
19 duction in the form or medium requested
20 by the Agency;

21 (ii) submit such tangible things;

22 (iii) file written reports or answers to
23 questions;

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

4 (v) furnish any combination of such
5 material, answers, or testimony.

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

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

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

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

24 (iii) identify the custodian to whom
25 such material shall be made available.

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

4 (i) describe each class of tangible
5 things to be submitted under the demand
6 with such definiteness and certainty as to
7 permit such things to be fairly identified;

8 (ii) prescribe a return date or dates
9 which will provide a reasonable period of
10 time within which the things so demanded
11 may be assembled and submitted; and

12 (iii) identify the custodian to whom
13 such things shall be submitted.

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

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

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

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

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

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

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

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

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

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

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

23 (II) to the extent that the courts
24 of the United States have authority to
25 assert jurisdiction over such person,

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

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

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

22 (ii) delivering a duly executed copy of
23 such demand or petition to the principal
24 office or place of business of the person to
25 be served; or

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

7 (I) PROOF OF SERVICE.—

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

14 (ii) RETURN RECEIPTS.—In the case
15 of service by registered or certified mail,
16 such return shall be accompanied by the
17 return post office receipt of delivery of
18 such demand or enforcement petition.

19 (J) PRODUCTION OF DOCUMENTARY MATE-
20 RIAL.—The production of documentary material
21 in response to a civil investigative demand shall
22 be made under a sworn certificate, in such form
23 as the demand designates, by the person, if a
24 natural person, to whom the demand is directed
25 or, if not a natural person, by any person hav-

1 ing knowledge of the facts and circumstances
2 relating to such production, to the effect that
3 all of the documentary material required by the
4 demand and in the possession, custody, or con-
5 trol of the person to whom the demand is di-
6 rected has been produced and made available to
7 the custodian.

8 (K) SUBMISSION OF TANGIBLE THINGS.—

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

21 (L) SEPARATE ANSWERS.—Each reporting
22 requirement or question in a civil investigative
23 demand shall be answered separately and fully
24 in writing under oath, unless it is objected to,
25 in which event the reasons for the objection

1 shall be stated in lieu of an answer, and it shall
2 be submitted under a sworn certificate, in such
3 form as the demand designates, by the person,
4 if a natural person, to whom the demand is di-
5 rected or, if not a natural person, by any per-
6 son responsible for answering each reporting re-
7 quirement or question, to the effect that all in-
8 formation required by the demand and in the
9 possession, custody, control, or knowledge of
10 the person to whom the demand is directed has
11 been submitted.

12 (M) TESTIMONY.—

13 (i) IN GENERAL.—

14 (I) OATH AND RECORDATION.—

15 The examination of any person pursu-
16 ant to a demand for oral testimony
17 served under this paragraph shall be
18 taken before an officer authorized to
19 administer oaths and affirmations by
20 the laws of the United States or of
21 the place at which the examination is
22 held. The officer before whom oral
23 testimony is to be taken shall put the
24 witness on oath or affirmation and
25 shall personally, or by any individual

1 acting under the direction of and in
2 the presence of the officer, record the
3 testimony of the witness.

4 (II) TRANSCRIPTION.—The testi-
5 mony shall be taken stenographically
6 and transcribed.

7 (III) TRANSMISSION TO CUSTO-
8 DIAN.—After the testimony is fully
9 transcribed, the officer investigator
10 before whom the testimony is taken
11 shall promptly transmit a copy of the
12 transcript of the testimony to the cus-
13 todian.

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

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

11 (iv) ATTORNEY REPRESENTATION.—

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

18 (II) AUTHORITY.—The attorney
19 may advise a person described in sub-
20 clause (I), in confidence, either upon
21 the request of such person or upon
22 the initiative of the attorney, with re-
23 spect to any question asked of such
24 person.

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

19 (IV) REFUSAL TO ANSWER.—If a
20 person described in subclause (I) re-
21 fuses to answer any question—

22 (aa) the Agency may peti-
23 tion the district court of the
24 United States pursuant to this
25 section for an order compelling

74

1 such person to answer such ques-
2 tion; and

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

10 (v) TRANSCRIPTS.—For purposes of
11 this paragraph—

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

18 (II) the transcript shall be read
19 to or by the witness, unless such ex-
20 amination and reading are waived by
21 the witness;

22 (III) any changes in form or sub-
23 stance which the witness desires to
24 make shall be entered and identified
25 upon the transcript by the Agency in-

1 investigator, with a statement of the
2 reasons given by the witness for mak-
3 ing such changes;

4 (IV) the transcript shall be
5 signed by the witness, unless the wit-
6 ness in writing waives the signing, is
7 ill, cannot be found, or refuses to
8 sign; and

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

20 (vi) CERTIFICATION BY INVESTI-
21 GATOR.—The Agency investigator shall
22 certify on the transcript that the witness
23 was duly sworn by him or her and that the
24 transcript is a true record of the testimony
25 given by the witness, and the Agency in-

1 investigator shall promptly deliver the tran-
2 script or send it by registered or certified
3 mail to the custodian.

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

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

17 (4) CONFIDENTIAL TREATMENT OF DEMAND
18 MATERIAL.—

19 (A) IN GENERAL.—Documentary materials
20 and tangible things received as a result of a
21 civil investigative demand shall be subject to re-
22 quirements and procedures regarding confiden-
23 tiality, in accordance with rules established by
24 the Agency.

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

12 (5) PETITION FOR ENFORCEMENT.—

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

1 petition for an order of such court for the en-
2 forcement of this paragraph.

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

7 (6) PETITION FOR ORDER MODIFYING OR SET-
8 TING ASIDE DEMAND.—

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

21 (B) COMPLIANCE DURING PENDENCY.—
22 The time permitted for compliance with the de-
23 mand in whole or in part, as determined proper
24 and ordered by the Agency, shall not run dur-
25 ing the pendency of a petition under clause (i)

1 at the Agency, except that such person shall
2 comply with any portions of the demand not
3 sought to be modified or set aside.

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

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

23 (8) JURISDICTION OF COURT.—

24 (A) IN GENERAL.—Whenever any petition
25 is filed in any district court of the United

1 States under this paragraph, such court shall
2 have jurisdiction to hear and determine the
3 matter so presented, and to enter such order or
4 orders as may be required to carry out the pro-
5 visions of this section.

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

10 (c) HEARINGS AND ADJUDICATORY PROCEEDINGS.—

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

16 (A) the provisions of this Act, including
17 any rules prescribed by the Agency under this
18 Act; and

19 (B) any other Federal privacy law that the
20 Agency is authorized to enforce, and any regu-
21 lations or order prescribed thereunder, unless
22 such Federal privacy law specifically limits the
23 Agency from conducting a hearing or adjudica-
24 tion proceeding and only to the extent of such
25 limitation.

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

3 (A) ORDERS AUTHORIZED.—

4 (i) IN GENERAL.—If, in the opinion of
5 the Agency, any data aggregator is engag-
6 ing or has engaged in an activity that vio-
7 lates a law, rule, or any condition imposed
8 in writing on the person by the Agency,
9 the Agency may issue and serve upon the
10 data aggregator or service provider a no-
11 tice of charges in respect thereof.

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

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

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

22 (B) EFFECTIVENESS OF ORDER.—A cease-
23 and-desist order shall become effective at the
24 expiration of 30 days after the date of service
25 of an order under subparagraph (A) upon the

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

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

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

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

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

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

24 (3) SPECIAL RULES FOR TEMPORARY CEASE-
25 AND-DESIST PROCEEDINGS.—

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

1 and-desist order is issued against the person,
2 until the effective date of such order.

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

21 (C) INCOMPLETE OR INACCURATE
22 RECORDS.—

23 (i) TEMPORARY ORDER.—If a notice
24 of charges served under paragraph (2)
25 specifies, on the basis of particular facts

1 and circumstances, that the books and
2 records of a data aggregator or service
3 provider are so incomplete or inaccurate
4 that the Agency is unable to determine the
5 financial condition of that data aggregator
6 or service provider or the details or pur-
7 pose of any transaction or transactions
8 that may have a material effect on the fi-
9 nancial condition of that person, the Agen-
10 cy may issue a temporary order requir-
11 ing—

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

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

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

24 (I) shall become effective upon
25 service; and

1 (II) unless set aside, limited, or
2 suspended by a court in proceedings
3 under subparagraph (B), shall remain
4 in effect and enforceable until the ear-
5 lier of—

6 (aa) the completion of the
7 proceeding initiated under para-
8 graph (2) in connection with the
9 notice of charges; or

10 (bb) the date the Agency de-
11 termines, by examination or oth-
12 erwise, that the books and
13 records of the covered person or
14 service provider are accurate and
15 reflect the financial condition
16 thereof.

17 (4) SPECIAL RULES FOR ENFORCEMENT OF OR-
18 DERS.—

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

1 tion and power to order and require compliance
2 herewith.

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

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

12 (d) LITIGATION AUTHORITY.—

13 (1) IN GENERAL.—If any person violates this
14 Act, the Agency may commence a civil action against
15 such person to impose a civil penalty or to seek all
16 appropriate legal and equitable relief including a
17 permanent or temporary injunction as permitted by
18 law.

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

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

4 (4) NOTICE TO THE ATTORNEY GENERAL.—

5 (A) IN GENERAL.—When commencing a
6 civil action under this Act, or any rule there-
7 under, the Agency shall notify the Attorney
8 General.

9 (B) NOTICE AND COORDINATION.—

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

18 (ii) COORDINATION.—In order to
19 avoid conflicts and promote consistency re-
20 garding litigation of matters under Federal
21 law, the Attorney General and the Agency
22 shall consult regarding the coordination of
23 investigations and proceedings, including
24 by negotiating an agreement for coordina-
25 tion by not later than 180 days after the

1 designated transfer date. The agreement
2 under this subclause shall include provi-
3 sions to ensure that parallel investigations
4 and proceedings involving the Federal pri-
5 vacy laws are conducted in a manner that
6 avoids conflicts and does not impede the
7 ability of the Attorney General to pros-
8 ecute violations of Federal criminal laws.

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

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

24 (6) FORUM.—Any civil action brought under
25 this Act may be brought in a United States district

1 court or in any court of competent jurisdiction of a
2 State in a district in which the defendant is located
3 or resides or is doing business, and such court shall
4 have jurisdiction to enjoin such person and to re-
5 quire compliance with any Federal privacy law.

6 (7) TIME FOR BRINGING ACTION.—Except as
7 otherwise permitted by law or equity, no action may
8 be brought under this Act more than 5 years after
9 the date of discovery of the violation to which an ac-
10 tion relates.

11 (e) RELIEF AVAILABLE.—

12 (1) ADMINISTRATIVE PROCEEDINGS OR COURT
13 ACTIONS.—

14 (A) JURISDICTION.—The court (or the
15 Agency, as the case may be) in an action or ad-
16 judication proceeding brought under this Act,
17 shall have jurisdiction to grant any appropriate
18 legal or equitable relief with respect to a viola-
19 tion of this Act or Federal privacy law, includ-
20 ing a violation of a rule or order prescribed
21 under this Act or Federal privacy law.

22 (B) RELIEF.—Relief under this section
23 may include, without limitation—

24 (i) rescission or reformation of con-
25 tracts;

- 1 (ii) refund of moneys or return of real
2 property;
- 3 (iii) restitution;
- 4 (iv) disgorgement or compensation for
5 unjust enrichment;
- 6 (v) payment of damages or other mon-
7 etary relief;
- 8 (vi) public notification regarding the
9 violation, including the costs of notifica-
10 tion;
- 11 (vii) limits on the activities or func-
12 tions of the person; and
- 13 (viii) civil money penalties, as set
14 forth more fully in paragraph (3).

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

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

1 cy, the State attorney general, or the State regulator
2 is the prevailing party in the action.

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

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

10 (B) PENALTY AMOUNTS.—

11 (i) FIRST TIER.—For any violation of
12 a law, rule, or final order or condition im-
13 posed in writing by the Agency, a civil pen-
14 alty may not exceed \$5,000 for each day
15 during which such violation or failure to
16 pay continues.

17 (ii) SECOND TIER.—Notwithstanding
18 clause (i), for any person that recklessly
19 engages in a violation of a this Act or any
20 Federal privacy law, a civil penalty may
21 not exceed \$25,000 for each day during
22 which such violation continues.

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

1 privacy law, a civil penalty may not exceed
2 \$1,000,000 for each day during which such
3 violation continues.

4 (C) PENALTIES FOR RE-IDENTIFYING
5 DATA.—Any person that re-identifies, or at-
6 tempts to re-identify, anonymized data shall be
7 assessed a third tier civil penalty under sub-
8 paragraph (B).

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

14 (i) the size of financial resources and
15 good faith of the person charged;

16 (ii) the gravity of the violation or fail-
17 ure to pay;

18 (iii) the severity of the risks or harms
19 to the individual;

20 (iv) the history of previous violations;
21 and

22 (v) such other matters as justice may
23 require.

24 (E) AUTHORITY TO MODIFY OR REMIT
25 PENALTY.—The Agency may compromise, mod-

1 ify, or remit any penalty which may be assessed
2 or had already been assessed under subpara-
3 graph (B). The amount of such penalty, when
4 finally determined, shall be exclusive of any
5 sums owed by the person to the United States
6 in connection with the costs of the proceeding,
7 and may be deducted from any sums owed by
8 the United States to the person charged.

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

13 (i) the Agency gives notice and an op-
14 portunity for a hearing to the person ac-
15 cused of the violation; or

16 (ii) the appropriate court has ordered
17 such assessment and entered judgment in
18 favor of the Agency.

19 (f) REFERRALS FOR CRIMINAL PROCEEDINGS.—If
20 the Agency obtains evidence that any person, domestic or
21 foreign, has engaged in conduct that may constitute a vio-
22 lation of Federal criminal law, the Agency shall transmit
23 such evidence to the Attorney General of the United
24 States, who may institute criminal proceedings under ap-

1 appropriate law. Nothing in this section affects any other
2 authority of the Agency to disclose information.

3 **TITLE IV—CIVIL LIABILITY**

4 **SEC. 401. PRIVATE RIGHT OF ACTION.**

5 (a) IN GENERAL.—Any person may commence a civil
6 action—

7 (1) against any person, including the United
8 States or any other governmental instrumentality or
9 agency to the extent permitted by the Eleventh
10 Amendment to the Constitution of the United
11 States, that is alleged to have violated this Act; or

12 (2) against the Agency if the Agency is alleged
13 to have—

14 (A) adopted a rule in violation of—

15 (i) any provision of chapter 5 of title
16 5, United States Code; or

17 (ii) any provision of this title; or

18 (B) failed to promulgate a rule required
19 under this title, in order compel the issuance of
20 such rule.

21 (b) JURISDICTION.—The district courts of the United
22 States shall have jurisdiction, without regard to the
23 amount in controversy or the citizenship of the parties.

1 (c) RELIEF.—In a civil action brought under para-
2 graph (1) in which the plaintiff prevails, the court may
3 award—

4 (1) an amount not less than \$100 and not
5 greater than \$1,000 per violation per day or actual
6 damages, whichever is greater;

7 (2) punitive damages;

8 (3) reasonable attorney’s fees and litigation
9 costs; and

10 (4) any other relief, including a temporary or
11 permanent injunction, equitable, or declaratory re-
12 lief, that the court determines appropriate.

13 (d) INJURY IN FACT.—A violation of this Act or a
14 regulation promulgated under this Act with respect to the
15 personal data of an individual is presumed to cause pri-
16 vacy harm and constitutes a concrete and particularized
17 injury in fact to that individual.

18 (e) TIME FOR BRINGING AN ACTION.—Except as oth-
19 erwise permitted by law or equity, no individual may bring
20 an action under this Act more than 5 years after the date
21 of discovery of the violation to which an action relates.

1 **SEC. 402. INVALIDITY OF PRE-DISPUTE ARBITRATION**
2 **AGREEMENTS AND PRE-DISPUTE JOINT AC-**
3 **TION WAIVERS.**

4 (a) **IN GENERAL.**—Notwithstanding any other provi-
5 sion of law, no pre-dispute arbitration agreement or pre-
6 dispute joint action waiver shall be valid or enforceable
7 with respect to a dispute regarding a violation of this Act
8 or regulations promulgated by the Agency.

9 (b) **APPLICABILITY.**—Any determination as to wheth-
10 er or how this subsection applies to any dispute regarding
11 a violation of this Act or regulations promulgated by the
12 Agency shall be made by a court, rather than an arbi-
13 trator, without regard to whether such agreement pur-
14 ports to delegate such determination to an arbitrator.

15 (c) **DEFINITIONS.**—For purposes of this section:

16 (1) The term “pre-dispute arbitration agree-
17 ment” means any agreement to arbitrate a dispute
18 that has not arisen at the time of the making of the
19 agreement.

20 (2) The term “pre-dispute joint-action waiver”
21 means an agreement, whether or not part of a pre-
22 dispute arbitration agreement, that would prohibit,
23 or waive the right of, one of the parties to the agree-
24 ment to participate in a joint, class, or collective ac-
25 tion in a judicial, arbitral, administrative, or other

1 forum, concerning a dispute that has not yet arisen
2 at the time of the making of the agreement.

3 **SEC. 403. PROHIBITION ON WAIVER.**

4 No provisions of this Act may be waived and any
5 agreement to waive compliance with or modify any provi-
6 sion of the Act shall be void as contrary to public policy.

7 **TITLE V—CORPORATE**
8 **ACCOUNTABILITY**

9 **SEC. 501. REPORTING AND CERTIFICATION.**

10 (a) IN GENERAL.—Each data aggregator shall estab-
11 lish comprehensive privacy and data security policies, pro-
12 cedures, and practices to ensure compliance with this Act.

13 (b) ANNUAL REPORT.—Each data aggregator shall
14 submit to the Agency an annual report—

15 (1) describing its collection, use, or sharing of
16 personal data, and the permissible purposes for such
17 collection, use, or sharing of personal data;

18 (2) identifying each service provider with which
19 the data aggregator shares personal data, the per-
20 missible purposes for sharing personal data with
21 each such service provider, and a description of the
22 oversight and supervision conducted by the data
23 aggregator to ensure that each such service provider
24 complies with the requirements of this Act;

1 (3) internal controls that the data aggregator
2 has put in place to ensure compliance with the re-
3 quirements of this Act; and

4 (4) a description of the testing, and results of
5 such testing, to ensure compliance with the require-
6 ments of this Act.

7 (c) EXECUTIVE CERTIFICATION.—The chief execu-
8 tive officer or, if the data aggregator does not have a chief
9 executive officer, the highest ranking officer of the data
10 aggregator, shall annually certify to the Agency that it has
11 complied with this Act, including—

12 (1) conducted oversight sufficient to dem-
13 onstrate all service providers are complying with this
14 Act;

15 (2) maintains adequate internal controls suffi-
16 cient to demonstrate compliance with this Act;

17 (3) conducted testing sufficient to demonstrate
18 compliance with this Act; and

19 (4) maintains reporting structures to ensure
20 that the chief executive officer (or, if the data
21 aggregator does not have a chief executive officer,
22 the highest ranking officer of the data aggregator)
23 is involved in, and responsible for, decisions to en-
24 sure compliance with this Act.

1 (d) CRIMINAL AND CIVIL PENALTIES FOR CEO AND
2 BOARD OF DIRECTORS.—

3 (1) CRIMINAL PENALTY.—

4 (A) IN GENERAL.—Whoever knowingly and
5 intentionally violates, or knowingly and inten-
6 tionally attempts to violate, this section shall be
7 fined in accordance with title 18, United States
8 Code, or imprisoned for not more than 5 years,
9 or both.

10 (B) ENHANCED PENALTY FOR AGGRA-
11 VATED CASES.—Whoever violates, or attempts
12 to violate, this section while violating another
13 law of the United States or as part of a pattern
14 of any illegal activity involving more than
15 \$100,000 in a 12-month period shall be fined
16 twice the amount provided in subsection (b)(3)
17 or (c)(3) (as the case may be) of section 3571
18 of title 18, United States Code, imprisoned for
19 not more than 10 years, or both.

20 (2) CIVIL FINE.—Whoever violates this section
21 shall be liable to the United States for a civil fine
22 of not more than \$10,000,000.

23 **SEC. 502. WHISTLEBLOWER PROTECTIONS.**

24 (a) IN GENERAL.—A data aggregator may not, di-
25 rectly or indirectly, discharge, threaten, harass, suspend,

1 demote, terminate, or in any other manner discriminate
2 against a covered individual because—

3 (1) the covered individual, or anyone perceived
4 as assisting the covered individual, takes (or the
5 data aggregator suspects that the covered individual
6 has taken or will take) a lawful action in providing
7 to the Federal Government or the attorney general
8 of a State information relating to any act or omis-
9 sion that the covered individual reasonably believes
10 to be a violation of this Act or any regulation pro-
11 mulgated under this Act;

12 (2) the covered individual provides information
13 that the covered individual reasonably believes evi-
14 dences such a violation to—

15 (A) a person with supervisory authority
16 over the covered individual at the covered enti-
17 ty; or

18 (B) another individual working for the cov-
19 ered entity who the covered individual reason-
20 ably believes has the authority to investigate,
21 discover, or terminate the violation or to take
22 any other action to address the violation;

23 (3) the covered individual testifies (or the cov-
24 ered entity expects that the covered individual will

1 testify) in an investigation or judicial or administra-
2 tive proceeding concerning such a violation;

3 (4) the covered individual assists or participates
4 (or the covered entity expects that the covered indi-
5 vidual will assist or participate) in such an investiga-
6 tion or judicial or administrative proceeding; or

7 (5) takes any other action to assist in carrying
8 out the purposes of this section.

9 (b) ENFORCEMENT.—An individual who alleges dis-
10 charge or other discrimination in violation of subsection
11 (a) may bring an action governed by the rules, procedures,
12 statute of limitations, and legal burdens of proof in section
13 42121(b) of title 49, United States Code. If the individual
14 has not received a decision within 180 days and there is
15 no showing that such delay is due to the bad faith of the
16 claimant, the individual may bring an action for a jury
17 trial, governed by the burden of proof in section 42121(b)
18 of title 49, United States Code, in the appropriate district
19 court of the United States for the following relief:

20 (1) Temporary relief while the case is pending.

21 (2) Reinstatement with the same seniority sta-
22 tus that the individual would have had, but for the
23 discharge or discrimination.

24 (3) Three times the amount of back pay other-
25 wise owed to the individual, with interest.

1 (4) Consequential and compensatory damages,
2 and compensation for litigation costs, expert witness
3 fees, and reasonable attorneys' fees.

4 (c) WAIVER OF RIGHTS AND REMEDIES.—The rights
5 and remedies provided for in this section shall not be
6 waived by any policy form or condition of employment, in-
7 cluding by a predispute arbitration agreement.

8 (d) PREDISPUTE ARBITRATION AGREEMENTS.—No
9 predispute arbitration agreement shall be valid or enforce-
10 able if the agreement requires arbitration of a dispute
11 arising under this section.

12 (e) DEFINITION.—In this section, the term “covered
13 individual” means an applicant, current or former em-
14 ployee, contractor, subcontractor, grantee, or agent of a
15 data aggregator or service provider.

16 **TITLE VI—RELATION TO** 17 **FEDERAL AND STATE LAW**

18 **SEC. 601. RELATION TO FEDERAL LAW.**

19 The Agency shall have concurrent enforcement au-
20 thority with other Federal agencies to enforce Federal pri-
21 vacy laws.

22 **SEC. 602. RELATION TO STATE LAW.**

23 (a) IN GENERAL.—Nothing in this Act, nor any
24 amendment, standard, rule, requirement, or standard of
25 performance, shall be construed to preempt, displace, or

1 supplant any State or Federal common law or statute, ex-
2 cept to the extent that any such provision of law specifi-
3 cally and directly conflicts with the provisions of this Act,
4 and then only to the extent of the specific and direct con-
5 flict.

6 (b) GREATER PROTECTION UNDER STATE LAW.—
7 For purposes of this subsection, a statute, regulation,
8 order, or interpretation in effect in any State is not in
9 specific and direct conflict with the provisions of this Act
10 if the protection that such statute, regulation, order, or
11 interpretation affords to persons is greater than the pro-
12 tection provided under this Act.

13 (c) STATE REGULATION WHEN ACT IS SILENT.—
14 Nothing in this Act shall be construed or interpreted as
15 limiting the right of any State to regulate any person, per-
16 sonal data, right, or obligation covered by this Act or any
17 rule, regulation or standard under this Act if any such
18 State regulation is not covered by or is exempted from
19 this Act, or any final agency regulation issued under this
20 Act.

21 (d) REMEDIES PRESERVED.—Notwithstanding any
22 other provision of this Act, nothing in this Act, nor any
23 nor any amendment, standard, rule, requirement, assess-
24 ment, shall preempt, displace, or supplant any Federal or
25 State common law or statutory rights and remedies, in-

1 cluding any cause of action for personal injury, wrongful
2 death, property damage, or other financial, physical,
3 reputational, or psychological injury based in negligence,
4 strict liability, products liability, failure to warn, an objec-
5 tively offensive intrusion into the private affairs or con-
6 cerns of the individual, or any other legal theory of liability
7 under any State law, Federal common law, or statutory
8 law.

9 **SEC. 603. PRESERVATION OF ENFORCEMENT POWERS OF**
10 **STATES.**

11 (a) IN GENERAL.—

12 (1) ACTION BY STATE.—

13 (A) STATE ATTORNEY GENERAL.—Except
14 as provided in paragraph (2), the attorney gen-
15 eral (or the equivalent thereof) of any State
16 may bring a civil action in the name of such
17 State in any district court of the United States
18 in that State or in State court that is located
19 in that State and that has jurisdiction over the
20 defendant, to enforce provisions of this Act or
21 regulations issued under this Act, and to secure
22 remedies under provisions of this Act or rem-
23 edies otherwise provided under other law.

24 (B) STATE REGULATOR.—A State regu-
25 lator may bring a civil action or other appro-

1 appropriate proceeding to enforce the provisions of
2 this Act or regulations issued under this Act
3 with respect to any entity that is State-char-
4 tered, incorporated, licensed, or otherwise au-
5 thorized to do business under State law (except
6 as provided in paragraph (2)), and to secure
7 remedies under provisions of this Act or rem-
8 edies otherwise provided under other provisions
9 of law with respect to such an entity.

10 (2) **RULE OF CONSTRUCTION.**—No provision of
11 this Act may be construed as modifying, limiting, or
12 superseding the operation of any provision of a Fed-
13 eral privacy law that relates to the authority of a
14 State attorney general or State regulator to enforce
15 that Federal privacy law.

16 (b) **CONSULTATION REQUIRED.**—

17 (1) **NOTICE.**—

18 (A) **IN GENERAL.**—Before initiating any
19 action in a court, or any other administrative or
20 regulatory proceeding, against a data
21 aggregator or service provider, as authorized
22 under subsection (a), to enforce any provision
23 of this Act, including any regulation prescribed
24 by the Agency under this Act, a State attorney
25 general or State regulator shall timely provide

1 to the Agency a copy of the complete complaint
2 to be filed and written notice describing the ac-
3 tion or proceeding.

4 (B) EMERGENCY ACTION.—If providing
5 the notice required under subparagraph (A) is
6 not practicable, the State attorney general or
7 State regulator, as applicable, shall provide to
8 the Agency immediately upon instituting the ac-
9 tion or proceeding.

10 (C) CONTENTS OF NOTICE.—The notifica-
11 tion required under this paragraph shall, at a
12 minimum, describe—

13 (i) the identity of the parties;

14 (ii) the alleged facts underlying the
15 proceeding; and

16 (iii) whether there may be a need to
17 coordinate the prosecution of the pro-
18 ceeding so as not to interfere with any ac-
19 tion, including any rulemaking, undertaken
20 by the Agency.

21 (2) AGENCY RESPONSE.—In any action de-
22 scribed in paragraph (1), the Agency may—

23 (A) intervene in the action as a party;

24 (B) upon intervening—

1 (i) remove the action to the appro-
2 priate United States district court, if the
3 action was not originally brought there;
4 and

5 (ii) be heard on all matters arising in
6 the action; and

7 (C) appeal any order or judgment, to the
8 same extent as any other party in the pro-
9 ceeding may.

10 (c) REGULATIONS.—The Agency shall prescribe regu-
11 lations to implement the requirements of this section and,
12 from time to time, provide guidance in order to further
13 coordinate actions with the State attorneys general and
14 other regulators.

15 (d) PRESERVATION OF STATE AUTHORITY.—No pro-
16 vision of this section may be construed as altering, lim-
17 iting, or affecting the authority of a State attorney general
18 or any other regulatory or enforcement agency or author-
19 ity to bring an action or other regulatory proceeding aris-
20 ing solely under the law in effect in that State.

21 **SEC. 604. SAVINGS.**

22 Nothing in this Act may be construed to prohibit
23 compliance with otherwise valid and constitutional legal
24 process.