

116TH CONGRESS
2D SESSION

S. 3300

To establish a Federal data protection agency, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2020

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

A BILL

To establish a Federal data protection agency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) IN GENERAL.—This Act may be cited as the
5 “Data Protection Act of 2020”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. Definitions.
- Sec. 4. Establishment of the Data Protection Agency.
- Sec. 5. Executive and administrative powers.
- Sec. 6. Purpose, objectives, and functions of the Agency.
- Sec. 7. Rulemaking authority.
- Sec. 8. Specific agency authorities.

- Sec. 9. Enforcement powers.
- Sec. 10. Preservation of State law.
- Sec. 11. Reports and information.
- Sec. 12. Transfers of functions.
- Sec. 13. Authorization of appropriations.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Privacy is an important fundamental indi-
4 vidual right protected by the Constitution of the
5 United States.

6 (2) The right of privacy is widely recognized in
7 international legal instruments that the United
8 States has endorsed, ratified, or promoted.

9 (3) The right to privacy protects the individual
10 against intrusions into seclusion, protects individual
11 autonomy, safeguards fair processing of data that
12 pertains to the individual, advances the just proc-
13 essing of data, and contributes to respect for indi-
14 vidual civil rights and fundamental freedoms.

15 (4) Privacy protections not only protect and
16 benefit the individual, but they also advance other
17 societal interests, including the protection of
18 marginalized and vulnerable groups of individuals,
19 the safeguarding of other foundational values of our
20 democracy, such as freedom of information, freedom
21 of speech, justice, and human ingenuity and dignity,
22 as well as the integrity of democratic institutions, in-
23 cluding fair and open elections.

1 (5) The privacy of an individual is directly af-
2 fected by the collection, maintenance, use, and dis-
3 semination of personal data.

4 (6) The increasing digitalization of information
5 and its application in classifying individuals and
6 groups of individuals has greatly magnified the harm
7 to individual privacy that can occur from the collec-
8 tion, maintenance, use, or dissemination of personal
9 data.

10 (7) The opportunities for an individual to se-
11 cure employment, insurance, credit, and housing and
12 the right to due process and other legal protections
13 are endangered by the unrestricted collection, disclo-
14 sure, processing, and misuse of personal data.

15 (8) Information systems lacking privacy protec-
16 tion amplify bias.

17 (9) In order to protect the privacy of individ-
18 uals, it is necessary and proper for Congress to reg-
19 ulate the collection, maintenance, use, processing,
20 storage, and dissemination of information.

21 (b) PURPOSE.—The purpose of this Act is to estab-
22 lish a data protection agency to—

23 (1) safeguard privacy, promote innovation, en-
24 sure compliance with the law, and promote best
25 practices;

1 (2) provide guidance on matters related to elec-
2 tronic data storage, communication, and usage;

3 (3) provide the public with information and
4 guidance on privacy protections and fair information
5 practices and principles;

6 (4) oversee Federal agencies' implementation of
7 section 552a of title 5, United States Code;

8 (5) promote implementation of fair information
9 practices in the public and private sector; and

10 (6) represent the United States in international
11 forums.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) **AGENCY.**—The term “Agency” means the
15 Data Protection Agency established under section 4.

16 (2) **COVERED ENTITY.**—The term “covered en-
17 tity” means any person that collects, processes, or
18 otherwise obtains personal data with the exception of
19 an individual processing personal data in the course
20 of personal or household activity.

21 (3) **FEDERAL PRIVACY LAW.**—

22 (A) **IN GENERAL.**—The term “Federal pri-
23 vacy law” means the provisions of this Act, the
24 laws specified in subparagraph (B), and any
25 rule or order prescribed by the Agency under

1 this Act or pursuant to the authorities trans-
2 ferred under this Act. Such term shall not in-
3 clude the Federal Trade Commission Act (15
4 U.S.C. 41 et seq.).

5 (B) SPECIFIED LAWS.—The laws specified
6 in this subparagraph are the following laws (in-
7 cluding any amendments made by such laws):

8 (i) The Children’s Online Privacy Pro-
9 tection Act (15 U.S.C. 6501 et seq.).

10 (ii) The CAN–SPAM Act of 2003 (15
11 U.S.C. 7701 et seq.).

12 (iii) The Do-Not-Call Implementation
13 Act (15 U.S.C. 6152 et seq.) and Public
14 Law 108–82 (15 U.S.C. 6151).

15 (iv) The Fair Credit Reporting Act
16 (15 U.S.C. 1681 et seq.).

17 (v) Title V of the Gramm-Leach-Bli-
18 ley Act (15 U.S.C. 6801 et seq.).

19 (vi) Subtitle D of the Health Informa-
20 tion Technology for Economic and Clinical
21 Health Act (42 U.S.C. 17921 et seq.).

22 (vii) The Identity Theft Assumption
23 and Deterrence Act of 1998 (Pub. L. 105–
24 318).

1 (viii) The Telemarketing and Con-
2 sumer Fraud and Abuse Prevention Act
3 (15 U.S.C. 6101 et seq.).

4 (ix) Section 227 of the Communica-
5 tions Act of 1934 (47 U.S.C. 227) (com-
6 monly known as the “Telephone Consumer
7 Protection Act of 1991”).

8 (4) HIGH-RISK DATA PRACTICE.—The term
9 “high-risk data practice” means an action by a cov-
10 ered entity that involves—

11 (A) a systematic or extensive evaluation of
12 personal data that is based on automated proc-
13 essing, including profiling, and on which deci-
14 sions are based that produce legal effects con-
15 cerning the individual or household or similarly
16 significantly affect the individual or household;

17 (B) sensitive data uses;

18 (C) a systemic monitoring of publicly ac-
19 cessible data on a large scale;

20 (D) processing involving the use of new
21 technologies, or combinations of technologies,
22 that creates adverse consequences or potential
23 adverse consequences to an individual or soci-
24 ety;

1 (E) decisions about an individual’s access
2 to a product, service, opportunity, or benefit
3 which is based to any extent on automated
4 processing;

5 (F) any profiling of individuals on a large
6 scale;

7 (G) any processing of biometric data for
8 the purpose of uniquely identifying an indi-
9 vidual;

10 (H) any processing of genetic data, other
11 than data processed by a health care profes-
12 sional for the purpose of providing health care
13 to the individual;

14 (I) combining, comparing, or matching
15 personal data obtained from multiple sources;

16 (J) processing the personal data of an in-
17 dividual that has not been obtained directly
18 from the individual;

19 (K) processing which involves tracking an
20 individual’s geolocation; or

21 (L) the use of personal data of children or
22 other vulnerable individuals for marketing pur-
23 poses, profiling, or automated processing.

24 (5) PERSONAL DATA.—The term “personal
25 data” means any information that identifies, relates

1 to, describes, is capable of being associated with, or
2 could reasonably be linked, directly or indirectly,
3 with a particular individual or device, including—

4 (A) an identifier such as a real name,
5 alias, signature, date of birth, gender identity,
6 sexual orientation, marital status, physical
7 characteristic or description, postal address,
8 telephone number, unique personal identifier,
9 military identification number, online identifier,
10 Internet Protocol address, email address, ac-
11 count name, mother's maiden name, social secu-
12 rity number, driver's license number, passport
13 number, or other similar identifiers;

14 (B) information such as employment sta-
15 tus, employment history, or other professional
16 or employment-related information;

17 (C) bank account number, credit card
18 number, debit card number, insurance policy
19 number, or any other financial information;

20 (D) medical information, mental health in-
21 formation, or health insurance information;

22 (E) commercial information, including
23 records of personal property, products or serv-
24 ices purchased, obtained, or considered, or other

1 purchasing or consuming histories or ten-
2 dencies;

3 (F) characteristics of protected classes
4 under Federal law, including race, color, na-
5 tional origin, religion, sex, age, or disability;

6 (G) biometric information;

7 (H) internet or other electronic network
8 activity information, including browsing history,
9 search history, content, and information regard-
10 ing an individual's interaction with an internet
11 website, mobile application, or advertisement;

12 (I) historical or real-time geolocation data;

13 (J) audio, electronic, visual, thermal, olfac-
14 tory, or similar information;

15 (K) education records;

16 (L) political information;

17 (M) password-protected digital photo-
18 graphs and digital videos not otherwise avail-
19 able to the public;

20 (N) information on criminal convictions or
21 arrests;

22 (O) information (such as an Internet Pro-
23 tocol address or other similar identifier) that al-
24 lows an individual or device to be singled out

1 for interaction, even without identification of
2 such individual or device; and

3 (P) inferences drawn from any of the in-
4 formation identified in this subparagraph to
5 create a profile about an individual reflecting
6 the individual's preferences, characteristics,
7 psychological trends, predispositions, behavior,
8 attitudes, intelligence, abilities, and aptitudes.

9 (6) PROCESS.—The term “process” means to
10 perform an operation or set of operations on per-
11 sonal data, either manually or by automated means,
12 including but not limited to collecting, recording, or-
13 ganizing, structuring, storing, adapting or altering,
14 retrieving, consulting, using, disclosing by trans-
15 mission, sorting, classifying, disseminating or other-
16 wise making available, aligning or combining, re-
17 stricting, erasing or destroying.

18 (7) PROFILE.—The term “profile” means the
19 use of an automated means to process data (includ-
20 ing personal data and other data) to derive, infer,
21 predict, or evaluate information about an individual
22 or group, such as the processing of data to analyze
23 or predict an individual's identity, attributes, inter-
24 ests, or behavior.

1 (8) SENSITIVE DATA USE.—The term “sensitive
2 data use” means—

3 (A) the processing of data in a manner
4 that reveals an individual’s race, color, eth-
5 nicity, religion or creed, national origin or an-
6 cestry, sex, gender, gender identity, sexuality,
7 sexual orientation, political beliefs, trade union
8 membership, familial status, lawful source of in-
9 come, financial status (such as the individual’s
10 income or assets), veteran status, criminal con-
11 victions or arrests, citizenship, past, present, or
12 future physical or mental health or condition,
13 psychological states, disability, geospatial data,
14 or any other factor used as a proxy for identi-
15 fying any of these characteristics; or

16 (B) the use of the biometric or genetic
17 data of an individual.

18 (9) TRANSFER DATE.—The term “transfer
19 date” means the date that is 1 year after the date
20 of enactment of this Act.

21 **SEC. 4. ESTABLISHMENT OF THE DATA PROTECTION AGEN-**

22 **CY.**

23 (a) ESTABLISHMENT.—

24 (1) IN GENERAL.—There is established in the
25 Executive branch an agency to be known as the

1 “Data Protection Agency” which shall regulate the
2 processing of personal data.

3 (2) STATUS.—The Agency shall be an inde-
4 pendent establishment (as defined in section 104 of
5 title 5, United States Code).

6 (b) DIRECTOR AND DEPUTY DIRECTOR.—

7 (1) IN GENERAL.—There is established a posi-
8 tion of the Director of the United States Data Pro-
9 tection Agency (referred to in this Act as the “Di-
10 rector”), who shall serve as the head of the Agency.

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

14 (3) QUALIFICATION.—The President shall
15 nominate the Director from among members of the
16 public at large who are well qualified for service on
17 the Agency by virtue of their knowledge and exper-
18 tise in—

- 19 (A) technology;
- 20 (B) protection of personal data;
- 21 (C) civil rights and liberties;
- 22 (D) law;
- 23 (E) social sciences; and
- 24 (F) business.

25 (4) COMPENSATION.—

1 (A) IN GENERAL.—The Director shall be
2 compensated at the rate prescribed for level II
3 of the Executive Schedule under section 5313
4 of title 5, United States Code.

5 (B) CONFORMING AMENDMENT.—Section
6 5313 of title 5, United States Code, is amended
7 by inserting after the item relating to the Fed-
8 eral Transit Administrator the following new
9 item:

10 “Director of the United States Data Protection
11 Agency.”.

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

14 (A) be appointed by the Director; and

15 (B) serve as acting Director in the absence
16 or unavailability of the Director.

17 (c) TERM.—

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

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

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

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

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

11 **SEC. 5. EXECUTIVE AND ADMINISTRATIVE POWERS.**

12 (a) POWERS OF THE AGENCY.—The Director is au-
13 thorized to establish the general polices of the Agency with
14 respect to all executive and administrative functions, in-
15 cluding—

16 (1) the establishment of rules for conducting
17 the general business of the Agency, in a manner not
18 inconsistent with this Act;

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

20 (3) directing the establishment and mainte-
21 nance of divisions or other offices within the Agency,
22 in order to carry out the responsibilities of the Agen-
23 cy under this Act and Federal privacy law, and to
24 satisfy the requirements of other applicable law;

1 (4) to coordinate and oversee the operation of
2 all administrative, enforcement, and research activi-
3 ties of the Agency;

4 (5) to adopt and use a seal;

5 (6) to determine the character of and the neces-
6 sity for the obligations and expenditures of the
7 Agency;

8 (7) the appointment and supervision of per-
9 sonnel employed by the Agency;

10 (8) the distribution of business among per-
11 sonnel appointed and supervised by the Director and
12 among administrative units of the Agency;

13 (9) the use and expenditure of funds;

14 (10) implementing this Act and the Federal pri-
15 vacy laws through rules, orders, guidance, interpre-
16 tations, statements of policy, examinations, and en-
17 forcement actions; and

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

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

23 (c) AUTONOMY OF AGENCY REGARDING REC-
24 OMMENDATIONS AND TESTIMONY.—No officer or agency
25 of the United States shall have any authority to require

1 the Director or any other officer of the Agency to submit
2 legislative recommendations, or testimony or comments on
3 legislation, to any officer or agency of the United States
4 for approval, comments, or review prior to the submission
5 of such recommendations, testimony, or comments to the
6 Congress, if such recommendations, testimony, or com-
7 ments to the Congress include a statement indicating that
8 the views expressed therein are those of the Director or
9 such officer, and do not necessarily reflect the views of
10 the President.

11 **SEC. 6. PURPOSE, OBJECTIVES, AND FUNCTIONS OF THE**
12 **AGENCY.**

13 (a) **PURPOSE.**—The Agency shall seek to protect indi-
14 viduals' privacy and limit the collection, disclosure, proc-
15 essing, and misuse of individuals' personal data by covered
16 entities, and is authorized to exercise its authorities under
17 this Act for such purposes.

18 (b) **FUNCTIONS.**—The primary functions of the agen-
19 cy are—

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

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

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

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

18 (5) examining the social, ethical, economic, and
19 civil rights impacts of high-risk data practices and
20 propose remedies;

21 (6) ensuring that privacy practices and proc-
22 essing are fair, just, and comply with fair informa-
23 tion practices;

1 (7) ensuring fair contract terms in the market,
2 including the prohibition of “pay-for-privacy provi-
3 sions” and “take-it-or leave it” terms of service;

4 (8) promoting privacy enhancing techniques,
5 such as privacy by design and data minimization
6 techniques;

7 (9) collecting, researching, and responding to
8 consumer complaints;

9 (10) initiating a formal public rulemaking proc-
10 ess at the Agency before any new high-risk data
11 practice or other related profiling technique can be
12 implemented;

13 (11) reviewing and approving new high-risk
14 techniques or applications, giving special consider-
15 ation to minors and sensitive data uses;

16 (12) regulating consumer scoring and other
17 business practices that pertain to the eligibility of an
18 individual for rights, benefits, or privileges in em-
19 ployment (including hiring, firing, promotion, demo-
20 tion, and compensation), credit and insurance (in-
21 cluding denial of an application or obtaining less fa-
22 vorable terms), housing, education, professional cer-
23 tification, or the provision of health care and related
24 services;

1 (13) developing model privacy, data protection,
2 and fair information practices, standards, guidelines,
3 policies, and routine uses for use by the private sec-
4 tor;

5 (14) issuing rules, orders, and guidance imple-
6 menting Federal privacy law;

7 (15) upon written request, providing appro-
8 priate assistance to the private sector in imple-
9 menting privacy, data protection, and fair informa-
10 tion practices, principles, standards, guidelines, poli-
11 cies, or routine uses of privacy and data protection,
12 and fair information; and

13 (16) enforce other privacy statutes and rules as
14 authorized by Congress.

15 **SEC. 7. RULEMAKING AUTHORITY.**

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

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

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

1 jectives of this Act and Federal privacy law, and to
2 prevent evasions thereof.

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

7 (3) STANDARDS FOR RULEMAKING.—In pre-
8 scribing a rule under the Federal privacy laws—

9 (A) the Agency shall consider—

10 (i) the potential benefits and costs to
11 individuals or groups of individuals; and

12 (ii) the impact of proposed rules on
13 individuals or groups of individuals;

14 (B) the Agency may provide that a rule
15 shall only apply to a subcategory of covered en-
16 tities, as defined by the Agency; and

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

19 (c) MONITORING.—In order to support its rule-
20 making and other functions, the Agency shall monitor for
21 risks to individuals in the collection, disclosure, processing,
22 and misuse of personal data.

23 **SEC. 8. SPECIFIC AGENCY AUTHORITIES.**

24 (a) SUPERVISION OF VERY LARGE COVERED ENTI-
25 TIES.—

1 (1) IN GENERAL.—This subsection shall apply
2 to any covered entity that satisfies one or more of
3 the following thresholds:

4 (A) The entity has annual gross revenues
5 that exceed \$25,000,000.

6 (B) The entity annually buys, receives for
7 the covered entity’s commercial purposes, sells,
8 or discloses for commercial purposes, alone or
9 in combination, the personal information of
10 50,000 or more individuals, households, or de-
11 vices.

12 (C) The entity derives 50 percent or more
13 of its annual revenues from the sale of personal
14 data.

15 (2) SUPERVISION.—The Agency may require re-
16 ports and conduct examinations on a periodic basis
17 of covered entities described in paragraph (1) for
18 purposes of—

19 (A) assessing compliance with the require-
20 ments of Federal privacy laws;

21 (B) obtaining information about the activi-
22 ties subject to such laws and the associated
23 compliance systems or procedures of such enti-
24 ties;

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

4 (D) requiring and overseeing ex-ante im-
5 pact assessments and ex-post outcome audits of
6 high-risk data practices to advance fair and just
7 data practices.

8 (b) PROHIBITING UNFAIR OR DECEPTIVE ACTS AND
9 PRACTICES.—

10 (1) IN GENERAL.—The Agency may take any
11 action authorized under this Act to prevent a cov-
12 ered entity from committing or engaging in an un-
13 fair or deceptive act or practice (as defined by the
14 Agency under this subsection) in connection with the
15 collection, disclosure, processing, and misuse of per-
16 sonal data.

17 (2) RULEMAKING.—The Agency may prescribe
18 rules applicable to a covered entity identifying as un-
19 lawful, unfair, or deceptive acts or practices in con-
20 nection with the collection, disclosure, processing,
21 and misuse of personal data. Rules under this sec-
22 tion may include requirements for the purpose of
23 preventing such acts or practices.

24 (3) UNFAIRNESS.—

1 (A) IN GENERAL.—The Agency shall have
2 no authority under this section to declare an
3 act or practice in connection with the collection,
4 disclosure, processing, and misuse of personal
5 data to be unlawful on the grounds that such
6 act or practice is unfair, unless the Agency has
7 a reasonable basis to conclude that—

8 (i) the act or practice causes or is
9 likely to cause substantial injury to con-
10 sumers which is not reasonably avoidable
11 by consumers; and

12 (ii) such substantial injury is not out-
13 weighed by countervailing benefits to con-
14 sumers or to competition.

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

22 (c) RESPONSE TO CONSUMER COMPLAINTS AND IN-
23 QUIRIES.—

24 (1) TIMELY REGULATOR RESPONSE TO CON-
25 SUMERS.—The Agency shall establish, in consulta-

1 tion with the appropriate Federal regulatory agen-
2 cies, reasonable procedures to provide a timely re-
3 sponse to consumers, in writing where appropriate,
4 to complaints against, or inquiries concerning, a cov-
5 ered entity, including—

6 (A) steps that have been taken by the reg-
7 ulator in response to the complaint or inquiry
8 of the consumer;

9 (B) any responses received by the regu-
10 lator from the covered entity; and

11 (C) any follow-up actions or planned fol-
12 low-up actions by the regulator in response to
13 the complaint or inquiry of the consumer.

14 (2) TIMELY RESPONSE TO REGULATOR BY COV-
15 ERED ENTITY.—A covered entity subject to super-
16 vision and primary enforcement by the Agency pur-
17 suant to this Act shall provide a timely response to
18 the Agency, in writing where appropriate, concerning
19 a consumer complaint or inquiry, including—

20 (A) steps that have been taken by the cov-
21 ered entity to respond to the complaint or in-
22 quiry of the consumer;

23 (B) responses received by the covered enti-
24 ty from the consumer; and

1 (C) follow-up actions or planned follow-up
2 actions by the covered entity to respond to the
3 complaint or inquiry of the consumer.

4 (3) ROUTING COMPLAINTS TO STATES.—To the
5 extent practicable, State agencies may receive appro-
6 priate complaints from the systems established by
7 the Agency under this subsection, if—

8 (A) the State agency system has the func-
9 tional capacity to receive calls or electronic re-
10 ports routed by the Agency systems;

11 (B) the State agency has satisfied any con-
12 ditions of participation in the system that the
13 Agency may establish, including treatment of
14 personal information and sharing of informa-
15 tion on complaint resolution or related compli-
16 ance procedures and resources; and

17 (C) participation by the State agency in-
18 cludes measures necessary to provide for protec-
19 tion of personal information that conform to the
20 standards for protection of the confidentiality of
21 personal information and for data integrity and
22 security that apply to Federal agencies.

23 **SEC. 9. ENFORCEMENT POWERS.**

24 (a) JOINT INVESTIGATIONS.—The Agency or, where
25 appropriate, an Agency investigator, may engage in joint

1 investigations and requests for information, as authorized
2 under this Act.

3 (b) SUBPOENAS.—

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

9 (2) FAILURE TO OBEY.—In the case of contu-
10 macy or refusal to obey a subpoena issued pursuant
11 to this paragraph and served upon any person, the
12 district court of the United States for any district in
13 which such person is found, resides, or transacts
14 business, upon application by the Agency or an
15 Agency investigator and after notice to such person,
16 may issue an order requiring such person to appear
17 and give testimony or to appear and produce docu-
18 ments or other material.

19 (3) CONTEMPT.—Any failure to obey an order
20 of the court under this subsection may be punished
21 by the court as a contempt thereof.

22 (c) LITIGATION AUTHORITY.—

23 (1) IN GENERAL.—If any covered entity violates
24 a Federal privacy law, the Agency may commence a
25 civil action against such covered entity to impose a

1 civil penalty or to seek all appropriate legal and eq-
2 uitable relief including a permanent or temporary in-
3 junction as permitted by law.

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

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

12 (4) NOTICE TO THE ATTORNEY GENERAL.—

13 (A) IN GENERAL.—When commencing a
14 civil action under Federal privacy law, or any
15 rule thereunder, the Agency shall notify the At-
16 torney General.

17 (B) NOTICE AND COORDINATION.—

18 (i) NOTICE OF OTHER ACTIONS.—In
19 addition to any notice required under sub-
20 paragraph (A), the Agency shall notify the
21 Attorney General concerning any action,
22 suit, or proceeding to which the Agency is
23 a party.

24 (ii) COORDINATION.—In order to
25 avoid conflicts and promote consistency re-

1 regarding litigation of matters under Federal
2 law, the Attorney General and the Agency
3 shall consult regarding the coordination of
4 investigations and proceedings, including
5 by negotiating an agreement for coordina-
6 tion by not later than 180 days after the
7 transfer date. The agreement under this
8 clause shall include provisions to ensure
9 that parallel investigations and proceedings
10 involving the Federal privacy laws are con-
11 ducted in a manner that avoids conflicts
12 and does not impede the ability of the At-
13 torney General to prosecute violations of
14 Federal criminal laws.

15 (iii) RULE OF CONSTRUCTION.—Noth-
16 ing in this subparagraph shall be construed
17 to limit the authority of the Agency under
18 this Act, including the authority to inter-
19 pret Federal privacy law.

20 (5) FORUM.—Any civil action brought under
21 this Act may be brought in a United States district
22 court or in any court of competent jurisdiction of a
23 state in a district in which the defendant is located
24 or resides or is doing business, and such court shall

1 have jurisdiction to enjoin such person and to re-
2 quire compliance with any Federal privacy law.

3 (6) TIME FOR BRINGING ACTION.—

4 (A) IN GENERAL.—Except as otherwise
5 permitted by law or equity, no action may be
6 brought under this Act more than 3 years after
7 the date of discovery of the violation to which
8 an action relates.

9 (B) LIMITATIONS UNDER OTHER FEDERAL
10 LAWS.—

11 (i) IN GENERAL.—An action arising
12 under this Act does not include claims
13 arising solely under the Federal privacy
14 laws.

15 (ii) AGENCY AUTHORITY.—In any ac-
16 tion arising solely under a Federal privacy
17 law, the Agency may commence, defend, or
18 intervene in the action in accordance with
19 the requirements of that provision of law,
20 as applicable.

21 (iii) TRANSFERRED AUTHORITY.—In
22 any action arising solely under laws for
23 which authorities were transferred under
24 this Act, the Agency may commence, de-
25 fend, or intervene in the action in accord-

1 ance with the requirements of that provi-
2 sion of law, as applicable.

3 (d) RELIEF AVAILABLE.—

4 (1) JURISDICTION.—The court (or the Agency,
5 as the case may be) in an action or adjudication pro-
6 ceeding brought under Federal privacy law, shall
7 have jurisdiction to grant any appropriate legal or
8 equitable relief with respect to a violation of Federal
9 privacy law, including a violation of a rule or order
10 prescribed under a Federal privacy law.

11 (2) RELIEF.—Relief under this section may in-
12 clude, without limitation—

13 (A) rescission or reformation of contracts;

14 (B) refund of moneys;

15 (C) restitution;

16 (D) disgorgement or compensation for un-
17 just enrichment;

18 (E) payment of damages or other mone-
19 etary relief;

20 (F) public notification regarding the viola-
21 tion, including the costs of notification;

22 (G) limits on the activities or functions of
23 the covered entity; and

24 (H) civil money penalties, as set forth
25 more fully in subsection (f).

1 (3) NO EXEMPLARY OR PUNITIVE DAMAGES.—

2 Nothing in this subsection shall be construed as au-
3 thorizing the imposition of exemplary or punitive
4 damages.

5 (e) RECOVERY OF COSTS.—In any action brought by
6 the Agency, a State attorney general, or any State regu-
7 lator to enforce any Federal privacy law, the Agency, the
8 State attorney general, or the State regulator may recover
9 its costs in connection with prosecuting such action if the
10 Agency, the State attorney general, or the State regulator
11 is the prevailing party in the action.

12 (f) CIVIL MONEY PENALTY IN COURT AND ADMINIS-
13 TRATIVE ACTIONS.—

14 (1) IN GENERAL.—Any person that violates,
15 through any act or omission, any provision of Fed-
16 eral privacy law shall forfeit and pay a civil penalty
17 pursuant to this subsection.

18 (2) PENALTY AMOUNTS.—

19 (A) FIRST TIER.—For any violation of a
20 law, rule, or final order or condition imposed in
21 writing by the Agency, a civil penalty may not
22 exceed \$5,000 for each day during which such
23 violation or failure to pay continues.

24 (B) SECOND TIER.—Notwithstanding sub-
25 paragraph (A), for any person that recklessly

1 engages in a violation of a Federal privacy law,
2 a civil penalty may not exceed \$25,000 for each
3 day during which such violation continues.

4 (C) THIRD TIER.—Notwithstanding sub-
5 paragraphs (A) and (B), for any person that
6 knowingly violates a Federal privacy law, a civil
7 penalty may not exceed \$1,000,000 for each
8 day during which such violation continues.

9 (3) MITIGATING FACTORS.—In determining the
10 amount of any penalty assessed under paragraph
11 (2), the Agency or the court shall take into account
12 the appropriateness of the penalty with respect to—

13 (A) the size of financial resources and good
14 faith of the person charged;

15 (B) the gravity of the violation or failure
16 to pay;

17 (C) the severity of the risks to or losses of
18 the individual or group of individuals affected
19 by the violation;

20 (D) the history of previous violations; and

21 (E) such other matters as justice may re-
22 quire.

23 (4) AUTHORITY TO MODIFY OR REMIT PEN-
24 ALTY.—The Agency may compromise, modify, or
25 remit any penalty which may be assessed or had al-

1 ready been assessed under paragraph (2). The
2 amount of such penalty, when finally determined,
3 shall be exclusive of any sums owed by the covered
4 entity to the United States in connection with the
5 costs of the proceeding, and may be deducted from
6 any sums owing by the United States to the covered
7 entity charged.

8 (5) NOTICE AND HEARING.—No civil penalty
9 may be assessed under this subsection with respect
10 to a violation of any Federal privacy law, unless—

11 (A) the Agency gives notice and an oppor-
12 tunity for a hearing to the person accused of
13 the violation; or

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

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

25 (h) DATA PROTECTION RELIEF FUND.—

1 (1) ESTABLISHMENT OF RELIEF FUND.—There
2 is established in the Treasury of the United States
3 a separate fund to be known as the “Data Protec-
4 tion Relief Fund” (referred to in this subsection as
5 the “Relief Fund”).

6 (2) DEPOSITS.—

7 (A) DEPOSITS FROM THE AGENCY.—The
8 Agency shall deposit into the Relief Fund the
9 amount of any civil penalty obtained against
10 any covered entity in any judicial or administra-
11 tive action the Agency commences to enforce
12 this Act, a regulation promulgated under this
13 Act, or a Federal privacy law.

14 (B) DEPOSITS FROM THE ATTORNEY GEN-
15 ERAL.—The Attorney General of the United
16 States shall deposit into the Relief Fund the
17 amount of any civil penalty obtained against
18 any covered entity in any judicial or administra-
19 tive action the Attorney General commences on
20 behalf of the Agency to enforce this Act, a reg-
21 ulation promulgated under this Act, or a Fed-
22 eral privacy law.

23 (3) USE OF FUND AMOUNTS.—Notwithstanding
24 section 3302 of title 31, United States Code,
25 amounts in the Relief Fund shall be available to the

1 Agency, without fiscal year limitation, to provide re-
2 dress, payments or compensation, or other monetary
3 relief to individuals affected by an act or practice for
4 which civil penalties have been obtained under this
5 Act. To the extent that individuals cannot be located
6 or such redress, payments or compensation, or other
7 monetary relief are otherwise not practicable, the
8 Agency may use such funds for the purpose of con-
9 sumer or business education relating to data protec-
10 tion or for the purpose of engaging in technological
11 research that the Agency considers necessary to en-
12 force this Act and Federal privacy laws.

13 (4) AMOUNTS NOT SUBJECT TO APPORTION-
14 MENT.—Notwithstanding any other provision of law,
15 amounts in the Relief Fund shall not be subject to
16 apportionment for purposes of chapter 15 of title 31,
17 United States Code, or under any other authority.

18 **SEC. 10. PRESERVATION OF STATE LAW.**

19 (a) RELATION TO STATE LAW.—

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

1 of law is inconsistent with the provisions of this title,
2 and then only to the extent of the inconsistency.

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

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

22 (c) PRESERVATION OF ENFORCEMENT POWERS OF
23 STATES.—The attorney general (or the equivalent thereof)
24 of any State may bring a civil action in the name of such
25 State in any district court of the United States in that

1 State or in State court that is located in that State and
2 that has jurisdiction over the defendant, to enforce provi-
3 sions of this title or regulations issued under this Act, and
4 to secure remedies under provisions of this title or rem-
5 edies otherwise provided under other law. A State regu-
6 lator may bring a civil action or other appropriate pro-
7 ceeding to enforce the provisions of this title or regulations
8 issued under this Act with respect to any entity that is
9 State-chartered, incorporated, licensed, or otherwise au-
10 thorized to do business under State law (except as pro-
11 vided in paragraph (2)), and to secure remedies under pro-
12 visions of this title or remedies otherwise provided under
13 other provisions of law with respect to such an entity.

14 (d) PRESERVATION OF STATE AUTHORITY.—

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

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

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

6 **SEC. 11. REPORTS AND INFORMATION.**

7 (a) **REPORTS REQUIRED.**—Not later than 6 months
8 after the date of the enactment of this Act, and every 6
9 months thereafter, the Director shall submit a report to
10 the President and to the Committee on Energy and Com-
11 merce, the Committee on the Judiciary, and the Com-
12 mittee on Appropriations of the House of Representatives
13 and the Committee on Commerce, Science, and Transpor-
14 tation, the Committee on the Judiciary, and the Com-
15 mittee on Appropriations of the Senate, and shall publish
16 such report on the website of the Agency.

17 (b) **CONTENTS.**—Each report required by subsection
18 (a) shall include—

19 (1) a discussion of the significant problems
20 faced by individuals with respect to the privacy or
21 security of personal information;

22 (2) a justification of the budget request of the
23 Agency for the preceding year, unless a justification
24 for such year was included in the preceding report
25 submitted under such subsection;

1 (3) a list of the significant rules and orders
2 adopted by the Agency, as well as other significant
3 initiatives conducted by the Agency, during the pre-
4 ceding 6-month period and the plan of the Agency
5 for rules, orders, or other initiatives to be under-
6 taken during the upcoming 6-month period;

7 (4) an analysis of complaints about the privacy
8 or security of personal information that the Agency
9 has received and collected in the database described
10 in section 8 during the preceding 6-month period;

11 (5) a list, with a brief statement of the issues,
12 of the public enforcement actions to which the Agen-
13 cy was a party during the preceding 6-month period;
14 and

15 (6) an assessment of significant actions by
16 State attorneys general or State agencies relating to
17 this Act or the rules prescribed under this Act dur-
18 ing the preceding 6-month period.

19 **SEC. 12. TRANSFERS OF FUNCTIONS.**

20 (a) **FEDERAL TRADE COMMISSION.**—The authority
21 of the Federal Trade Commission under a Federal privacy
22 law specified in section 3(3)(B) to prescribe rules, issue
23 guidelines, or conduct a study or issue a report mandated
24 under such law shall be transferred to the Agency on the
25 transfer date. Nothing in this title shall be construed to

1 require a mandatory transfer of any employee of the Fed-
2 eral Trade Commission.

3 (b) AGENCY AUTHORITY.—

4 (1) IN GENERAL.—The Agency shall have all
5 powers and duties under the Federal privacy laws to
6 prescribe rules, issue guidelines, or to conduct stud-
7 ies or issue reports mandated by such laws, that
8 were vested in the Federal Trade Commission on the
9 day before the transfer date.

10 (2) FEDERAL TRADE COMMISSION ACT.—The
11 Agency may enforce a rule prescribed under the
12 Federal Trade Commission Act (45 U.S.C. 41 et
13 seq.) by the Federal Trade Commission with respect
14 to the collection, disclosure, processing, and misuse
15 of personal data.

16 (c) AUTHORITY OF THE FEDERAL TRADE COMMIS-
17 SION.—No provision of this title shall be construed as
18 modifying, limiting, or otherwise affecting the authority
19 of the Federal Trade Commission (including its authority
20 with respect to very large entities described in section
21 8(a)(1)) under the Federal Trade Commission Act or any
22 other law, other than the authority under a Federal pri-
23 vacy law to prescribe rules, issue official guidelines, or con-
24 duct a study or issue a report mandated under such law.

1 (d) AUTHORITY OF THE CONSUMER FINANCIAL PRO-
2 TECTION BUREAU.—No provision of this title shall be con-
3 strued as modifying, limiting, or otherwise affecting the
4 authority of the Consumer Financial Protection Bureau
5 under the Dodd-Frank Wall Street Reform and Consumer
6 Protection Act (Public Law 111–203) or any other law.

7 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

8 For fiscal year 2020 and each subsequent fiscal year,
9 there are authorized to be appropriated to the Agency
10 such sums as may be necessary to carry out this Act.

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