AMENDMENT NO. _______  Calendar No. _______

Purpose: In the nature of a substitute.


S. 1418

To amend the Children’s Online Privacy Protection Act of 1998 to strengthen protections relating to the online collection, use, and disclosure of personal information of children and teens, and for other purposes.

Referred to the Committee on ________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by ____________

Viz:

1 Strike all after the enacting clause and insert the follow-

2 ing:

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) Short Title.—This Act may be cited as the “Children and Teens’ Online Privacy Protection Act”.

5 (b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Online collection, use, disclosure, and deletion of personal information of children and teens.
Sec. 3. Study and reports of mobile and online application oversight and enforcement.
Sec. 4. GAO study.
Sec. 5. Severability.
SEC. 2. ONLINE COLLECTION, USE, DISCLOSURE, AND DELETION OF PERSONAL INFORMATION OF CHILDREN AND TEENS.

(a) DEFINITIONS.—Section 1302 of the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6501) is amended—

(1) by amending paragraph (2) to read as follows:

“(2) OPERATOR.—The term ‘operator’—

“(A) means any person—

“(i) who, for commercial purposes, in interstate or foreign commerce operates or provides a website on the internet, an online service, an online application, or a mobile application; and

“(ii) who—

“(I) collects or maintains, either directly or through a service provider, personal information from or about the users of that website, service, or application;

“(II) allows another person to collect personal information directly from users of that website, service, or application (in which case, the oper-
ator is deemed to have collected the information); or

“(III) allows users of that website, service, or application to publicly disclose personal information (in which case, the operator is deemed to have collected the information); and

“(B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).”;

(2) in paragraph (4)—

(A) by amending subparagraph (A) to read as follows:

“(A) the release of personal information collected from a child or teen by an operator for any purpose, except where the personal information is provided to a person other than an operator who—

“(i) provides support for the internal operations of the website, online service, online application, or mobile application of the operator, excluding any activity relating to individual-specific advertising to children or teens; and
“(ii) does not disclose or use that personal information for any other purpose; and”;

(B) in subparagraph (B)—

(i) by inserting “or teen” after “child” each place the term appears;

(ii) by striking “website or online service” and inserting “website, online service, online application, or mobile application”; and

(iii) by striking “actual knowledge” and inserting “actual knowledge or knowledge fairly implied on the basis of objective circumstances”;

(3) by striking paragraph (8) and inserting the following:

“(8) PERSONAL INFORMATION.—

“(A) IN GENERAL.—The term ‘personal information’ means individually identifiable information about an individual collected online, including—

“(i) a first and last name;

“(ii) a home or other physical address including street name and name of a city or town;
“(iii) an e-mail address;
“(iv) a telephone number;
“(v) a Social Security number;
“(vi) any other identifier that the Commission determines permits the physical or online contacting of a specific individual;
“(vii) a persistent identifier that can be used to recognize a specific child or teen over time and across different websites, online services, online applications, or mobile applications, including but not limited to a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier, but excluding an identifier that is used by an operator solely for providing support for the internal operations of the website, online service, online application, or mobile application;
“(viii) a photograph, video, or audio file where such file contains a specific child’s or teen’s image or voice;
“(ix) geolocation information;
“(x) information generated from the measurement or technological processing of an individual’s biological, physical, or physiological characteristics that is used to identify an individual, including—

“(I) fingerprints;

“(II) voice prints;

“(III) iris or retina imagery scans;

“(IV) facial templates;

“(V) deoxyribonucleic acid (DNA) information; or

“(VI) gait; or

“(xi) information linked or reasonably linkable to a child or teen or the parents of that child or teen (including any unique identifier) that an operator collects online from the child or teen and combines with an identifier described in this subparagraph.

“(B) Exclusion.—The term ‘personal information’ shall not include an audio file that contains a child’s or teen’s voice so long as the operator—
“(i) does not request information via voice that would otherwise be considered personal information under this paragraph;
“(ii) provides clear notice of its collection and use of the audio file and its deletion policy in its privacy policy;
“(iii) only uses the voice within the audio file solely as a replacement for written words, to perform a task, or engage with a website, online service, online application, or mobile application, such as to perform a search or fulfill a verbal instruction or request; and
“(iv) only maintains the audio file long enough to complete the stated purpose and then immediately deletes the audio file and does not make any other use of the audio file prior to deletion.
“(C) Support for the internal operations of a website, online service, online application, or mobile application.—
“(i) In general.—For purposes of subparagraph (A)(vii), the term ‘support for the internal operations of a website, online service, online application, or mobile
application’ means those activities nec-
necessary to—

“(I) maintain or analyze the
functioning of the website, online serv-
ice, online application, or mobile appli-
cation;

“(II) perform network commu-
nications;

“(III) authenticate users of, or
personalize the content on, the
website, online service, online applica-
tion, or mobile application;

“(IV) cap the frequency of adver-
tising;

“(V) protect the security or in-
tegrity of the user, website, online
service, online application, or mobile
application;

“(VI) ensure legal or regulatory
compliance, or

“(VII) fulfill a request of a child
or teen as permitted by subpara-
graphs (A) through (C) of section
1303(b)(2).
“(ii) CONDITION.—Except as specified under clause (i), information collected for the activities listed in clause (i) cannot be used or disclosed to contact a specific individual, including through individual-specific advertising to children or teens, to amass a profile on a specific individual, in connection with processes that encourage or prompt use of a website or online service, or for any other purpose.”;

(4) by amending paragraph (9) to read as follows:

“(9) VERIFIABLE CONSENT.—The term ‘verifiable consent’ means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that, in the case of a child, a parent of the child, or, in the case of a teen, the teen—

“(A) receives direct notice of the personal information collection, use, and disclosure practices of the operator; and
“(B) before the personal information of the child or teen is collected, freely and unambiguously authorizes—

“(i) the collection, use, and disclosure, as applicable, of that personal information; and

“(ii) any subsequent use of that personal information.”;

(5) in paragraph (10)—

(A) in the paragraph header, by striking “WEBSITE OR ONLINE SERVICE DIRECTED TO CHILDREN” and inserting “WEBSITE, ONLINE SERVICE, ONLINE APPLICATION, OR MOBILE APPLICATION DIRECTED TO CHILDREN”;

(B) by striking “website or online service” each place it appears and inserting “website, online service, online application, or mobile application”; and

(C) by adding at the end the following new subparagraph:

“(C) RULE OF CONSTRUCTION.—In considering whether a website, online service, online application, or mobile application, or portion thereof, is directed to children, the Commission shall apply a totality of circumstances
test and will also consider competent and reli-
able empirical evidence regarding audience com-
position and evidence regarding the intended
audience of the website, online service, online
application, or mobile application.”; and
(6) by adding at the end the following:
“(13) CONNECTED DEVICE.—The term ‘con-
nected device’ means a device that is capable of con-
necting to the internet, directly or indirectly, or to
another connected device.
“(14) ONLINE APPLICATION.—The term ‘online
application’—
“(A) means an internet-connected software
program; and
“(B) includes a service or application of-
fered via a connected device.
“(15) MOBILE APPLICATION.—The term ‘mo-
bile application’—
“(A) means a software program that runs
on the operating system of—
“(i) a cellular telephone;
“(ii) a tablet computer; or
“(iii) a similar portable computing de-
vice that transmits data over a wireless
connection; and
“(B) includes a service or application offered via a connected device.

“(16) GEOLOCATION INFORMATION.—The term ‘geolocation information’ means information sufficient to identify a street name and name of a city or town.

“(17) TEEN.—The term ‘teen’ means an individual over the age of 12 and under the age of 17.

“(18) INDIVIDUAL-SPECIFIC ADVERTISING TO CHILDREN OR TEENS.—

“(A) IN GENERAL.—The term ‘individual-specific advertising to children or teens’ means advertising or any other effort to market a product or service that is directed to a specific child or teen or a connected device that is linked or reasonably linkable to a child or teen based on—

“(i) the personal information from—

“(I) the child or teen; or

“(II) a group of children or teens who are similar in sex, age, household income level, race, or ethnicity to the specific child or teen to whom the product or service is marketed;
“(ii) profiling of a child or teen or group of children or teens; or

“(iii) a unique identifier of the connected device.

“(B) EXCLUSIONS.—The term ‘individual-specific advertising to children or teens’ shall not include—

“(i) advertising or marketing to an individual or the device of an individual in response to the individual’s specific request for information or feedback, such as a child’s or teen’s current search query;

“(ii) contextual advertising, such as when an advertisement is displayed based on the content of the website, online service, online application, mobile application, or connected device in which the advertisement appears and does not vary based on personal information related to the viewer; or

“(iii) processing personal information solely for measuring or reporting advertising or content performance, reach, or frequency, including independent measurement.
“(C) Rule of construction.—Nothing in subparagraph (A) shall be construed to prohibit an operator with actual knowledge or knowledge fairly implied on the basis of objective circumstances that a user is under the age of 17 from delivering advertising or marketing that is age-appropriate and intended for a child or teen audience, so long as the operator does not use any personal information other than whether the user is under the age of 17.”.

(b) Online Collection, Use, Disclosure, and Deletion of Personal Information of Children and Teens.—Section 1303 of the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6502) is amended—

(1) by striking the heading and inserting the following: “ONLINE COLLECTION, USE, DISCLOSURE, AND DELETION OF PERSONAL INFORMATION OF CHILDREN AND TEENS.”;

(2) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

“(1) In general.—It is unlawful for an operator of a website, online service, online application, or mobile application directed to children or for any
operator of a website, online service, online application, or mobile application with actual knowledge or knowledge fairly implied on the basis of objective circumstances that a user is a child or teen—

“(A) to collect personal information from a child or teen in a manner that violates the regulations prescribed under subsection (b);

“(B) except as provided in subparagraphs (B) and (C) of section 1302(18), to collect, use, disclose to third parties, or maintain personal information of a child or teen for purposes of individual-specific advertising to children or teens (or to allow another person to collect, use, disclose, or maintain such information for such purpose);

“(C) to collect the personal information of a child or teen except when the collection of the personal information is—

“(i) consistent with the context of a particular or service or the relationship of the child or teen with the operator, including collection necessary to fulfill a transaction or provide a product or service requested by the child or teen; or
“(ii) required or specifically authorized by Federal or State law; or

“(D) to store or transfer the personal information of a child or teen outside of the United States unless the operator provides direct notice to the parent of the child, in the case of a child, or to the teen, in the case of a teen, that the child’s or teen’s personal information is being stored or transferred outside of the United States; or

“(E) to retain the personal information of a child or teen for longer than is reasonably necessary to fulfill a transaction or provide a service requested by the child or teen except as required or specifically authorized by Federal or State law.”; and

(B) in paragraph (2)—

(i) in the header, by striking “PARENT” and inserting “‘PARENT OR TEEN’”

(ii) by striking “Notwithstanding paragraph (1)” and inserting “Notwithstanding paragraph (1)(A)”;

(iii) by striking “of such a website or online service”; and
(iv) by striking “subsection (b)(1)(B)(iii) to the parent of a child” and inserting “subsection (b)(1)(B)(iv) to the parent of a child or under subsection (b)(1)(C)(iv) to a teen”;

(3) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) by striking “operator of any website” and all that follows through “from a child” and inserting “operator of a website, online service, online application, or mobile application directed to children or that has actual knowledge or knowledge fairly implied on the basis of objective circumstances that a user is a child or teen”;

(II) in clause (i)—

(aa) by striking “notice on the website” and inserting “clear and conspicuous notice on the website”; 

(bb) by inserting “or teens” after “children”;
(cc) by striking “, and the operator’s” and inserting “, the operator’s”; and

(dd) by striking “; and” and inserting “, the rights and opportunities available to the parent of the child or teen under subparagraphs (B) and (C), and the procedures or mechanisms the operator uses to ensure that personal information is not collected from children or teens except in accordance with the regulations promulgated under this paragraph;”;

(III) in clause (ii)—

(aa) by striking “parental”; 

(bb) by inserting “or teens” after “children”; 

(cc) by striking the semi-colon at the end and inserting “; and”; and 

(IV) by inserting after clause (ii) the following new clause:
“(iii) to obtain verifiable consent from a parent of a child or from a teen before using or disclosing personal information of the child or teen for any purpose that is a material change from the original purposes and disclosure practices specified to the parent of the child or the teen under clause (i);”;

(ii) in subparagraph (B)—

(I) in the matter preceding clause (i), by striking “website or online service” and inserting “operator”;

(II) in clause (i), by inserting “and the method by which the operator obtained the personal information, and the purposes for which the operator collects, uses, discloses, and retains the personal information” before the semicolon;

(III) in clause (ii)—

(aa) by inserting “to delete personal information collected from the child or content or information submitted by the child to a website, online service, on-
20

line application, or mobile appli-
cation and” after “the oppor-
tunity at any time”; and

(bb) by striking “; and” and
inserting a semicolon;

(IV) by redesignating clause (iii)
as clause (iv) and inserting after
clause (ii) the following new clause:

“(iii) the opportunity to challenge the
accuracy of the personal information and,
if the parent of the child establishes the in-
accuracy of the personal information, to
have the inaccurate personal information
corrected;”; and

(V) in clause (iv), as so redesig-
nated, by inserting “, if such informa-
tion is available to the operator at the
time the parent makes the request”
before the semicolon;

(iii) by redesignating subparagraphs
(C) and (D) as subparagraphs (D) and
(E), respectively;

(iv) by inserting after subparagraph
(B) the following new subparagraph:
“(C) require the operator to provide, upon
the request of a teen under this subparagraph
who has provided personal information to the
operator, upon proper identification of that
teen—

“(i) a description of the specific types
of personal information collected from the
teen by the operator, the method by which
the operator obtained the personal infor-
mation, and the purposes for which the op-
erator collects, uses, discloses, and retains
the personal information;

“(ii) the opportunity at any time to
delete personal information collected from
the teen or content or information sub-
mitted by the teen to a website, online
service, online application, or mobile appli-
cation and to refuse to permit the opera-
tor’s further use or maintenance in retriev-
able form, or online collection, of personal
information from the teen;

“(iii) the opportunity to challenge the
accuracy of the personal information and,
if the teen establishes the inaccuracy of the
personal information, to have the inaccurate personal information corrected; and

“(iv) a means that is reasonable under the circumstances for the teen to obtain any personal information collected from the teen, if such information is available to the operator at the time the teen makes the request;”;

(v) in subparagraph (D), as so redesignated—

(I) by striking “a child’s” and inserting “a child’s or teen’s”; and

(II) by inserting “or teen” after “the child”; and

(vi) by amending subparagraph (E), as so redesignated, to read as follows:

“(E) require the operator to establish, implement, and maintain reasonable security practices to protect the confidentiality, integrity, and accessibility of personal information of children or teens collected by the operator, and to protect such personal information against unauthorized access.”;

(B) in paragraph (2)—
(i) in the matter preceding subpara-
graph (A), by striking “verifiable parental
consent” and inserting “verifiable con-
sent”;

(ii) in subparagraph (A)—
   (I) by inserting “or teen” after
   “collected from a child”; and

   (II) by inserting “or teen” after
   “request from the child”; and

   (III) by inserting “or teen or to
   contact another child or teen” after
   “to recontact the child”; and

(iii) in subparagraph (B)—
   (I) by striking “parent or child”
   and inserting “parent or teen”; and

   (II) by striking “parental con-
   sent” each place the term appears and
   inserting “verifiable consent”;

(iv) in subparagraph (C)—
   (I) in the matter preceding clause
   (i), by inserting “or teen” after
   “child” each place the term appears;

   (II) in clause (i)—
(aa) by inserting “or teen” after “child” each place the term appears; and

(bb) by inserting “or teen, as applicable,” after “parent” each place the term appears; and

(III) in clause (ii)—

(aa) by striking “without notice to the parent” and inserting “without notice to the parent or teen, as applicable,”; and

(bb) by inserting “or teen” after “child” each place the term appears; and

(v) in subparagraph (D)—

(I) in the matter preceding clause (i), by inserting “or teen” after “child” each place the term appears;

(II) in clause (ii), by inserting “or teen” after “child”; and

(III) in the flush text following clause (iii)—

(aa) by inserting “or teen, as applicable,” after “parent” each place the term appears; and
(bb) by inserting “or teen” after “child”;

(C) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

“(3) **APPLICATION TO OPERATORS ACTING UNDER AGREEMENTS WITH EDUCATIONAL AGENCIES OR INSTITUTIONS.**—The regulations may provide that verifiable consent under paragraph (1)(A)(ii) is not required for an operator that is acting under a written agreement with an educational agency or institution (as defined in section 444 of the General Education Provisions Act (commonly known as the ‘Family Educational Rights and Privacy Act of 1974’) (20 U.S.C. 1232g(a)(3)) that, at a minimum, requires the—

“(A) operator to—

“(i) limit its collection, use, and disclosure of the personal information from a child or teen to solely educational purposes and for no other commercial purposes;

“(ii) provide the educational agency or institution with a notice of the specific types of personal information the operator will collect from the child or teen, the
method by which the operator will obtain
the personal information, and the purposes
for which the operator will collect, use, dis-
close, and retain the personal information;

“(iii) provide the educational agency
or institution with a link to the operator’s
online notice of information practices as
required under subsection (b)(1)(A)(i); and

“(iv) provide the educational agency
or institution, upon request, with a means
to review the personal information collected
from a child or teen, to prevent further use
or maintenance or future collection of per-
sonal information from a child or teen, and
to delete personal information collected
from a child or teen or content or informa-
tion submitted by a child or teen to the op-
erator’s website, online service, online ap-
lication, or mobile application;

“(B) representative of the educational
agency or institution to acknowledge and agree
that they have authority to authorize the collect-
ion, use, and disclosure of personal information
from children or teens on behalf of the edu-
cational agency or institution, along with such
authorization, their name, and title at the educational agency or institution; and

“(C) educational agency or institution to—

“(i) provide on its website a notice that identifies the operator with which it has entered into a written agreement under this subsection and provides a link to the operator’s online notice of information practices as required under paragraph (1)(A)(i);

“(ii) provide the operator’s notice regarding its information practices, as required under subparagraph (A)(ii), upon request, to a parent, in the case of a child, or a parent or teen, in the case of a teen; and

“(iii) upon the request of a parent, in the case of a child, or a parent or teen, in the case of a teen, request the operator provide a means to review the personal information from the child or teen and provide the parent, in the case of a child, or parent or teen, in the case of the teen, a means to review the personal information.”;)
(D) by amending paragraph (4), as so re-designated, to read as follows:

“(4) TERMINATION OF SERVICE.—The regulations shall permit the operator of a website, online service, online application, or mobile application to terminate service provided to a child whose parent has refused, or a teen who has refused, under the regulations prescribed under paragraphs (1)(B)(ii) and (1)(C)(ii), to permit the operator’s further use or maintenance in retrievable form, or future online collection of, personal information from that child or teen.”; and

(E) by adding at the end the following new paragraphs:

“(5) CONTINUATION OF SERVICE.—The regulations shall prohibit an operator from discontinuing service provided to a child or teen on the basis of a request by the parent of the child or by the teen, under the regulations prescribed under subparagraph (B) or (C) of paragraph (1), respectively, to delete personal information collected from the child or teen, to the extent that the operator is capable of providing such service without such information.

“(6) RULE OF CONSTRUCTION.—A request made pursuant to subparagraph (B) or (C) of para-
graph (1) to delete or correct personal information
of a child or teen shall not be construed—

“(A) to limit the authority of a law en-
forcement agency to obtain any content or in-
formation from an operator pursuant to a law-
fully executed warrant or an order of a court of
competent jurisdiction;

“(B) to require an operator or third party
delete or correct information that—

“(i) any other provision of Federal or
State law requires the operator or third
party to maintain; or

“(ii) was submitted to the website, on-
line service, online application, or mobile
application of the operator by any person
other than the user who is attempting to
erase or otherwise eliminate the content or
information, including content or informa-
tion submitted by the user that was repub-
lished or resubmitted by another person; or

“(C) to prohibit an operator from—

“(i) retaining a record of the deletion
request and the minimum information nec-
essary for the purposes of ensuring compli-
 ance with a request made pursuant to sub-
paragraph (B) or (C);

“(ii) preventing, detecting, protecting
against, or responding to security inci-
dents, identity theft, or fraud, or reporting
those responsible for such actions;

“(iii) protecting the integrity or secu-
rity of a website, online service, online ap-
application or mobile application; or

“(iv) ensuring that the child’s or
teen’s information remains deleted.

“(7) COMMON VERIFIABLE CONSENT MECHA-
NISM.—

“(A) IN GENERAL.—

“(i) FEASIBILITY OF MECHANISM.—
The Commission shall assess the feasi-
bility, with notice and public comment, of
allowing operators the option to use a com-
mon verifiable consent mechanism that
fully meets the requirements of this title.

“(ii) REQUIREMENTS.—The feasibility
assessment described in clause (i) shall
consider whether a single operator could
use a common verifiable consent mecha-
nism to obtain verifiable consent, as re-
quired under this title, from a parent of a
child or from a teen on behalf of multiple,
listed operators that provide a joint or re-
lated service.

“(B) REPORT.—Not later than 1 year
after the date of enactment of this paragraph,
the Commission shall submit a report to the
Committee on Commerce, Science, and Trans-
portation of the Senate and the Committee on
Energy and Commerce of the House of Rep-
resentatives with the findings of the assessment
required by subparagraph (A).

“(C) REGULATIONS.—If the Commission
finds that the use of a common verifiable con-
sent mechanism is feasible and would meet the
requirements of this title, the Commission shall
issue regulations to permit the use of a common
verifiable consent mechanism in accordance
with the findings outlined in such report.”;

(4) in subsection (c), by striking “a regulation
prescribed under subsection (a)” and inserting “sub-
paragraph (B), (C), (D), or (E) of subsection (a)(1),
or of a regulation prescribed under subsection (b),”;
and
(5) by striking subsection (d) and inserting the following:

“(d) RELATIONSHIP TO STATE LAW.—The provisions of this title shall preempt any State law, rule, or regulation only to the extent that such State law, rule, or regulation conflicts with a provision of this title. Nothing in this title shall be construed to prohibit any State from enacting a law, rule, or regulation that provides greater protection to children or teens than the provisions of this title.”.

(c) SAFE HARBORS.—Section 1304 of the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6503) is amended—

(1) in subsection (b)(1), by inserting “and teens” after “children”; and

(2) by adding at the end the following:

“(d) PUBLICATION.—

“(1) IN GENERAL.—Subject to the restrictions described in paragraph (2), the Commission shall publish on the internet website of the Commission any report or documentation required by regulation to be submitted to the Commission to carry out this section.

“(2) RESTRICTIONS ON PUBLICATION.—The restrictions described in section 6(f) and section 21 of the Federal Trade Commission Act (15 U.S.C.
46(f), 57b–2) applicable to the disclosure of information obtained by the Commission shall apply in the same manner to the disclosure under this subsection of information obtained by the Commission from a report or documentation described in paragraph (1).”.

(d) Actions by States.—Section 1305 of the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6504) is amended—

(1) in subsection (a)(1)—

(A) in the matter preceding subparagraph (A), by inserting “section 1303(a)(1) or” before “any regulation”; and

(B) in subparagraph (B), by inserting “section 1303(a)(1) or” before “the regulation”; and

(2) in subsection (d)—

(A) by inserting “section 1303(a)(1) or” before “any regulation”; and

(B) by inserting “section 1303(a)(1) or” before “that regulation”.

(e) Administration and Applicability of Act.—

Section 1306 of the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6505) is amended—

(1) in subsection (b)—
(A) in paragraph (1), by striking “, in the case of” and all that follows through “the Board of Directors of the Federal Deposit Insurance Corporation;” and inserting the following: “by the appropriate Federal banking agency, with respect to any insured depository institution (as those terms are defined in section 3 of that Act (12 U.S.C. 1813));”; and

(B) by striking paragraph (2) and redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively;

(2) in subsection (d)—

(A) by inserting “section 1303(a)(1) or” before “a rule”; and

(B) by striking “such rule” and inserting “section 1303(a)(1) or a rule of the Commission under section 1303”; and

(3) by adding at the end the following new subsections:

“(f) Determination of Whether an Operator Has Knowledge Fairly Implied on the Basis of Objective Circumstances.—

“(1) Rule of construction.—For purposes of enforcing this title or a regulation promulgated under this title, in making a determination as to
whether an operator has knowledge fairly implied on
the basis of objective circumstances that a specific
user is a child or teen, the Commission or State attor-
yeas general shall rely on competent and reliable
evidence, taking into account the totality of the cir-
cumstances, including whether a reasonable and pru-
dent person under the circumstances would have
known that the user is a child or teen. Nothing in
this title, including a determination described in the
preceding sentence, shall be construed to require an
operator to—

“(A) affirmatively collect any personal in-
formation with respect to the age of a child or
teen that an operator is not already collecting
in the normal course of business; or

“(B) implement an age gating or age
verification functionality.

“(2) COMMISSION GUIDANCE.—

“(A) IN GENERAL.—Within 180 days of
enactment, the Commission shall issue guidance
to provide information, including best practices
and examples for operators to understand the
Commission’s determination of whether an op-
erator has knowledge fairly implied on the basis
of objective circumstances that a user is a child
or teen.

“(B) LIMITATION.—No guidance issued by
the Commission with respect to this title shall
confer any rights on any person, State, or local-
ity, nor shall operate to bind the Commission or
any person to the approach recommended in
such guidance. In any enforcement action
brought pursuant to this title, the Commission
or State attorney general, as applicable, shall
allege a specific violation of a provision of this
title. The Commission or State attorney gen-
eral, as applicable, may not base an enforce-
ment action on, or execute a consent order
based on, practices that are alleged to be incon-
sistent with any such guidance, unless the prac-
tices allegedly violate this title.

“(g) ADDITIONAL REQUIREMENT.—Any regulations
issued under this title shall include a description and anal-
ysis of the impact of proposed and final Rules on small
entities per the Regulatory Flexibility Act of 1980 (5
U.S.C. 601 et seq.).”.
SEC. 3. STUDY AND REPORTS OF MOBILE AND ONLINE APPLICATION OVERSIGHT AND ENFORCEMENT.

(a) OVERSIGHT REPORT.—Not later than 3 years after the date of enactment of this Act, the Federal Trade Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the processes of platforms that offer mobile and online applications for ensuring that, of those applications that are websites, online services, online applications, or mobile applications directed to children, the applications operate in accordance with—

(1) this Act, the amendments made by this Act, and rules promulgated under this Act; and

(2) rules promulgated by the Commission under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) relating to unfair or deceptive acts or practices in marketing.

(b) ENFORCEMENT REPORT.—Not later than 1 year after the date of enactment of this Act, and each year thereafter, the Federal Trade Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that addresses, at a minimum—
(1) the number of actions brought by the Commission during the reporting year to enforce the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6501) (referred to in this subsection as the “Act”) and the outcome of each such action;

(2) the total number of investigations or inquiries into potential violations of the Act; during the reporting year;

(3) the total number of open investigations or inquiries into potential violations of the Act as of the time the report is submitted;

(4) the number and nature of complaints received by the Commission relating to an allegation of a violation of the Act during the reporting year; and

(5) policy or legislative recommendations to strengthen online protections for children and teens.

SEC. 4. GAO STUDY.

(a) Study.—The Comptroller General of the United States (in this section referred to as the “Comptroller General”) shall conduct a study on the privacy of teens who use financial technology products. Such study shall—

(1) identify the type of financial technology products that teens are using;
(2) identify the potential risks to teens’ privacy from using such financial technology products; and

(3) determine whether existing laws are sufficient to address such risks to teens’ privacy.

(b) REPORT.—Not later than 1 year after the date of enactment of this section, the Comptroller General shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

SEC. 5. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, is determined to be unenforceable or invalid, the remaining provisions of this Act and the amendments made by this Act shall not be affected.