

113TH CONGRESS
1ST SESSION

S. 172

To amend the Truth in Lending Act to address certain issues related to the extension of consumer credit, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2013

Mr. MERKLEY (for himself, Mr. UDALL of New Mexico, Mr. DURBIN, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Truth in Lending Act to address certain issues related to the extension of consumer credit, 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.**

4 This Act may be cited as the “Stopping Abuse and
5 Fraud in Electronic Lending Act of 2013” or the “SAFE
6 Lending Act of 2013”.

7 **SEC. 2. CONSUMER CONTROL OVER BANK ACCOUNTS.**

8 (a) PROHIBITING UNAUTHORIZED REMOTELY CRE-
9 ATED CHECKS.—Section 905 of the Electronic Fund

1 Transfer Act (15 U.S.C. 1693c) is amended by adding at
2 the end the following:

3 “(d) LIMITATIONS ON REMOTELY CREATED
4 CHECKS.—

5 “(1) IN GENERAL.—Subject to the limitations
6 set forth under paragraph (2) and any additional
7 limitations that the Bureau may establish, by rule,
8 a remotely created check may only be issued by a
9 person designated in writing by the consumer, such
10 designation specifically provided in writing by the
11 consumer to the insured depository institution at
12 which the consumer maintains the account from
13 which the check is to be drawn.

14 “(2) ADDITIONAL LIMITATIONS.—

15 “(A) IN GENERAL.—An authorization pro-
16 vided under paragraph (1) may be revoked at
17 any time by the consumer.

18 “(B) CONSUMER FINANCIAL PROTECTION
19 LAWS.—No payment order, including a re-
20 motely created check, may be issued by any per-
21 son in response to the exercise of, or attempt to
22 exercise, any rights by a consumer under any
23 Federal consumer financial law (as defined in
24 section 1002(14) of the Consumer Financial
25 Protection Act of 2010 (12 U.S.C. 5481(14)))

1 or any other provision of any law or regulation
2 within the jurisdiction of the Bureau.

3 “(3) REMOTELY CREATED CHECK DEFINED.—

4 For purposes of this subsection, the term ‘remotely
5 created check’ means a check (including paper and
6 electronic checks and any other payment order that
7 the Bureau, by rule, determines is appropriately cov-
8 ered by this subsection) that—

9 “(A) is not created by the financial institu-
10 tion that holds the customer account from
11 which the check is to be paid; and

12 “(B) does not bear a signature applied, or
13 purported to be applied, by the person from
14 whose account the check is to be paid.”.

15 (b) CONSUMER PROTECTIONS FOR CERTAIN ONE-
16 TIME ELECTRONIC FUND TRANSFERS.—Section 913 of
17 the Electronic Fund Transfer Act (15 U.S.C. 1693k) is
18 amended—

19 (1) by inserting “(a) IN GENERAL.—” before
20 “No person”;

21 (2) striking “preauthorized electronic fund
22 transfers” and inserting “an electronic fund trans-
23 fer”; and

24 (3) by adding at the end the following:

1 “(b) TREATMENT FOR ELECTRONIC FUND TRANS-
 2 FERS IN CREDIT EXTENSIONS.—If a consumer voluntarily
 3 agrees to repay an extension of small-dollar consumer
 4 credit transaction (as defined in section 110(b) of the
 5 Truth in Lending Act) by means of an electronic fund
 6 transfer, such electronic fund transfer shall be treated as
 7 a preauthorized electronic fund transfer subject to the pro-
 8 tections of this title.”.

9 **SEC. 3. CONSISTENT APPLICATION OF LAW FOR SMALL-**
 10 **DOLLAR LENDING.**

11 (a) CONSISTENT APPLICATION OF STATE LAW FOR
 12 SMALL-DOLLAR LENDING.—The Truth in Lending Act
 13 (15 U.S.C. 1601 et seq.) is amended by inserting after
 14 section 109 the following:

15 **“SEC. 110. CONSISTENT APPLICATION OF LAW FOR SMALL-**
 16 **DOLLAR LENDING.**

17 “(a) IN GENERAL.—Notwithstanding any other pro-
 18 vision of law, and except to the extent that Federal or
 19 applicable tribal law affords greater protection to the con-
 20 sumer, any small-dollar consumer credit transaction made
 21 over the Internet, telephone, facsimile, mail, electronic
 22 mail, or other electronic communication, and any small-
 23 dollar consumer credit transaction conducted by a national
 24 bank shall comply with the laws of the State in which the
 25 consumer resides with respect to annual percentage rates,

1 interest, fees, charges, and such other similar or related
2 matters as the Bureau may, by rule, determine.

3 “(b) DEFINITIONS.—As used in this section, the term
4 ‘small-dollar consumer credit transaction’ means any
5 transaction that extends, facilitates, brokers, arranges, or
6 gathers applications for credit that is—

7 “(1) made to a consumer in an amount of not
8 more than \$5,000, or such greater amount as the
9 Bureau may, by rule, determine, such amount to be
10 adjusted annually to reflect changes in the Con-
11 sumer Price Index for all urban consumers published
12 by the Department of Labor; and

13 “(2) extended pursuant to an agreement that
14 is—

15 “(A) other than an open-end credit plan
16 and is payable in one or more installments of
17 less than 12 months (or such longer period as
18 the Bureau may, by rule, determine);

19 “(B) an open-end credit plan in which each
20 advance is fully repayable within a defined time
21 or in connection with a defined event, or both;
22 or

23 “(C) such other plan as the Bureau deter-
24 mines, by rule.”.

1 (b) ENFORCEMENT.—Section 130 of the Truth in
2 Lending Act (15 U.S.C. 1640) is amended by inserting
3 “section 110,” before “or chapter 4”.

4 **SEC. 4. RESTRICTIONS ON LEAD GENERATION IN SMALL-**
5 **DOLLAR CONSUMER CREDIT TRANSACTIONS.**

6 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
7 is amended by adding at the end the following:

8 **“SEC. 140B. RESTRICTIONS ON LEAD GENERATION IN**
9 **SMALL-DOLLAR CONSUMER CREDIT TRANS-**
10 **ACTIONS.**

11 “(a) IDENTIFICATION INFORMATION.—Any person
12 facilitating, brokering, arranging, gathering applications
13 for, or distributing sensitive personal financial information
14 in connection with small-dollar consumer credit trans-
15 actions shall prominently disclose information by which
16 they may be contacted or identified, including for service
17 of process and for identification of the registrant of any
18 domain name registered or used.

19 “(b) PROHIBITION ON LEAD GENERATION IN SMALL-
20 DOLLAR CONSUMER CREDIT TRANSACTIONS.—No person
21 may facilitate, broker, arrange, gather applications for, or
22 distribute sensitive personal financial information in con-
23 nection with small-dollar consumer credit transactions,
24 unless the person is directly providing the small-dollar
25 consumer credit to the consumer.

1 “(c) DEFINITIONS.—For purposes of this section—

2 “(1) the term ‘sensitive personal financial infor-
3 mation’ means the consumer’s Social Security num-
4 ber, financial account number, bank routing number,
5 bank account number, or any required security or
6 access code that is immediately necessary to permit
7 access to an individual’s financial account; and

8 “(2) the term ‘small-dollar consumer credit
9 transaction’ has the same meaning as in section
10 110(b).

11 “(d) RULE OF CONSTRUCTION.—

12 “(1) IN GENERAL.—Nothing in this section
13 may be interpreted to limit the authority of the Bu-
14 reau to further restrict activities covered by this sec-
15 tion.

16 “(2) CLARIFICATION.—It shall not be consid-
17 ered ‘facilitating’ in connection with small-dollar
18 consumer credit transactions to be engaged solely in
19 one of the following activities:

20 “(A) The provision of a telecommuni-
21 cations service, or of an Internet access service
22 or Internet information location tool (as those
23 terms are defined in section 231 of the Commu-
24 nications Act of 1934 (47 U.S.C. 231)).

1 “(B) The transmission, storage, retrieval,
 2 hosting, formatting, or translation (or any com-
 3 bination thereof) of a communication, without
 4 selection or alteration of the content of the
 5 communication, except that deletion of a par-
 6 ticular communication or material made by an-
 7 other person in a manner consistent with sec-
 8 tion 230(e) of the Communications Act of 1934
 9 (47 U.S.C. 230(c)).”.

10 **SEC. 5. ENHANCED ENFORCEMENT AUTHORITY AGAINST**
 11 **CERTAIN INTERNET LENDING.**

12 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
 13 is amended by inserting after section 108 the following:

14 **“SEC. 108A. ENHANCED ENFORCEMENT AUTHORITY RELAT-**
 15 **ING TO CONSUMER FINANCIAL ACTIVITIES**
 16 **BY CERTAIN INTERNET SITES.**

17 “(a) DEFINITIONS.—In this section, the following
 18 definitions shall apply:

19 “(1) COMPLAINANT.—The term ‘complainant’
 20 means a State attorney general or State or tribal
 21 agency with enforcement authority over prohibited
 22 activity who files a complaint with the Bureau under
 23 subsection (d).

1 “(2) COVERED ONSHORE PERSON.—The term
2 ‘covered onshore person’ means a State government
3 or an Indian tribe.

4 “(3) FEDERAL CONSUMER FINANCIAL LAW.—
5 The term ‘Federal consumer financial law’ has the
6 same meaning as in section 1002 of the Consumer
7 Financial Protection Act of 2010 (12 U.S.C. 5481).

8 “(4) FINANCIAL TRANSACTION PROVIDER.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the term ‘financial trans-
11 action provider’ has the same meaning as in
12 section 5362(4) of title 31, United States Code.

13 “(B) EXCEPTION.—The term ‘financial
14 transaction provider’ does not include an Inter-
15 net service platform or an affiliate of an Inter-
16 net service platform.

17 “(5) INDIAN TRIBE.—The term ‘Indian tribe’
18 has the same meaning as in section 4 of the Indian
19 Self-Determination and Education Assistance Act
20 (25 U.S.C. 450b).

21 “(6) INTERNET SERVICE PLATFORM.—The
22 term ‘Internet service platform’ means an interactive
23 digital service the provider of which—

1 “(A) does not act merely as a payment
2 intermediary between a user and a supplier of
3 goods or services; and

4 “(B) provides additional services to facili-
5 tate interaction between users unrelated to pur-
6 chases from suppliers of goods and services.

7 “(7) INTERNET SITE.—The term ‘Internet site’
8 means the collection of digital assets, including links,
9 indexes, or pointers to digital assets, accessible
10 through the Internet that are addressed relative to
11 a common domain name.

12 “(8) COVERED OFFSHORE PERSON.—

13 “(A) IN GENERAL.—The term ‘covered off-
14 shore person’ means a person (and if such per-
15 son is not known, the Internet site or other
16 electronic representation of such person such as
17 a telephone number, text message service, or
18 mobile application) that—

19 “(i) conducts business directed to resi-
20 dents of the United States;

21 “(ii) does not have a domain name
22 that is registered or assigned by a domain
23 name registrar, domain name registry, or
24 other domain name registration authority

1 that is located within a judicial district of
2 the United States; and

3 “(iii) is not operated by an entity that
4 is located within a judicial district of the
5 United States.

6 “(B) BUSINESS DIRECTED TO RESIDENTS
7 OF THE UNITED STATES.—For purposes of
8 making a determination under subparagraph
9 (A)(i), the Bureau may consider, among other
10 indicators, whether—

11 “(i) the person extends, facilitates,
12 brokers, arranges, or gathers applications
13 for credit to persons located in the United
14 States;

15 “(ii) the person has reasonable meas-
16 ures in place to prevent its services from
17 being accessed from or delivered to the
18 United States; and

19 “(iii) any prices for goods and services
20 provided are indicated in the currency of
21 the United States.

22 “(9) OPERATOR.—The term ‘operator’, when
23 used in connection with an Internet site, includes
24 any person with authority to operate the Internet
25 site.

1 “(10) OWNER.—The term ‘owner’, when used
2 in connection with an Internet site, includes any
3 owner of a majority interest in the Internet site.

4 “(11) STATE CONSUMER FINANCIAL LAW.—The
5 term ‘State consumer financial law’ means a provi-
6 sion of State law that either constitutes a ‘State
7 consumer financial law’ as that term is defined in
8 section 5136C of title LXII of the Revised Statutes
9 of the United States (12 U.S.C. 21 et seq.), or pro-
10 hibits unfair or deceptive acts or practices.

11 “(b) APPLICABILITY OF SECTION.—It shall be a vio-
12 lation of this section—

13 “(1) for a covered offshore person to violate an
14 applicable Federal, State, or tribal consumer finan-
15 cial law; and

16 “(2) for a covered onshore person to violate an
17 applicable Federal, State, or tribal consumer finan-
18 cial law.

19 “(c) INVESTIGATION OF VIOLATIONS BY BUREAU.—

20 “(1) IN GENERAL.—The Bureau—

21 “(A) may investigate any alleged violation
22 of subsection (b) on its own initiative; and

23 “(B) shall—

1 “(i) review any alleged violation of
2 subsection (b) upon receiving a complaint
3 filed under subsection (d); and

4 “(ii) adjudicate and otherwise inves-
5 tigate and respond to such complaint, as
6 appropriate.

7 “(2) CONSULTATIONS.—In taking action under
8 paragraph (1), the Bureau shall, as the Bureau de-
9 termines appropriate, consult with and seek advice
10 and information from the Attorney General of the
11 United States, the Federal Trade Commission, the
12 International Trade Commission, the Bureau of In-
13 dian Affairs (in the case of matters involving an In-
14 dian tribe), federally recognized Indian tribes (in the
15 case of rulemakings involving Indian tribes), and
16 such other agencies and officials as the Bureau con-
17 siders appropriate.

18 “(3) LIMITATION ON INVESTIGATIONS OF DO-
19 MAIN NAMES; CONSENT TO JURISDICTION.—Subject
20 to such limitations as the Bureau may, by rule, de-
21 termine, the Bureau shall terminate, or not initiate,
22 an investigation or adjudication under paragraph (1)
23 with respect to a person or a domain name—

24 “(A) if a person or the operator of the
25 Internet site associated with the domain name

1 provides in a legal notice on the site accurate
2 information consisting of—

3 “(i) the name of an individual author-
4 ized to receive process on behalf of the site;

5 “(ii) an address at which process may
6 be served;

7 “(iii) a telephone number at which the
8 individual described in clause (i) may be
9 contacted; and

10 “(iv) a statement that the operator of
11 the site consents to the jurisdiction and
12 venue of the United States district courts
13 with respect to a violation of State con-
14 sumer lending laws;

15 “(B) provided that, in the event of the fil-
16 ing of any civil action in the appropriate United
17 States district court for a violation of State or
18 tribal consumer lending laws, the operator of
19 the Internet site accepts service and waives, in
20 a timely manner, any objections to jurisdiction,
21 as set forth in the statement described in sub-
22 paragraph (A)(iv); and

23 “(C) provided that, any limitations on in-
24 vestigations under this subsection shall not
25 apply if—

1 “(i) any of the information provided
2 by the operator is inaccurate in any way;
3 or

4 “(ii) at any point, the relevant party
5 fails to respond to or abide by any order
6 or request of the relevant court.

7 “(4) RULE OF CONSTRUCTION.—It shall not be
8 considered a violation of this section to be engaged
9 solely in one of the following activities:

10 “(A) The provision of a telecommuni-
11 cations service, or of an Internet access service
12 or Internet information location tool (as those
13 terms are defined in section 231 of the Commu-
14 nications Act of 1934 (47 U.S.C. 231)).

15 “(B) The transmission, storage, retrieval,
16 hosting, formatting, or translation (or any com-
17 bination thereof) of a communication, without
18 selection or alteration of the content of the
19 communication, except that deletion of a par-
20 ticular communication or material made by an-
21 other person in a manner consistent with sec-
22 tion 230(e) of the Communications Act of 1934
23 (47 U.S.C. 230(e)).

24 “(d) COMPLAINTS.—

1 “(1) IN GENERAL.—A complaint alleging, under
2 oath, that a covered onshore person or a covered off-
3 shore person is in violation of subsection (b) may be
4 filed with the Bureau.

5 “(2) NOTICE.—

6 “(A) IN GENERAL.—Upon filing a com-
7 plaint under paragraph (1), if the identity of
8 the covered offshore person is not known, but
9 the Internet site or other electronic representa-
10 tion is, the complainant shall send a notice of
11 the violation alleged in the complaint to the reg-
12 istrant of the domain name of the Internet site
13 (or relevant operator of the electronic represen-
14 tation) alleged to be operated or maintained in
15 violation of subsection (b)—

16 “(i) at the postal and e-mail addresses
17 appearing in the applicable publicly acces-
18 sible database of registrations, if any, to
19 the extent such addresses are reasonably
20 available;

21 “(ii) via the postal and e-mail ad-
22 dresses of the registrar, registry, or other
23 domain name registration authority that
24 registered or assigned the domain name, to

1 the extent such addresses are reasonably
2 available; and

3 “(iii) in any other such form as the
4 Bureau finds necessary.

5 “(B) RULE OF CONSTRUCTION.—For pur-
6 poses of this subsection, the actions described
7 in this paragraph shall constitute service of
8 process.

9 “(3) IDENTIFICATION OF, AND NOTICE TO, EN-
10 TITIES THAT MAY BE REQUIRED TO TAKE ACTION
11 PURSUANT TO THIS SECTION.—

12 “(A) IDENTIFICATION.—A complaint filed
13 under paragraph (1) shall identify any financial
14 transaction provider that may be required to
15 take measures described in subsection (g)(2) if
16 the Bureau issues an order under subsection (f)
17 with respect to the complaint and the order is
18 served on the provider or service pursuant to
19 subsection (g)(1).

20 “(B) NOTICE.—Upon filing a complaint
21 under paragraph (1), the complainant shall pro-
22 vide notice to any financial transaction provider
23 identified in the complaint pursuant to subpara-
24 graph (A) or any amendments to the complaint.

25 “(C) INTERVENTION.—

1 “(i) IN GENERAL.—A financial trans-
2 action provider or identified in a complaint
3 pursuant to subparagraph (A) may inter-
4 vene upon timely request filed with the Bu-
5 reau in—

6 “(I) an investigation initiated
7 under subsection (c) pursuant to the
8 complaint; or

9 “(II) pursuant to subsection
10 (f)(3), an action to modify, suspend,
11 or vacate an order issued pursuant to
12 the complaint.

13 “(ii) RULE OF CONSTRUCTION.—Fail-
14 ure to intervene under clause (i) in an in-
15 vestigation under subsection (c) does not
16 preclude a financial transaction provider
17 notified of the investigation from subse-
18 quently seeking an order to modify, sus-
19 pend, or vacate an order issued by the Bu-
20 reau under subsection (f).

21 “(e) DETERMINATIONS.—

22 “(1) IN GENERAL.—The Bureau shall deter-
23 mine, with respect to each investigation initiated
24 under subsection (c), whether the respective covered

1 onshore person or covered offshore person under in-
2 vestigation is in violation of subsection (b).

3 “(2) EFFECTIVE DATE.—A determination made
4 under paragraph (1) shall take effect on the date on
5 which the Bureau publishes the determination in the
6 Federal Register.

7 “(3) ELECTRONIC SUBMISSION OF INFORMA-
8 TION AND PROCEEDINGS.—The Bureau may, in
9 making any determination under this section—

10 “(A) allow the submission of information
11 electronically; and

12 “(B) hold hearings electronically or obtain
13 testimony or other information electronically or
14 by such means as the Bureau determines allows
15 participation in proceedings under this section
16 at as low a cost as possible to participants in
17 the proceedings.

18 “(f) CEASE AND DESIST ORDERS.—

19 “(1) IN GENERAL.—If the Bureau determines
20 under subsection (e) that the covered onshore person
21 or covered offshore person is in violation of sub-
22 section (b), in addition to any actions which the Bu-
23 reau could otherwise take, the Bureau may—

24 “(A) issue an order to cease and desist
25 from violation of subsection (b) to the covered

1 onshore person or covered offshore person (and
2 if the identity of the covered offshore person is
3 not known, to the relevant Internet site and to
4 the owner and the operator of the Internet site
5 or relevant electronic representation); and

6 “(B) cause the order to be served on the
7 relevant person.

8 “(2) TEMPORARY AND PRELIMINARY CEASE
9 AND DESIST ORDERS.—

10 “(A) PETITION BY COMPLAINANT.—A
11 complainant may file with the Bureau a peti-
12 tion, in accordance with this paragraph, for the
13 issuance of a temporary or preliminary order.

14 “(B) ISSUANCE OF ORDER.—If, upon re-
15 ceiving a petition under subparagraph (A) and
16 after providing an opportunity to be heard
17 under subparagraph (C), the Bureau deter-
18 mines that the covered onshore person or cov-
19 ered offshore person is in violation of subsection
20 (b), in addition to any actions which the Direc-
21 tor could otherwise take, the Bureau may issue
22 a temporary or preliminary cease and desist
23 order against, and cause the order to be served
24 on the relevant person pursuant to paragraph
25 (1).

1 “(C) OPPORTUNITY TO BE HEARD.—

2 “(i) IN GENERAL.—Before issuing a
3 temporary or preliminary cease and desist
4 order under this paragraph, the Bureau
5 shall provide to any person (including any
6 applicable Internet site or electronic rep-
7 resentation and the owner and the oper-
8 ator of such Internet site or electronic rep-
9 resentation) alleged to be in violation of
10 subsection (b) an opportunity to be heard
11 and to submit relevant information to the
12 Bureau.

13 “(ii) ELECTRONIC SUBMISSION OF IN-
14 FORMATION AND PROCEEDINGS.—The Bu-
15 reau may provide an opportunity to be
16 heard and to submit information under
17 clause (i) electronically or in such other
18 manner as the Bureau determines appro-
19 priate.

20 “(D) STANDARD FOR RELIEF.—If the Bu-
21 reau issues a temporary or preliminary cease
22 and desist order under this paragraph, the
23 order shall be issued in a manner consistent
24 with the provisions of rule 65 of the Federal
25 Rules of Civil Procedure, or any successor

1 thereto, relating to preliminary injunctions and
2 temporary restraining orders.

3 “(E) PROCEDURES FOR TEMPORARY
4 CEASE AND DESIST ORDER.—

5 “(i) EXPEDITED CONSIDERATION.—
6 Upon a showing of extraordinary cir-
7 cumstances by the complainant filing a pe-
8 tition for a temporary cease and desist
9 order under subparagraph (A), the Bureau
10 may make a determination with respect to
11 the petition on an expedited basis.

12 “(ii) EXPIRATION OF ORDER.—

13 “(I) IN GENERAL.—Except as
14 provided in subclause (II), a tem-
15 porary cease and desist order issued
16 under this paragraph shall expire at a
17 time determined by the Bureau that is
18 not later than 14 days after the
19 issuance of the order.

20 “(II) EXTENSION OF ORDER.—
21 The Bureau may extend a temporary
22 cease and desist order issued under
23 this paragraph for additional periods
24 of not more than 14 days for good

1 cause or with the consent of the entity
2 against which the order is issued.

3 “(F) PROCEDURES FOR PRELIMINARY
4 CEASE AND DESIST ORDER.—

5 “(i) IN GENERAL.—Except as pro-
6 vided in clause (ii), the Bureau shall make
7 a determination with respect to a petition
8 for a preliminary cease and desist order
9 not later than 30 days after the Bureau
10 publishes notice of the initiation of an in-
11 vestigation under subsection (c) in the
12 Federal Register.

13 “(ii) EXTENSIONS OF TIME FOR DE-
14 TERMINATION.—The Bureau may extend
15 the date by which the Bureau is required
16 to make a determination under clause (i)
17 with respect to a petition for a preliminary
18 cease and desist order for an additional 30
19 days, if the Bureau—

20 “(I) determines that the petition
21 presents a more complicated case; and

22 “(II) publishes in the Federal
23 Register an explanation of why the
24 Bureau determined that the case is
25 more complicated under subclause (I).

1 “(3) MODIFICATION OR REVOCATION OF OR-
2 DERS.—

3 “(A) IN GENERAL.—At any time after the
4 issuance of an order under this subsection, a
5 motion to modify, suspend, or vacate the order
6 may be filed by—

7 “(i) any covered onshore person or
8 covered offshore person bound by the
9 order;

10 “(ii) the owner or operator of any
11 Internet site or electronic representation
12 subject to the order;

13 “(iii) any domain name registrar or
14 registry that has registered or assigned the
15 domain name of the Internet site subject
16 to the order; or

17 “(iv) a financial transaction provider
18 on which a copy of an order has been
19 served pursuant to paragraph (1) of sub-
20 section (g) requiring the provider or service
21 to take action described in paragraph (2)
22 of that subsection.

23 “(B) RELIEF.—The Bureau shall modify,
24 suspend, or vacate an order, as appropriate, if
25 the Bureau determines that—

1 “(i) the subject to the order is no
2 longer, or never was in violation of sub-
3 section (b); or

4 “(ii) the interests of justice require
5 that the order be modified, suspended, or
6 vacated.

7 “(C) CONSIDERATION.—In making a de-
8 termination under subparagraph (B), the Bu-
9 reau may consider whether any domain name of
10 an Internet site (or the relevant electronic rep-
11 resentation) subject to the order has expired or
12 has been re-registered by a different entity.

13 “(4) AMENDMENT OF ORDERS.—A complainant
14 may petition the Bureau to amend an order issued
15 under this subsection if any relevant an Internet site
16 or electronic representation determined under sub-
17 section (e) to be in violation of subsection (b) is ac-
18 cessible or has been reconstituted at a different do-
19 main name.

20 “(5) OPPORTUNITY TO BE HEARD FOR CERTAIN
21 ENTITIES.—Before the Bureau issues an order
22 under this subsection or modifies, suspends, vacates,
23 or amends such an order under paragraph (3) or
24 (4), a financial transaction provider that intervened
25 pursuant to subsection (d)(3) in an investigation or

1 action relating to the order shall have an oppor-
2 tunity to be heard before the Bureau with respect to
3 whether the Bureau should issue the order and the
4 scope of relief available under the order or whether
5 the Bureau should modify, suspend, vacate, or
6 amend the order, as the case may be.

7 “(6) EXPIRATION OF ORDERS WITH RESPECT
8 TO INTERNET SITE.—An order issued under this
9 subsection against an Internet site (or relevant elec-
10 tronic representation) shall cease to have any force
11 or effect upon expiration of the registration of the
12 domain name of the Internet site (or relevant elec-
13 tronic representation).

14 “(g) REQUIRED ACTIONS BASED ON BUREAU OR-
15 DERS.—

16 “(1) IN GENERAL.—If the Bureau reasonably
17 believes that a financial transaction provider identi-
18 fied in a complaint pursuant to subsection (d)(3), or
19 any amendment to the complaint, supplies services
20 to the covered onshore person or covered offshore
21 person subject to the order issued under subsection
22 (f) with respect to the complaint—

23 “(A) the Bureau may give permission to
24 the complainant to serve a copy of the order on
25 the financial transaction provider;

1 “(B) if the Bureau gives permission to the
2 complainant under subparagraph (A), the com-
3 plainant shall file proof of service with the Bu-
4 reau; and

5 “(C) upon receiving a copy of the order
6 pursuant to subparagraph (A), the financial
7 transaction provider shall implement the meas-
8 ures described in paragraph (2).

9 “(2) MEASURES TO BE IMPLEMENTED BY FI-
10 NANCIAL TRANSACTION PROVIDERS.—

11 “(A) IN GENERAL.—Subject to subpara-
12 graph (B), a financial transaction provider
13 shall, as expeditiously as is reasonable, take
14 reasonable and technically feasible measures, as
15 expeditiously as reasonable, designed to prevent
16 or prohibit the completion of payment trans-
17 actions by the provider that involve customers
18 located in the United States and the covered
19 onshore person or covered offshore person (in-
20 cluding the relevant Internet site or electronic
21 representation) subject to the order issued
22 under subsection (f).

23 “(B) LIMITATIONS ON MEASURES.—A fi-
24 nancial transaction provider may not be re-
25 quired pursuant to subparagraph (A)—

1 “(i) to implement measures that are
2 not commercially reasonable;

3 “(ii) to modify services or facilities of
4 the provider to comply with the order
5 issued under subsection (f); or

6 “(iii) to prevent or prohibit the com-
7 pletion of a payment transaction if the pro-
8 vider could not reasonably determine in ad-
9 vance whether the entity was using the
10 Internet site subject to the order.

11 “(3) COMMUNICATION WITH USERS.—A finan-
12 cial transaction provider required to implement
13 measures described in paragraph (2) shall determine
14 how to communicate with the users or customers of
15 the provider or service, as the case may be, with re-
16 spect to those measures.

17 “(4) RULES OF CONSTRUCTION.—

18 “(A) LIMITATION ON OBLIGATIONS.—A fi-
19 nancial transaction provider required to imple-
20 ment measures described in paragraph (2) shall
21 not be required to take measures or actions in
22 addition to the measures described in para-
23 graph (2) pursuant to this section or an order
24 issued under this section.

1 “(B) MANNER OF COMPLIANCE.—A finan-
2 cial transaction provider required to implement
3 measures described in paragraph (2) shall be in
4 compliance with this subsection if the provider
5 implements the measures described in that
6 paragraph with respect to accounts of the pro-
7 vider, as of the date on which a copy of an
8 order is served under paragraph (1) or, if appli-
9 cable, the date on which the order is modified
10 or amended under paragraph (3) or (4) of sub-
11 section (f).

12 “(5) ACTIONS PURSUANT TO BUREAU ORDER.—

13 “(A) IMMUNITY FROM CIVIL ACTIONS.—No
14 cause of action shall lie in any court against a
15 financial transaction provider on which a copy
16 of an order is served under paragraph (1), or
17 against any director, officer, employee, or agent
18 thereof, other than in an action pursuant to
19 subsection (h), for—

20 “(i) any act reasonably designed to
21 comply with this subsection or reasonably
22 arising from the order; or

23 “(ii) any act, failure, or inability to
24 meet the obligations under this subsection
25 of the provider or service if the provider or

1 service, as the case may be, makes a good
2 faith effort to comply with such obliga-
3 tions.

4 “(B) IMMUNITY FROM LIABILITY.—A fi-
5 nancial transaction provider on which a copy of
6 an order is served under paragraph (1), and
7 any director, officer, employee, or agent thereof,
8 shall not be liable to any person for any acts
9 reasonably designed to comply with this sub-
10 section or reasonably arising from the order,
11 other than in an action pursuant to subsection
12 (h).

13 “(C) IMMUNITY FROM ACTIONS OF THIRD
14 PARTIES.—An action taken by a third party to
15 circumvent any measures implemented pursuant
16 to an order served on a financial transaction
17 provider under paragraph (1) may not be used
18 by any person in any claim or cause of action
19 against the provider or service, as the case may
20 be, other than in an action pursuant to sub-
21 section (h).

22 “(h) ENFORCEMENT OF ORDERS.—

23 “(1) IN GENERAL.—In order to compel compli-
24 ance with this section, the Bureau and any State at-
25 torney general (or other appropriate State or tribal

1 entity) having enforcement authority over prohibited
2 activity may bring an action for injunctive relief
3 against any person subject to an order issued under
4 subsection (f) or on which such an order is served
5 under subsection (g) that fails to comply with the
6 order.

7 “(2) RULE OF CONSTRUCTION.—The authority
8 granted to the Bureau, State, and tribal authorities
9 under paragraph (1) shall be the sole legal remedy
10 for enforcing the obligations under subsection (g) of
11 a financial transaction provider on which an order is
12 served under paragraph (1) of that subsection.

13 “(3) AFFIRMATIVE DEFENSES.—A defendant in
14 an action commenced under paragraph (1) may es-
15 tablish an affirmative defense by showing that the
16 defendant does not have the technical means to com-
17 ply with this section without incurring an unreason-
18 able economic burden or that the order is incon-
19 sistent with this section. That showing shall serve as
20 a defense only to the extent of the inability of the
21 defendant to comply or to the extent of the incon-
22 sistency.

23 “(i) SANCTIONS FOR ABUSE OF PROCESS AND DIS-
24 COVERY.—The Bureau may, by rule, prescribe sanctions
25 for abuse of process in a manner consistent with the provi-

1 sions of rule 11 and rule 37 of the Federal Rules of Civil
2 Procedure.

3 “(j) IMMUNITY FOR ENFORCEMENT OF ORDERS.—
4 No cause of action shall lie in any court, no person may
5 rely on any claim or cause of action, and no liability for
6 damages to any person shall be granted, against a finan-
7 cial transaction provider for taking any action pursuant
8 to subsection (g)(2).

9 “(k) SAVINGS CLAUSE.—Nothing in this section, in-
10 cluding subsection (c), may be construed to limit the au-
11 thority or jurisdiction of the Bureau or any State or tribe
12 to review, regulate, investigate, enforce against, or other-
13 wise restrict activities covered by this section.”.

14 **SEC. 6. STUDIES.**

15 Not later than 180 days after enactment of this sec-
16 tion, the Government Accountability Office (in this section
17 referred to as the “GAO”) shall conduct a study regarding
18 the availability of capital on reservations of Indian tribes
19 (as such term is defined in section 4 of the Indian Self-
20 Determination and Education Assistance Act (25 U.S.C.
21 450b)) and the impact that small-dollar consumer credit
22 extended through Internet and non-Internet means to
23 members of Indian tribes has had on economic opportunity
24 and wealth for members of Indian tribes. In conducting
25 the study, the GAO shall consult, as appropriate, with the

1 Bureau of Consumer Financial Protection, the Board of
2 Governors of the Federal Reserve System, the Bureau of
3 Indian Affairs, federally recognized Indian tribes, and
4 community development financial institutions operating in
5 Indian lands. The report shall be presented to the Com-
6 mittee on Banking, Housing, and Urban Affairs and the
7 Committee on Indian Affairs of the Senate and the Com-
8 mittee on Financial Services and the Committee on Nat-
9 ural Resources of the House of Representatives.

10 **SEC. 7. RULEMAKING.**

11 Not later than 1 year after the date of enactment
12 of this Act, the Bureau shall adopt any final rules nec-
13 essary to implement the provisions of this Act and the
14 amendments made by this Act.

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