

105TH CONGRESS
1ST SESSION

H. R. 1900

To provide for adequate consumer protection in the provision of financial services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 1997

Mr. LAFALCE (for himself, Mr. GONZALEZ, Mr. VENTO, Mr. SCHUMER, Mr. FRANK of Massachusetts, Ms. WATERS, Mrs. MALONEY of New York, Mr. GUTIERREZ, Ms. ROYBAL-ALLARD, Ms. VELÁZQUEZ, Mr. HINCHEY, Mr. ACKERMAN, Mr. JACKSON of Illinois, Ms. KILPATRICK, Ms. CARSON, Mr. TORRES, and Mr. SANDERS) introduced the following bill; which was referred to the Committee on Banking and Financial Services

A BILL

To provide for adequate consumer protection in the provision of financial services, 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 “Depository Institution
5 Consumer Protection Act of 1997”.

1 **SEC. 2. CONSUMER PROTECTION REGULATIONS REQUIRED.**

2 (a) IN GENERAL.—The Federal Deposit Insurance
3 Act (12 U.S.C. 1811 et seq.) is amended by adding at
4 the end the following new section:

5 **“SEC. 45. CONSUMER PROTECTION REGULATIONS.**

6 “(a) REGULATIONS REQUIRED.—

7 “(1) IN GENERAL.—Each Federal banking
8 agency shall prescribe and publish in final form not
9 later than six months after the date of enactment of
10 this section of consumer protection regulations
11 which—

12 “(A) apply to sales, solicitations, advertis-
13 ing or offers of any nondeposit product by any
14 retail depository institution, any affiliate or
15 subsidiary of a retail depository institution, or
16 any person who is engaged in such activities at
17 an office of the institution or on behalf of the
18 institution; and

19 “(B) meet the requirements of this section
20 and provide such additional protections for con-
21 sumers to whom such sales, solicitations, adver-
22 tising or offers are directed as the agency deter-
23 mines to be appropriate.

24 “(2) CONSULTATION AND JOINT REGULA-
25 TIONS.—The Federal banking agencies shall consult
26 with each other and the SEC regarding the regula-

1 tions required to be prescribed pursuant to para-
2 graph (1) and to the greatest extent practicable shall
3 prescribe such regulations jointly.

4 “(3) NONDEPOSIT PRODUCT DEFINED.—For
5 purposes of this section, the term ‘nondeposit prod-
6 uct’—

7 “(A) means any investment and insurance
8 product which is not an insured deposit;

9 “(B) includes shares issued by a registered
10 investment company; and

11 “(C) does not include—

12 “(i) any loan or any other extension
13 of credit by an insured depository institu-
14 tion;

15 “(ii) any letter of credit; or

16 “(iii) any other instrument or insur-
17 ance or investment product specifically ex-
18 cluded from the definition of such term by
19 regulations prescribed jointly by the Fed-
20 eral banking agencies, to the extent nec-
21 essary to carry out the purpose of this Act.

22 “(b) SALES PRACTICES.—The regulations prescribed
23 pursuant to subsection (a) shall include the following pro-
24 visions relating to sales practices in connection with the
25 sale of nondeposit products:

1 “(1) ANTICOERCION RULES.—

2 “(A) IN GENERAL.—Anticoercion rules
3 prohibiting depository institutions from making
4 any extension of credit conditional upon:

5 “(i) the purchase of a nondeposit
6 product from the same retail depository in-
7 stitutions, or an affiliate, subsidiary or
8 agent of that retail depository institution;
9 or

10 “(ii) an agreement by the consumer
11 not to obtain, or a prohibition on the
12 consumer from obtaining, a nondeposit
13 product from an unaffiliated entity.

14 “(B) PRODUCT MARKETING.—Specific
15 rules prohibiting depository institutions, or
16 their affiliates, subsidiaries or agents from mar-
17 keting nondeposit products to consumers while
18 applications for extensions of credit from the
19 depository institution are pending, unless such
20 marketing is done by mail, separate and dis-
21 tinct from any processing, discussion or provi-
22 sion of information regarding the application
23 for an extension of credit.

24 “(2) SUITABILITY OF PRODUCT.—

1 “(A) IN GENERAL.—Standards to ensure
2 that a nondeposit product sold to a consumer
3 is suitable and appropriate for the consumer
4 based on financial information disclosed by the
5 consumer.

6 “(B) RULES OF FAIR PRACTICE.—In pre-
7 scribing the standards under subparagraph (A)
8 with respect to the sale of investments, the
9 Federal banking agencies shall take into ac-
10 count the Rules of Fair Practice of the Na-
11 tional Association of Securities Dealers.

12 “(c) DISCLOSURES AND ADVERTISING.—The regula-
13 tions prescribed pursuant to subsection (a) shall include
14 the following provisions relating to disclosures and adver-
15 tising in connection with the sale of nondeposit products:

16 “(1)(A) DISCLOSURES.—Requirements that the
17 following disclosures be made orally and in writing
18 before the completion of the sale and, additionally,
19 in the case of subparagraph (iv), at the time of ap-
20 plication for an extension of credit:

21 “(i) UNINSURED STATUS.—The product is
22 not insured by the Federal Deposit Insurance
23 Corporation or the United States Government.

24 “(ii) INSURANCE PRODUCT.—In the case of
25 an insurance policy which is sold by the retail

1 depository institution, affiliate, subsidiary or
2 other person as agent, the product is not guar-
3 anteed by the retail depository institution.

4 “(iii) INVESTMENT RISK.—In the case of
5 an investment product, there is an investment
6 risk associated with the product, including pos-
7 sible loss of principal.

8 “(iv) COERCION.—The approval, by the re-
9 tail depository institution, of an extension of
10 credit may not be conditioned on:

11 “(I) the purchase of a nondeposit
12 product which is sold by the retail depository
13 institution, affiliate, or other person
14 as agent; or

15 “(II) an agreement by the consumer
16 not to obtain, or a prohibition on the
17 consumer from obtaining, a nondeposit
18 product from an unaffiliated entity.

19 “(B) ADJUSTMENTS FOR ALTERNATIVE METH-
20 ODS OF PURCHASE.—In prescribing the require-
21 ments under subparagraph (A), necessary adjust-
22 ments shall be made for purchase in person, by tele-
23 phone or by electronic media to provide for the most
24 appropriate and complete form of disclosure.

1 “(C) CONSUMER ACKNOWLEDGEMENT.—A re-
2 quirement that a retail depository institution shall
3 require any person selling a nondeposit product at
4 any office of, or on behalf of, the institution to ob-
5 tain, at the time of the initial purchase by the
6 consumer of such product, a separate statement,
7 signed and dated by the consumer, which contains
8 the declaration that the purchaser has received the
9 disclosure required under this subsection with re-
10 spect to such product. Notwithstanding any rule of
11 evidence, written acknowledgement of receipt of any
12 disclosures by a person to whom such information is
13 required to be given does no more than create a re-
14 buttable presumption of delivery thereof.

15 “(2) PROHIBITION ON MISREPRESENTA-
16 TIONS.—A prohibition on any practice, or any adver-
17 tising, at any office of, or on behalf of, the retail de-
18 pository institution which could mislead any person
19 or otherwise cause a reasonable person to reach an
20 erroneous belief with respect to—

21 “(i) the uninsured nature of any non-
22 deposit product sold, or offered for sale by the
23 institution or any affiliate or agent of the insti-
24 tution; or

1 “(ii) the investment risk associated with
2 any such product.

3 “(d) SEPARATION OF BANKING AND NONBANKING
4 ACTIVITIES.—The regulations prescribed pursuant to sub-
5 section (a) shall include such provisions as the Federal
6 banking agencies consider appropriate to ensure that the
7 acceptance of deposits or the extension of credit by a de-
8 pository institution, are kept physically segregated from
9 nondeposit product activity. These provisions should in-
10 clude at a minimum the following provisions:

11 “(1) SEPARATE SETTING.—A clear delineation
12 of the setting in which, and the circumstances under
13 which, transactions involving nondeposit products
14 may be effected, and referrals made, to ensure that
15 such activity is conducted in a location physically
16 segregated from the area where retail deposits are
17 accepted, extensions of credit are granted or insured
18 products are sold by or on behalf of a depository in-
19 stitution.

20 “(2) CERTAIN PERSONS PROHIBITED FROM
21 SELLING NONDEPOSIT PRODUCTS.—Standards pro-
22 hibiting any person who accepts deposits from the
23 public at any office of, or on behalf of, an insured
24 depository institution from selling or offering to sell,

1 or offering an opinion or investment advice on, any
2 nondeposit product.

3 “(3) REFERRAL.—Notwithstanding paragraph
4 (2), the regulations shall include standards requiring
5 that a person who accepts deposits from the public
6 at any office of, or on behalf of, an insured deposi-
7 tory institution may refer a customer who seeks to
8 purchase, or seeks an opinion or investment advice
9 on, any nondeposit product to a person who sells or
10 provides opinions or investment advice on such prod-
11 uct only if—

12 “(A) the consumer explicitly requests such
13 referral; and

14 “(B) the person who accepts deposits—

15 “(i) does not solicit such request;

16 “(ii) discloses to the consumer that
17 such product is not insured by the institu-
18 tion, the Federal Deposit Insurance Cor-
19 poration, or the United States Govern-
20 ment, or the institution; and

21 “(iii) does not receive any compensa-
22 tion for the referral.

23 “(4) QUALIFICATION REQUIREMENTS AND
24 TRAINING.—Standards prohibiting any depository
25 institution from permitting any person to sell or

1 offer for sale, or provide an opinion or investment
2 advice about, any nondeposit product in any part of
3 any office of the institution, or on behalf of the in-
4 stitution, unless such person—

5 “(A) is registered with the Securities and
6 Exchange Commission as a broker or dealer, as
7 a representative of a broker or dealer, or as an
8 investment adviser; or

9 “(B) meets qualification and training re-
10 quirements which the Federal banking agencies
11 jointly determine are equivalent to the training
12 and qualification requirements applicable to a
13 person who is registered with the Commission
14 as a broker or dealer, as a representative of a
15 broker or dealer, or as an investment adviser,
16 as the case may be; or

17 “(C) in the case of insurance sales, is
18 qualified in accordance with regulations promul-
19 gated by the Federal banking regulators or in
20 accordance with state law, as appropriate.

21 “(5) COMPENSATION PROGRAMS.—Standards to
22 ensure that compensation programs are not struc-
23 tured in such a way as to provide incentives for the
24 referral or sales of nondeposit products that are not
25 suitable or appropriate for the consumer.

1 “(e) CONSUMER ENFORCEMENT MECHANISM.—The
2 Federal banking regulators shall jointly establish a
3 consumer enforcement mechanism for receiving and re-
4 solving within nine months of receipt of a written com-
5 plaint non-frivolous consumer complaints involving an al-
6 leged violation of regulations issued under this section
7 which shall:

8 “(1) involve an impartial decisionmaker;

9 “(2) allow consumers to recover from an insti-
10 tution that violates the regulations established under
11 this section;

12 “(3) provide a written statement of the basis
13 for any decision and a public record of the proceed-
14 ings.

15 “(f) USE OF NAMES OF DEPOSITORY INSTITU-
16 TIONS.—No insured depository institution, and no affiliate
17 of any insured depository institution, may use or permit
18 any other person to use the name, title, or logo of such
19 institution or any word or design which is the same as,
20 or substantially similar to, the name, title, or logo of such
21 institution in connection with any nondeposit product—

22 “(1) which is offered for sale by the institution
23 or affiliate or by any other person at any office, of,
24 or on behalf of, the institution; or

1 “(2) with respect to which the institution, affili-
2 ate, or other person provides an opinion or advice.

3 “(g) REQUIREMENTS RELATING TO CONFIDENTIAL
4 CONSUMER FINANCIAL INFORMATION.—No retail deposi-
5 tory institution shall disclose to any affiliate or subsidiary
6 of that institution that is not a retail depository institu-
7 tion, and no affiliate of that company that is not an in-
8 sured depository institution shall disclose to any other af-
9 filiate that is an insured depository institution or a sub-
10 sidiary thereof, any information regarding transactions or
11 experiences between a consumer and the depository insti-
12 tution affiliate or subsidiary in a position to disclose this
13 information unless the consumer—

14 “(1) has received clear and conspicuous disclo-
15 sure that such information may be communicated
16 among such persons; and

17 “(2) has had an opportunity, before such infor-
18 mation is initially communicated, to direct that such
19 information not be communicated among such per-
20 sons. The provisions of the Fair Credit Reporting
21 Act shall otherwise with regard to the sharing of in-
22 formation among affiliates; except that section
23 615(b)(2) of such Act shall apply without regard to
24 section 615(b)(2)(C)(ii).

25 “(h) NO EFFECT ON OTHER AUTHORITY.—

1 “(1) IN GENERAL.—No provision of this section
2 shall be construed as limiting or otherwise affect-
3 ing—

4 “(A) any authority of the Securities and
5 Exchange Commission, any self-regulatory or-
6 ganization, the Municipal Securities Rule-
7 making Board, or the Secretary of the Treasury
8 under any Federal securities law;

9 “(B) any authority of any State insurance
10 commissioner or other State authority under
11 any State insurance law; or

12 “(C) the applicability of any Federal secu-
13 rities law or State insurance law, or any regula-
14 tion prescribed by the Commission, any self-reg-
15 ulatory organization, the Municipal Securities
16 Rulemaking Board, the Secretary of the Treas-
17 ury, or any State insurance commissioner or
18 other State authority pursuant to any such law,
19 to any person.

20 “(2) DEFINITIONS.—For purposes of this sub-
21 section, the following definitions shall apply:

22 “(A) FEDERAL SECURITIES LAW.—The
23 term ‘Federal securities law’ has the meaning
24 given to the term ‘securities laws’ in section

1 3(a)(47) of the Securities Exchange Act of
2 1934.

3 “(B) SELF-REGULATORY ORGANIZATION.—
4 The term ‘self-regulatory organization’ has the
5 meaning given to such term in section 3(a)(26)
6 of the Securities Exchange Act of 1934.”.

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