

111TH CONGRESS
1ST SESSION

H. R. 1705

To create a Financial Product Safety Commission, to provide consumers with stronger protections and better information in connection with consumer financial products, and to give providers of consumer financial products more regulatory certainty.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2009

Mr. DELAHUNT (for himself and Mr. MILLER of North Carolina) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To create a Financial Product Safety Commission, to provide consumers with stronger protections and better information in connection with consumer financial products, and to give providers of consumer financial products more regulatory certainty.

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) SHORT TITLE.—This Act may be cited as the
5 “Financial Product Safety Commission Act of 2009”.

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

Sec. 1. Short title; table of contents.
 Sec. 2. Findings.
 Sec. 3. Definitions.
 Sec. 4. Establishment of Commission.
 Sec. 5. Objectives and responsibilities.
 Sec. 6. Coordination of enforcement.
 Sec. 7. Authorities.
 Sec. 8. Collaboration with Federal and State entities.
 Sec. 9. Prohibited acts.
 Sec. 10. Enforcement.
 Sec. 11. Reports.
 Sec. 12. Authorization of appropriations.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the Nation’s multiagency financial services
 4 regulatory structure has created a dispersion of reg-
 5 ulatory responsibility, which in turn has led to an in-
 6 adequate focus on protecting consumers from inap-
 7 propriate consumer financial products and practices;

8 (2) the absence of appropriate oversight has al-
 9 lowed excessively costly or predatory consumer fi-
 10 nancial products and practices to flourish; and

11 (3) the creation of a regulator whose sole focus
 12 is the safety of consumer financial products would
 13 help address this lack of consumer protection.

14 **SEC. 3. DEFINITIONS.**

15 For purposes of this Act, the following definitions
 16 shall apply:

17 (1) COMMISSION, CHAIRPERSON, AND COMMIS-
 18 SIONER.—The terms “Commission”, “Chairperson”,
 19 and “Commissioner” mean the Financial Product
 20 Safety Commission established under this Act and

1 the Chairperson and any Commissioner thereof, re-
2 spectively.

3 (2) CONSUMER FINANCIAL PRODUCT.—The
4 term “consumer financial product” includes—

5 (A) any extension of credit, deposit ac-
6 count, payment mechanism, or other product or
7 service within the scope of—

8 (i) the Truth in Savings Act (12
9 U.S.C. 4301 et seq.);

10 (ii) the Consumer Credit Protection
11 Act (15 U.S.C. 1601 et seq.); or

12 (iii) article 3 (relating to negotiable
13 instruments) or article 4 (relating to bank
14 deposits) of the Uniform Commercial Code,
15 as in effect in any State;

16 (B) any other extension of credit, deposit
17 account, or payment mechanism; and

18 (C) any ancillary product, practice, or
19 transaction.

20 (3) APPROPRIATE COMMITTEES OF THE CON-
21 GRESS.—The term “appropriate committees of Con-
22 gress” means the Committee on Banking, Housing,
23 and Urban Affairs and the Subcommittee on Finan-
24 cial Services and General Government of the Com-
25 mittee on Appropriations of the Senate, and the

1 Committee on Financial Services and the Sub-
2 committee on Financial Services and General Gov-
3 ernment of the Committee on Appropriations of the
4 House of Representatives, and any successor com-
5 mittees, as may be constituted.

6 (4) CONSUMER.—The term “consumer” means
7 any individual and any small business concern, as
8 defined in section 3 of the Small Business Act (15
9 U.S.C. 632).

10 (5) CREDIT.—The term “credit” has the same
11 meaning as in section 103 of the Truth in Lending
12 Act (15 U.S.C. 1602).

13 **SEC. 4. ESTABLISHMENT OF COMMISSION.**

14 (a) ESTABLISHMENT; CHAIRPERSON.—

15 (1) ESTABLISHMENT.—There is established the
16 “Financial Product Safety Commission” which shall
17 be an independent establishment, as defined in sec-
18 tion 104(1) of title 5, United States Code.

19 (2) MEMBERSHIP.—

20 (A) IN GENERAL.—The Commission shall
21 be comprised of 5 commissioners, appointed by
22 the President, by and with the advice and con-
23 sent of the Senate.

24 (B) CONSIDERATIONS.—In making ap-
25 pointments to the Commission, the President

1 shall consider individuals who, by reason of
2 their background and expertise in areas related
3 to consumer financial product safety, are quali-
4 fied to serve as members of the Commission.

5 (3) CHAIRPERSON.—The Chairperson of the
6 Commission shall be appointed by the President, by
7 and with the advice and consent of the Senate, from
8 among the members of the Commission.

9 (4) REMOVAL.—Any Commissioner may be re-
10 moved by the President for neglect of duty or mal-
11 feasance in office, but for no other cause.

12 (b) TERM; VACANCIES.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2)—

15 (A) the Commissioners first appointed
16 under this section shall be appointed for terms
17 ending 3, 4, 5, 6, and 7 years, respectively,
18 after the date of enactment of this Act, the
19 term of each to be designated by the President
20 at the time of nomination; and

21 (B) each of their successors shall be ap-
22 pointed for a term of 5 years from the date of
23 the expiration of the term for which the prede-
24 cessor was appointed.

1 (2) LIMITATIONS.—Any Commissioner ap-
2 pointed to fill a vacancy occurring prior to the expi-
3 ration of the term for which the predecessor thereof
4 was appointed shall be appointed only for the re-
5 mainder of such term. A Commissioner may con-
6 tinue to serve after the expiration of such term until
7 a successor has taken office, except that such Com-
8 missioner may not continue to serve more than 1
9 year after the date on which the term of that Com-
10 missioner would otherwise expire under this sub-
11 section.

12 (c) RESTRICTIONS ON OUTSIDE ACTIVITIES.—

13 (1) POLITICAL AFFILIATION.—Not more than 3
14 Commissioners may be affiliated with the same polit-
15 ical party.

16 (2) CONFLICTS OF INTEREST.—No individual
17 may serve as a Commissioner if that individual—

18 (A) is in the employ of, holding any official
19 relation to, or married to any person engaged
20 in selling or devising consumer financial prod-
21 ucts;

22 (B) owns stock or bonds of substantial
23 value in a person so engaged;

24 (C) is in any other manner pecuniarily in-
25 terested in a person so engaged; or

1 (D) engages in any other business, voca-
2 tion, or employment.

3 (d) VACANCIES; QUORUM; SEAL; VICE CHAIR-
4 PERSON.—

5 (1) VACANCIES.—No vacancy on the Commis-
6 sion shall impair the right of the remaining Commis-
7 sioners to exercise all the powers of the Commission.

8 (2) QUORUM.—Three members of the Commis-
9 sion shall constitute a quorum for the transaction of
10 business, except that—

11 (A) if there are only 3 members serving on
12 the Commission because of vacancies on the
13 Commission, 2 members of the Commission
14 shall constitute a quorum for the transaction of
15 business; and

16 (B) if there are only 2 members serving on
17 the Commission because of vacancies on the
18 Commission, 2 members shall constitute a
19 quorum for the 6-month period (or the 1-year
20 period, if the 2 members are not affiliated with
21 the same political party) beginning on the date
22 of the vacancy which caused the number of
23 Commissioners to decline to 2.

24 (3) SEAL.—The Commission shall have an offi-
25 cial seal, of which judicial notice shall be taken.

1 (4) VICE CHAIRPERSON.—The Commission
2 shall annually elect a Vice Chairperson to act in the
3 absence or disability of the Chairperson or in case
4 of a vacancy in the office of the Chairperson.

5 (e) OFFICES.—The Commission shall maintain a
6 principal office and such field offices as it determines nec-
7 essary, and may meet and exercise any of its powers at
8 any other place.

9 (f) FUNCTIONS OF CHAIRPERSON; REQUEST FOR AP-
10 PROPRIATIONS.—

11 (1) DUTIES.—The Chairperson shall be the
12 principal executive officer of the Commission, and
13 shall exercise all of the executive and administrative
14 functions of the Commission, including functions of
15 the Commission with respect to—

16 (A) the appointment and supervision of
17 personnel employed by the Commission (and the
18 Commission shall fix their compensation at a
19 level comparable to that for employees of the
20 Securities and Exchange Commission);

21 (B) the distribution of business among per-
22 sonnel appointed and supervised by the Chair-
23 person and among administrative units of the
24 Commission; and

25 (C) the use and expenditure of funds.

1 (2) GOVERNANCE.—In carrying out any of the
2 functions of the Chairperson under this subsection,
3 the Chairperson shall be governed by general policies
4 of the Commission and by such regulatory decisions,
5 findings, and determinations as the Commission
6 may, by law, be authorized to make.

7 (3) REQUESTS FOR APPROPRIATIONS.—Re-
8 quests or estimates for regular, supplemental, or de-
9 ficiency appropriations on behalf of the Commission
10 may not be submitted by the Chairperson without
11 the prior approval of a majority vote of the Commis-
12 sion.

13 (g) AGENDA AND PRIORITIES; ESTABLISHMENT AND
14 COMMENTS.—Not later than 30 days before the beginning
15 of each fiscal year, the Commission shall establish an
16 agenda for Commission action under its jurisdiction and,
17 to the extent feasible, shall establish priorities for such
18 actions. Before establishing such agenda and priorities,
19 the Commission shall conduct a public hearing on the
20 agenda and priorities, and shall provide reasonable oppor-
21 tunity for the submission of comments.

22 **SEC. 5. OBJECTIVES AND RESPONSIBILITIES.**

23 (a) OBJECTIVES.—The objectives of the Commission
24 are—

1 (1) to minimize unreasonable consumer risk as-
2 sociated with buying and using consumer financial
3 products;

4 (2) to prevent and eliminate practices that lead
5 consumers to incur unreasonable, inappropriate, or
6 excessive debt, or make it difficult for consumers to
7 repay existing debt, including practices or product
8 features that are abusive, fraudulent, unfair, decep-
9 tive, predatory, anticompetitive, or otherwise incon-
10 sistent with consumer protection;

11 (3) to promote practices that assist and encour-
12 age consumers to use credit and consumer financial
13 products responsibly, avoid excessive debt, and avoid
14 unnecessary or excessive charges derived from or as-
15 sociated with consumer financial products;

16 (4) to ensure that providers of consumer finan-
17 cial products provide credit based on the ability of
18 the consumer to repay the debt incurred;

19 (5) to ensure that consumer credit history is
20 maintained, reported, and used fairly and accurately;

21 (6) to maintain strong privacy protections for
22 consumer transactions, credit history, and other per-
23 sonal information associated with the use of con-
24 sumer financial products;

1 (7) to collect, investigate, resolve, and inform
2 the public about consumer complaints regarding con-
3 sumer financial products;

4 (8) to ensure a fair resolution of consumer dis-
5 putes regarding consumer financial products; and

6 (9) to take such other steps as are reasonable
7 to protect users of consumer financial products.

8 (b) RESPONSIBILITIES.—The Commission shall—

9 (1) promulgate consumer financial product
10 safety rules that—

11 (A) ban abusive, fraudulent, unfair, decep-
12 tive, predatory, anticompetitive, or otherwise
13 anticonsumer practices, products, or product
14 features;

15 (B) place reasonable restrictions on con-
16 sumer financial products, practices, or product
17 features to reduce the likelihood that they may
18 be provided in a manner that is inconsistent
19 with the objectives specified in subsection (a);
20 and

21 (C) establish requirements for such clear
22 and adequate warnings or other information,
23 and the form and manner of delivery of such
24 warnings or other information, as may be ap-

1 appropriate to advance the objectives specified in
2 subsection (a);

3 (2) establish and maintain a best practices
4 guide for all providers of consumer financial prod-
5 ucts;

6 (3) conduct such continuing studies and inves-
7 tigations of consumer financial products industry
8 practices as it determines necessary;

9 (4) award grants or enter into contracts for the
10 conduct of such studies and investigations with any
11 person (including a governmental entity), as nec-
12 essary to advance the objectives specified in sub-
13 section (a);

14 (5) following publication of a rule, assist public
15 and private organizations or groups of consumer fi-
16 nancial product providers, administratively and tech-
17 nically, in the development of safety standards or
18 guidelines that would assist such providers in com-
19 plying with such rule;

20 (6) comment on selected rulemakings of agen-
21 cies designated in section 6(d) affecting consumer fi-
22 nancial products; and

23 (7) establish and operate a consumer financial
24 product customer hotline which consumers can call

1 to register complaints and receive information on
2 how to combat anticonsumer products or practices.

3 (c) STATE REGULATION OF THE BUSINESS OF IN-
4 SURANCE.—The Act entitled “An Act to express the intent
5 of Congress with reference to the regulation of the busi-
6 ness of insurance” and approved March 9, 1945 (15
7 U.S.C. 1011 et seq.) (commonly referred to as the
8 “McCarran-Ferguson Act”) remains the law of the United
9 States.

10 **SEC. 6. COORDINATION OF ENFORCEMENT.**

11 (a) IN GENERAL.—Notwithstanding any concurrent
12 or similar authority of any other agency, the Commission
13 shall enforce the requirements of this Act.

14 (b) RULE OF CONSTRUCTION.—The authority grant-
15 ed to the Commission to make and enforce rules under
16 this Act shall not be construed to impair the authority
17 of any other Federal department or agency to make and
18 enforce rules under any other provision of law, provided
19 that any portion of any rule promulgated by any other
20 such department or agency that conflicts with a rule pro-
21 mulgated by the Commission and that is less protective
22 of consumers than the rule promulgated by the Commis-
23 sion shall be superseded by the rule promulgated by the
24 Commission, to the extent of the conflict. Any portion of
25 any rule promulgated by any other such department or

1 agency that is not superseded by a rule promulgated by
2 the Commission shall remain in force without regard to
3 this Act.

4 (c) AGENCY AUTHORITY.—Any department or agen-
5 cy designated in subsection (d) may exercise, for the pur-
6 pose of enforcing compliance with any requirement im-
7 posed under this Act, any authority conferred on such de-
8 partment or agency by any other Act.

9 (d) DESIGNATED DEPARTMENTS AND AGENCIES.—
10 The departments and agencies designated in this sub-
11 section are—

12 (1) the Board of Governors of the Federal Re-
13 serve System;

14 (2) the Federal Deposit Insurance Corporation;

15 (3) the Comptroller of the Currency;

16 (4) the Director of the Office of Thrift Super-
17 vision;

18 (5) the National Credit Union Administration;

19 (6) the Federal Housing Finance Authority;

20 (7) the Federal Housing Administration;

21 (8) the Secretary of Housing and Urban Devel-
22 opment;

23 (9) the Federal Trade Commission; and

1 (10) any successor to the agencies, referred to
2 in paragraphs (1) through (9), as may be con-
3 stituted.

4 (e) COORDINATION OF RULEMAKING.—Any depart-
5 ment or agency designated in subsection (d) that engages
6 in a rulemaking affecting consumer financial products
7 shall consult with the Commission in the promulgation of
8 such rules.

9 **SEC. 7. AUTHORITIES.**

10 (a) AUTHORITY TO CONDUCT HEARINGS OR OTHER
11 INQUIRIES.—

12 (1) IN GENERAL.—The Commission may, by 1
13 or more of its members, or by such agents or agency
14 as it may designate, conduct any hearing or other
15 inquiry necessary or appropriate to its functions
16 anywhere in the United States.

17 (2) MEMBER PARTICIPATION.—A Commissioner
18 who participates in a hearing, or other inquiry de-
19 scribed in paragraph (1), shall not be disqualified
20 solely by reason of such participation from subse-
21 quently participating in a decision of the Commis-
22 sion in the same matter.

23 (3) NOTICE REQUIRED.—The Commission shall
24 publish notice of any proposed hearing in the Fed-
25 eral Register, and shall afford a reasonable oppor-

1 tunity for interested persons to present relevant tes-
2 timony and data.

3 (b) COMMISSION POWERS; ORDERS.—The Commis-
4 sion shall have the power—

5 (1) to require, by special or general orders, any
6 person to submit in writing such reports and an-
7 swers to questions as the Commission may prescribe
8 to carry out a specific regulatory or enforcement
9 function of the Commission, and such submission
10 shall be made within such reasonable period and
11 under oath or otherwise as the Commission may de-
12 termine, and such order shall contain a complete
13 statement of the reasons that the Commission re-
14 quires the report or answers specified in the order
15 to carry out a specific regulatory or enforcement
16 function of the Commission;

17 (2) to administer oaths;

18 (3) to require by subpoena the attendance and
19 testimony of witnesses and the production of all doc-
20 umentary evidence relating to the execution of its
21 duties;

22 (4) in any proceeding or investigation to order
23 testimony to be taken by deposition before any per-
24 son who is designated by the Commission and has
25 the power to administer oaths and, in such in-

1 stances, to compel testimony and the production of
2 evidence in the same manner as authorized under
3 paragraph (3);

4 (5) to pay witnesses the same fees and mileage
5 costs as are paid in like circumstances in the courts
6 of the United States;

7 (6) to accept voluntary and uncompensated
8 services relevant to the performance of the duties of
9 the Commission, notwithstanding the provisions of
10 section 1342 of title 31, United States Code, and to
11 accept voluntary and uncompensated services (but
12 not gifts) relevant to the performance of the duties
13 of the Commission provided that any such services
14 shall not be from parties that have or are likely to
15 have business before the Commission;

16 (7) to—

17 (A) issue an order requiring compliance
18 with applicable legal requirements;

19 (B) issue a civil penalty order in accord-
20 ance with section 10(b);

21 (C) initiate, prosecute, defend, intervene
22 in, or appeal (other than to the Supreme Court
23 of the United States), through its own legal
24 representative and in the name of the Commis-
25 sion, any civil action, if the Commission makes

1 a written request to the Attorney General of the
2 United States for representation in such civil
3 action and the Attorney General does not, with-
4 in the 45-day period beginning on the date on
5 which such request was made, notify the Com-
6 mission in writing that the Attorney General
7 will represent the Commission in such civil ac-
8 tion; and

9 (D) whenever the Commission obtains evi-
10 dence that any person has engaged in conduct
11 that may constitute a violation of Federal
12 criminal law, including a violation of section 9,
13 transmit such evidence to the Attorney General
14 of the United States; and

15 (8) to delegate any of its functions or powers,
16 other than the power to issue subpoenas under para-
17 graph (3), to any officer or employee of the Commis-
18 sion.

19 (c) NONCOMPLIANCE WITH SUBPOENA OR COMMIS-
20 SION ORDER.—If a person refuses to obey a subpoena or
21 order of the Commission issued under subsection (b), the
22 Commission (subject to subsection (b)(7)) or the Attorney
23 General of the United States may bring an action in the
24 United States district court for the district and division
25 in which the inquiry is carried out or any other appro-

1 p r i a t e United States district court seeking an order requir-
2 i n g compliance with the subpoena or order.

3 (d) DISCLOSURE OF INFORMATION.—No person shall
4 be subject to civil liability to any person (other than the
5 Commission or the United States) for disclosing informa-
6 tion to the Commission.

7 (e) CUSTOMER AND REVENUE DATA.—The Commis-
8 sion may, by rule, require any provider of consumer finan-
9 cial products to provide to the Commission such customer
10 and revenue data as may be required to carry out this
11 Act.

12 (f) PURCHASE OF CONSUMER FINANCIAL PRODUCTS
13 BY COMMISSION.—For purposes of carrying out this Act,
14 the Commission may purchase any consumer financial
15 product and it may require any provider of consumer fi-
16 nancial products to sell the product to the Commission at
17 cost.

18 (g) CONTRACT AUTHORITY.—The Commission is au-
19 thorized to enter into contracts with governmental entities,
20 private organizations, or individuals for the conduct of ac-
21 tivities authorized by this Act.

22 (h) BUDGET ESTIMATES AND REQUESTS; LEGISLA-
23 TIVE RECOMMENDATIONS; TESTIMONY; COMMENTS ON
24 LEGISLATION.—

1 (1) BUDGET COPIES TO CONGRESS.—Whenever
2 the Commission submits any budget estimate or re-
3 quest to the President or the Office of Management
4 and Budget, it shall concurrently transmit a copy of
5 that estimate or request to the appropriate commit-
6 tees of Congress.

7 (2) LEGISLATIVE RECOMMENDATION.—When-
8 ever the Commission submits any legislative rec-
9 ommendations, testimony, or comments on legisla-
10 tion to the President or the Office of Management
11 and Budget, it shall concurrently transmit a copy
12 thereof to the appropriate committees of Congress.
13 No officer or agency of the United States shall have
14 any authority to require the Commission to submit
15 its legislative recommendations, testimony, or com-
16 ments on legislation, to any officer or agency of the
17 United States for approval, comments, or review,
18 prior to the submission of such recommendations,
19 testimony, or comments to the appropriate commit-
20 tees of Congress.

21 **SEC. 8. COLLABORATION WITH FEDERAL AND STATE ENTI-**
22 **TIES.**

23 (a) PREEMPTION.—Nothing in this Act or any rule
24 promulgated under this Act may be construed to annul,
25 alter, affect, or exempt any person from complying with

1 the laws of any State, except to the extent that those laws
2 are inconsistent with a consumer financial product safety
3 rule promulgated by the Commission, and then only to the
4 extent of the inconsistency. For purposes of this section,
5 a State law is not inconsistent with this Act or a consumer
6 financial product safety rule, or the purposes of the Act
7 or rule, if the protection afforded by such State law to
8 any consumer is greater than the protection provided by
9 the consumer financial product safety rule or this Act.
10 Nothing in this Act or any rule promulgated under this
11 Act precludes any remedy under State law to or on behalf
12 of a consumer.

13 (b) PROGRAMS TO PROMOTE FEDERAL-STATE CO-
14 OPERATION.—

15 (1) IN GENERAL.—The Commission shall estab-
16 lish a program to promote cooperation between the
17 Federal Government and State governments for pur-
18 poses of carrying out this Act.

19 (2) AUTHORITIES.—In implementing the pro-
20 gram under paragraph (1), the Commission may—

21 (A) accept from any State or local author-
22 ity engaged in activities relating to consumer
23 protection assistance in such functions as data
24 collection, investigation, and educational pro-
25 grams, as well as other assistance in the admin-

1 istration and enforcement of this Act which
2 such States or local governments may be able
3 and willing to provide and, if so agreed, may
4 pay in advance or otherwise for the reasonable
5 cost of such assistance; and

6 (B) commission any qualified officer or
7 employee of any State or local government
8 agency as an officer of the Commission for the
9 purpose of conducting investigations.

10 (c) COOPERATION OF FEDERAL DEPARTMENTS AND
11 AGENCIES.—The Commission may obtain from any Fed-
12 eral department or agency such statistics, data, program
13 reports, and other materials as it may determine necessary
14 to carry out its functions under this Act. Each such de-
15 partment or agency shall cooperate with the Commission
16 and, to the extent permitted by law, furnish such materials
17 to the Commission. The Commission and the heads of
18 other departments and agencies engaged in administering
19 programs relating to consumer financial product safety
20 shall, to the maximum extent practicable, cooperate and
21 consult in order to ensure fully coordinated efforts.

22 **SEC. 9. PROHIBITED ACTS.**

23 It shall be unlawful for any person—

24 (1) to advertise, offer, or attempt to enforce
25 any agreement, term, change in term, fee, or charge

1 in connection with any consumer financial product,
2 or engage in any practice, that is not in conformity
3 with this Act or an applicable consumer financial
4 product safety rule under this Act; or

5 (2) to fail or refuse to permit access to or copy-
6 ing of records, or fail or refuse to establish or main-
7 tain records, or fail or refuse to make reports or
8 provide information to the Commission, as required
9 under this Act or any rule under this Act.

10 **SEC. 10. ENFORCEMENT.**

11 (a) CRIMINAL PENALTIES.—

12 (1) KNOWING AND WILLFUL VIOLATIONS.—Any
13 person who knowingly and willfully violates section 9
14 shall be fined not more than \$500,000, imprisoned
15 not more than 1 year, or both for each such viola-
16 tion.

17 (2) EXECUTIVES AND AGENTS.—Any individual
18 director, officer, or agent of a business entity who
19 knowingly and willfully authorizes, orders, or per-
20 forms any of the acts or practices constituting in
21 whole or in part a violation of section 9 shall be sub-
22 ject to penalties under this section, without regard
23 to any penalties to which that person may be other-
24 wise subject.

25 (b) CIVIL PENALTIES.—

1 (1) IN GENERAL.—Any person who violates sec-
2 tion 9 shall be subject to a civil penalty in an
3 amount established under paragraph (2). A violation
4 of section 9 shall constitute a separate civil offense
5 with respect to each consumer financial product
6 transaction involved.

7 (2) PUBLICATION OF SCHEDULE OF PEN-
8 ALTIES.—Not later than December 1, 2009, and De-
9 cember 1 of each fifth year thereafter, the Commis-
10 sion shall prescribe and publish in the Federal Reg-
11 ister a schedule of the maximum authorized civil
12 penalty that shall apply for any violation of section
13 9 that occurs on or after January 1 of the year im-
14 mediately following the date of such publication.

15 (3) RELEVANT FACTORS IN DETERMINING
16 AMOUNT OF PENALTY.—In determining the amount
17 of any civil penalty in an action for a violation of
18 section 9, the Commission—

19 (A) shall consider—

20 (i) the nature of the consumer finan-
21 cial product;

22 (ii) the severity of the unreasonable
23 risk to the consumer;

24 (iii) the number of products or serv-
25 ices sold or distributed;

1 (iv) the occurrence or absence of con-
2 sumer injury; and

3 (v) the appropriateness of such pen-
4 alty in relation to the size of the business
5 of the person charged; and

6 (B) shall ensure that penalties in each case
7 are sufficient to induce compliance by all regu-
8 lated entities.

9 (4) COMPROMISE OF PENALTY; DEDUCTIONS
10 FROM PENALTY.—

11 (A) IN GENERAL.—Any civil penalty under
12 this section may be compromised by the Com-
13 mission.

14 (B) CONSIDERATIONS.—In determining
15 the amount of such penalty or whether it should
16 be remitted or mitigated and in what amount,
17 the Commission—

18 (i) shall consider—

19 (I) the nature of the consumer fi-
20 nancial product;

21 (II) the severity of the unreason-
22 able risk to the consumer;

23 (III) the number of offending
24 products or services sold;

1 (IV) the occurrence or absence of
2 consumer injury; and

3 (V) the appropriateness of such
4 penalty to the size of the business of
5 the person charged; and

6 (ii) shall ensure that compromise pen-
7 alties remain sufficient to induce compli-
8 ance by all regulated entities.

9 (C) AMOUNT.—The amount of a penalty
10 compromised under this paragraph, when fi-
11 nally determined, or the amount agreed on com-
12 promise, may be deducted from any sums owing
13 by the United States to the person charged.

14 (c) COLLECTION AND USE OF PENALTIES.—

15 (1) ESTABLISHMENT OF FUND.—There is es-
16 tablished within the Treasury of the United States
17 a fund, into which shall be deposited all criminal and
18 civil penalties collected under this section.

19 (2) USE OF FUND.—The fund established
20 under this subsection shall be used to defray the
21 costs of the operations of the Commission or, where
22 appropriate, provide restitution to harmed con-
23 sumers.

24 (d) PRIVATE ENFORCEMENT.—

1 (1) IN GENERAL.—A person may bring a civil
2 action for a violation of section 9 for equitable relief
3 and other charges and costs in an amount equal to
4 the sum of—

5 (A) any actual damages sustained by such
6 person as a result of such violation, if actual
7 damages resulted;

8 (B) twice the amount of any finance
9 charge in connection with the transaction, ex-
10 cept that such liability shall not be less than
11 \$1,000, such minimum to be adjusted on an an-
12 nual basis by the Commission based upon the
13 consumer price index; and

14 (C) reasonable attorney fees and costs.

15 (e) JURISDICTION.—

16 (1) IN GENERAL.—Any action under this Act
17 may be brought in any appropriate United States
18 district court, or in any other court of competent ju-
19 risdiction, not later than 2 years after the date of
20 the discovery of the violation.

21 (2) RULES OF CONSTRUCTION.—This section
22 does not bar a person from asserting a violation of
23 this Act in an action to collect a debt, or if fore-
24 closure has been initiated, as a matter of defense by
25 recoupment or set-off. An action under this Act shall

1 not be the basis for removal of an action to a United
2 States district court. Neither this section nor any
3 other section of this Act preempts or otherwise dis-
4 places claims and remedies available under State
5 law, except as otherwise specifically provided in this
6 Act.

7 (f) STATE ACTIONS FOR VIOLATIONS.—

8 (1) AUTHORITY OF STATES.—In addition to
9 such other remedies as are provided under State
10 law, if the chief law enforcement officer of a State,
11 or an official or agency designated by a State, has
12 reason to believe that any person has violated or is
13 violating section 9, the State—

14 (A) may bring an action to enjoin such vio-
15 lation in any appropriate United States district
16 court or in any other court of competent juris-
17 diction;

18 (B) may bring an action on behalf of the
19 residents of the State to recover—

20 (i) damages for which the person is
21 liable to such residents under subsection
22 (d) as a result of the violation; and

23 (ii) civil penalties, as established
24 under subsection (b); and

1 (C) in the case of any successful action
2 under subparagraph (A) or (B), shall be award-
3 ed the costs of the action and reasonable attor-
4 ney fees, as determined by the court.

5 (2) RIGHTS OF FEDERAL REGULATORS.—

6 (A) NOTICE OF STATE ACTION.—A State
7 shall serve prior written notice of any action
8 under paragraph (1) upon the Commission and
9 provide the Commission with a copy of its com-
10 plaint, except in any case in which such prior
11 notice is not feasible, in which case the State
12 shall serve such notice immediately upon insti-
13 tuting such action.

14 (B) COMMISSION AUTHORIZATION.—Upon
15 notice of an action under subparagraph (A), the
16 Commission shall have the right—

- 17 (i) to intervene in the action;
18 (ii) upon so intervening, to be heard
19 on all matters arising therein;
20 (iii) to remove the action to the appro-
21 priate United States district court; and
22 (iv) to file petitions for appeal.

23 (3) INVESTIGATORY POWERS.—For purposes of
24 bringing any action under this subsection, nothing in
25 this subsection or in any other provision of Federal

1 law shall prevent the chief law enforcement officer of
2 a State, or an official or agency designated by a
3 State, from exercising the powers conferred on the
4 chief law enforcement officer or such official by the
5 laws of such State to conduct investigations or to
6 administer oaths or affirmations or to compel the at-
7 tendance of witnesses or the production of documen-
8 tary and other evidence.

9 (4) LIMITATION ON STATE ACTION WHILE FED-
10 ERAL ACTION PENDING.—If the Commission has in-
11 stituted a civil action or an administrative action for
12 a violation of section 9, a State may not, during the
13 pendency of such action, bring an action under this
14 section against any defendant named in the com-
15 plaint of the Commission for any violation of section
16 9 that is alleged in that complaint.

17 **SEC. 11. REPORTS.**

18 (a) REPORTS TO THE PUBLIC.—The Commission
19 shall determine what reports should be produced and dis-
20 tributed to the public on a recurring and ad hoc basis,
21 and shall prepare and publish such reports on a website
22 that provides free access to the general public.

23 (b) REPORT TO THE PRESIDENT AND CONGRESS.—

24 (1) IN GENERAL.—The Commission shall pre-
25 pare and submit to the President and the appro-

1 piate committees of Congress, at the beginning of
2 each regular session of Congress, a comprehensive
3 report on the administration of this Act for the pre-
4 ceding fiscal year.

5 (2) REPORT CONTENT.—The reports required
6 by this subsection shall include—

7 (A) a thorough appraisal, including statis-
8 tical analyses, estimates, and long-term projec-
9 tions, of the incidence and effects of practices
10 associated with the provision of consumer finan-
11 cial products that are inconsistent with the ob-
12 jectives specified in section 5(a), with a break-
13 down, insofar as practicable, among the various
14 sources of injury, as the Commission finds ap-
15 propriate;

16 (B) a list of consumer financial product
17 safety rules prescribed or in effect during such
18 year;

19 (C) an evaluation of the degree of observ-
20 ance of consumer financial product safety rules,
21 including a list of enforcement actions, court
22 decisions, and compromises of civil penalties, by
23 location and company name;

1 (D) a summary of outstanding problems
2 confronting the administration of this Act in
3 order of priority;

4 (E) an analysis and evaluation of public
5 and private consumer financial product safety
6 research activities;

7 (F) a list, with a brief statement of the
8 issues, of completed or pending judicial actions
9 under this Act;

10 (G) the extent to which technical informa-
11 tion was disseminated to the research and con-
12 sumer communities and consumer information
13 was made available to the public;

14 (H) the extent of cooperation between
15 Commission officials, representatives of the con-
16 sumer financial products industry, and other in-
17 terested parties in the implementation of this
18 Act, including a log or summary of meetings
19 held between Commission officials and rep-
20 resentatives of industry and other interested
21 parties;

22 (I) an appraisal of significant actions of
23 State and local governments relating to the re-
24 sponsibilities of the Commission;

1 (J) such recommendations for additional
2 legislation as the Commission deems necessary
3 to carry out the purposes of this Act; and

4 (K) the extent of cooperation with, and the
5 joint efforts undertaken by, the Commission in
6 conjunction with other regulators with whom
7 the Commission shares responsibilities for con-
8 sumer financial product safety.

9 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated to the Com-
11 mission for purposes of carrying out this Act such sums
12 as may be necessary.

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