

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.

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## 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

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## 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 U n i t e d S t a t e s d i s t r i c t c o u r t s e e k i n g a n o r d e r r e q u i r -  
2 i n g c o m p l i a n c e w i t h t h e s u b p o e n a o r o r d e r .

3 (d) DISCLOSURE OF INFORMATION.—No person shall  
4 b e s u b j e c t t o c i v i l l i a b i l i t y t o a n y p e r s o n ( o t h e r t h a n t h e  
5 C o m m i s s i o n o r t h e U n i t e d S t a t e s ) f o r d i s c l o s i n g i n f o r m a -  
6 t i o n t o t h e C o m m i s s i o n .

7 (e) CUSTOMER AND REVENUE DATA.—The Commis-  
8 s i o n m a y , b y r u l e , r e q u i r e a n y p r o v i d e r o f c o n s u m e r f i n a n -  
9 c i a l p r o d u c t s t o p r o v i d e t o t h e C o m m i s s i o n s u c h c u s t o m e r  
10 a n d r e v e n u e d a t a a s m a y b e r e q u i r e d t o c a r r y o u t t h i s  
11 A c t .

12 (f) PURCHASE OF CONSUMER FINANCIAL PRODUCTS  
13 B Y C O M M I S S I O N . — F o r p u r p o s e s o f c a r r y i n g o u t t h i s A c t ,  
14 t h e C o m m i s s i o n m a y p u r c h a s e a n y c o n s u m e r f i n a n c i a l  
15 p r o d u c t a n d i t m a y r e q u i r e a n y p r o v i d e r o f c o n s u m e r f i -  
16 n a n c i a l p r o d u c t s t o s e l l t h e p r o d u c t t o t h e C o m m i s s i o n a t  
17 c o s t .

18 (g) CONTRACT AUTHORITY.—The Commission is au-  
19 t h o r i z e d t o e n t e r i n t o c o n t r a c t s w i t h g o v e r n m e n t a l e n t i t i e s ,  
20 p r i v a t e o r g a n i z a t i o n s , o r i n d i v i d u a l s f o r t h e c o n d u c t o f a c -  
21 t i v i t i e s a u t h o r i z e d b y t h i s A c t .

22 (h) BUDGET ESTIMATES AND REQUESTS; LEGISLA-  
23 T I V E R E C O M M E N D A T I O N S ; T E S T I M O N Y ; C O M M E N T S O N  
24 L E G I S L A T I O N . —

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        appropriate 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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