

## DISCUSSION DRAFT

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**S.** \_\_\_\_\_

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 SENATE OF THE UNITED STATES

Mr. DURBIN (for himself, Mr. SCHUMER, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on

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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”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
2 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.

3 **SEC. 2. FINDINGS.**

4 Congress finds that—

- 5 (1) the Nation’s multiagency financial services  
6 regulatory structure has created a dispersion of reg-  
7 ulatory responsibility, which in turn has led to an in-  
8 adequate focus on protecting consumers from inap-  
9 propriate consumer financial products and practices;
- 10 (2) the absence of appropriate oversight has al-  
11 lowed excessively costly or predatory consumer fi-  
12 nancial products and practices to flourish; and
- 13 (3) the creation of a regulator whose sole focus  
14 is the safety of consumer financial products would  
15 help address this lack of consumer protection.

16 **SEC. 3. DEFINITIONS.**

17 For purposes of this Act—

- 18 (1) 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) the term “consumer financial product” in-  
4 cludes—

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) the term “appropriate committees of Con-  
21 gress” means the Committee on Banking, Housing,  
22 and Urban Affairs and the Subcommittee on Finan-  
23 cial Services and General Government of the Com-  
24 mittee on Appropriations of the Senate, and the  
25 Committee on Financial Services and the Sub-

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

5 (4) the term “consumer” means any natural  
6 person and any small business concern, as defined in  
7 section 3 of the Small Business Act (15 U.S.C.  
8 632); and

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

12 **SEC. 4. ESTABLISHMENT OF COMMISSION.**

13 (a) ESTABLISHMENT; CHAIRPERSON.—

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

18 (2) MEMBERSHIP.—

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

23 (B) CONSIDERATIONS.—In making ap-  
24 pointments to the Commission, the President  
25 shall consider individuals who, by reason of

1           their background and expertise in areas related  
2           to consumer financial product safety, are quali-  
3           fied to serve as members of the Commission.

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

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

11         (b) TERM; VACANCIES.—

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

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

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

24           (2) LIMITATIONS.—Any Commissioner ap-  
25          pointed to fill a vacancy occurring prior to the expi-

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

10       (c) RESTRICTIONS ON OUTSIDE ACTIVITIES.—

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

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

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

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

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

24                       (D) engages in any other business, voca-  
25                       tion, or employment.

1 (d) VACANCIES; QUORUM; SEAL; VICE CHAIR-  
2 PERSON.—

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

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

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

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

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

24 (4) VICE CHAIRPERSON.—The Commission  
25 shall annually elect a Vice Chairperson to act in the

1 absence or disability of the Chairperson or in case  
2 of a vacancy in the office of the Chairperson.

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

7 (f) FUNCTIONS OF CHAIRPERSON; REQUEST FOR AP-  
8 PROPRIATIONS.—

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

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

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

23 (C) the use and expenditure of funds.

24 (2) GOVERNANCE.—In carrying out any of the  
25 functions of the Chairperson under this subsection,

1 the Chairperson shall be governed by general policies  
2 of the Commission and by such regulatory decisions,  
3 findings, and determinations as the Commission  
4 may, by law, be authorized to make.

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

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

20 **SEC. 5. OBJECTIVES AND RESPONSIBILITIES.**

21 (a) OBJECTIVES.—The objectives of the Commission  
22 are—

23 (1) to minimize unreasonable consumer risk as-  
24 sociated with buying and using consumer financial  
25 products;

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

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

13           (4) to ensure that providers of consumer finan-  
14 cial products provide credit based on the ability of  
15 the consumer to repay the debt incurred;

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

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

22           (7) to collect, investigate, resolve, and inform  
23 the public about consumer complaints regarding con-  
24 sumer financial products;

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

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

5 (b) RESPONSIBILITIES.—The Commission shall—

6 (1) promulgate consumer financial product  
7 safety rules that—

8 (A) ban abusive, fraudulent, unfair, decep-  
9 tive, predatory, anticompetitive, or otherwise  
10 anticonsumer practices, products, or product  
11 features;

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

18 (C) establish requirements for such clear  
19 and adequate warnings or other information,  
20 and the form and manner of delivery of such  
21 warnings or other information, as may be ap-  
22 propriate to advance the objectives specified in  
23 subsection (a);

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

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

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

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

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

21          (7) establish and operate a consumer financial  
22          product customer hotline which consumers can call  
23          to register complaints and receive information on  
24          how to combat anticonsumer products or practices.

1 **SEC. 6. COORDINATION OF ENFORCEMENT.**

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

5 (b) RULE OF CONSTRUCTION.—The authority grant-  
6 ed to the Commission to make and enforce rules under  
7 this Act shall not be construed to impair the authority  
8 of any other Federal department or agency to make and  
9 enforce rules under any other provision of law, provided  
10 that any portion of any rule promulgated by any other  
11 such department or agency that conflicts with a rule pro-  
12 mulgated by the Commission and that is less protective  
13 of consumers than the rule promulgated by the Commis-  
14 sion shall be superseded by the rule promulgated by the  
15 Commission, to the extent of the conflict. Any portion of  
16 any rule promulgated by any other such department or  
17 agency that is not superseded by a rule promulgated by  
18 the Commission shall remain in force without regard to  
19 this Act.

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

1 (d) DESIGNATED DEPARTMENTS AND AGENCIES.—

2 The departments and agencies designated in this sub-  
3 section are—

4 (1) the Board of Governors of the Federal Re-  
5 serve System;

6 (2) the Federal Deposit Insurance Corporation;

7 (3) the Office of the Comptroller of the Cur-  
8 rency;

9 (4) the Office of Thrift Supervision;

10 (5) the National Credit Union Administration;

11 (6) the Federal Housing Finance Authority;

12 (7) the Federal Housing Administration;

13 (8) the Department of Housing and Urban De-  
14 velopment;

15 (9) the Federal Home Loan Bank Board;

16 (10) the Federal Trade Commission; and

17 (11) any successor to the agencies, referred to  
18 in paragraphs (1) through (10), as may be con-  
19 stituted.

20 (e) COORDINATION OF RULEMAKING.—Any depart-  
21 ment or agency designated in subsection (d) that engages  
22 in a rulemaking affecting consumer financial products  
23 shall consult with the Commission in the promulgation of  
24 such rules.

1 **SEC. 7. AUTHORITIES.**

2 (a) **AUTHORITY TO CONDUCT HEARINGS OR OTHER**  
3 **INQUIRIES.—**

4 (1) **IN GENERAL.—**The Commission may, by  
5 one or more of its members, or by such agents or  
6 agency as it may designate, conduct any hearing or  
7 other inquiry necessary or appropriate to its func-  
8 tions anywhere in the United States.

9 (2) **MEMBER PARTICIPATION.—**A Commissioner  
10 who participates in a hearing, or other inquiry de-  
11 scribed in paragraph (1), shall not be disqualified  
12 solely by reason of such participation from subse-  
13 quently participating in a decision of the Commis-  
14 sion in the same matter.

15 (3) **NOTICE REQUIRED.—**The Commission shall  
16 publish notice of any proposed hearing in the Fed-  
17 eral Register, and shall afford a reasonable oppor-  
18 tunity for interested persons to present relevant tes-  
19 timony and data.

20 (b) **COMMISSION POWERS; ORDERS.—**The Commis-  
21 sion shall have the power—

22 (1) to require, by special or general orders, any  
23 person to submit in writing such reports and an-  
24 swers to questions as the Commission may prescribe  
25 to carry out a specific regulatory or enforcement  
26 function of the Commission, and such submission

1 shall be made within such reasonable period and  
2 under oath or otherwise as the Commission may de-  
3 termine, and such order shall contain a complete  
4 statement of the reasons that the Commission re-  
5 quires the report or answers specified in the order  
6 to carry out a specific regulatory or enforcement  
7 function of the Commission;

8 (2) to administer oaths;

9 (3) to require by subpoena the attendance and  
10 testimony of witnesses and the production of all doc-  
11 umentary evidence relating to the execution of its  
12 duties;

13 (4) in any proceeding or investigation to order  
14 testimony to be taken by deposition before any per-  
15 son who is designated by the Commission and has  
16 the power to administer oaths and, in such in-  
17 stances, to compel testimony and the production of  
18 evidence in the same manner as authorized under  
19 paragraph (3);

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

23 (6) to accept voluntary and uncompensated  
24 services relevant to the performance of the duties of  
25 the Commission, notwithstanding the provisions of

1 section 1342 of title 31, United States Code, and to  
2 accept voluntary and uncompensated services (but  
3 not gifts) relevant to the performance of the duties  
4 of the Commission provided that any such services  
5 shall not be from parties that have or are likely to  
6 have business before the Commission;

7 (7) to—

8 (A) issue an order requiring compliance  
9 with applicable legal requirements;

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

12 (C) initiate, prosecute, defend, intervene  
13 in, or appeal (other than to the Supreme Court  
14 of the United States), through its own legal  
15 representative and in the name of the Commis-  
16 sion, any civil action, if the Commission makes  
17 a written request to the Attorney General of the  
18 United States for representation in such civil  
19 action and the Attorney General does not, with-  
20 in the 45-day period beginning on the date on  
21 which such request was made, notify the Com-  
22 mission in writing that the Attorney General  
23 will represent the Commission in such civil ac-  
24 tion; and

1 (D) whenever the Commission obtains evi-  
2 dence that any person has engaged in conduct  
3 that may constitute a violation of Federal  
4 criminal law, including a violation of section 9,  
5 transmit such evidence to the Attorney General  
6 of the United States; and

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

11 (c) NONCOMPLIANCE WITH SUBPOENA OR COMMIS-  
12 SION ORDER.—If a person refuses to obey a subpoena or  
13 order of the Commission issued under subsection (b), the  
14 Commission (subject to subsection (b)(7)) or the Attorney  
15 General of the United States may bring an action in the  
16 United States district court for the district and division  
17 in which the inquiry is carried out or any other appro-  
18 priate United States district court seeking an order requir-  
19 ing compliance with the subpoena or order.

20 (d) DISCLOSURE OF INFORMATION.—No person shall  
21 be subject to civil liability to any person (other than the  
22 Commission or the United States) for disclosing informa-  
23 tion to the Commission.

24 (e) CUSTOMER AND REVENUE DATA.—The Commis-  
25 sion may, by rule, require any provider of consumer finan-

1 cial products to provide to the Commission such customer  
2 and revenue data as may be required to carry out this  
3 Act.

4 (f) PURCHASE OF CONSUMER FINANCIAL PRODUCTS  
5 BY COMMISSION.—For purposes of carrying out this Act,  
6 the Commission may purchase any consumer financial  
7 product and it may require any provider of consumer fi-  
8 nancial products to sell the product to the Commission at  
9 cost.

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

14 (h) BUDGET ESTIMATES AND REQUESTS; LEGISLA-  
15 TIVE RECOMMENDATIONS; TESTIMONY; COMMENTS ON  
16 LEGISLATION.—

17 (1) BUDGET COPIES TO CONGRESS.—Whenever  
18 the Commission submits any budget estimate or re-  
19 quest to the President or the Office of Management  
20 and Budget, it shall concurrently transmit a copy of  
21 that estimate or request to the appropriate commit-  
22 tees of Congress.

23 (2) LEGISLATIVE RECOMMENDATION.—When-  
24 ever the Commission submits any legislative rec-  
25 ommendations, testimony, or comments on legisla-

1       tion to the President or the Office of Management  
2       and Budget, it shall concurrently transmit a copy  
3       thereof to the appropriate committees of Congress.  
4       No officer or agency of the United States shall have  
5       any authority to require the Commission to submit  
6       its legislative recommendations, testimony, or com-  
7       ments on legislation, to any officer or agency of the  
8       United States for approval, comments, or review,  
9       prior to the submission of such recommendations,  
10      testimony, or comments to the appropriate commit-  
11      tees of Congress.

12 **SEC. 8. COLLABORATION WITH FEDERAL AND STATE ENTI-**  
13                                   **TIES.**

14       (a) PREEMPTION.—Nothing in this Act or any rule  
15      promulgated under this Act may be construed to annul,  
16      alter, affect, or exempt any person from complying with  
17      the laws of any State, except to the extent that those laws  
18      are inconsistent with a consumer financial product safety  
19      rule promulgated by the Commission, and then only to the  
20      extent of the inconsistency. For purposes of this section,  
21      a State law is not inconsistent with this Act or a consumer  
22      financial product safety rule, or the purposes of the Act  
23      or rule, if the protection afforded by such State law to  
24      any consumer is greater than the protection provided by  
25      the consumer financial product safety rule or this Act.

1 Nothing in this Act or any rule promulgated under this  
2 Act precludes any remedy under State law to or on behalf  
3 of a consumer.

4 (b) PROGRAMS TO PROMOTE FEDERAL-STATE CO-  
5 OPERATION.—

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

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

12 (A) accept from any State or local author-  
13 ity engaged in activities relating to consumer  
14 protection assistance in such functions as data  
15 collection, investigation, and educational pro-  
16 grams, as well as other assistance in the admin-  
17 istration and enforcement of this Act which  
18 such States or local governments may be able  
19 and willing to provide and, if so agreed, may  
20 pay in advance or otherwise for the reasonable  
21 cost of such assistance; and

22 (B) commission any qualified officer or  
23 employee of any State or local government  
24 agency as an officer of the Commission for the  
25 purpose of conducting investigations.

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

13 **SEC. 9. PROHIBITED ACTS.**

14           It shall be unlawful for any person—

15           (1) to advertise, offer, or attempt to enforce  
16           any agreement, term, change in term, fee, or charge  
17           in connection with any consumer financial product,  
18           or engage in any practice, that is not in conformity  
19           with this Act or an applicable consumer financial  
20           product safety rule under this Act; or

21           (2) to fail or refuse to permit access to or copy-  
22           ing of records, or fail or refuse to establish or main-  
23           tain records, or fail or refuse to make reports or  
24           provide information to the Commission, as required  
25           under this Act or any rule under this Act.

1 **SEC. 10. ENFORCEMENT.**

2 (a) **CRIMINAL PENALTIES.—**

3 (1) **KNOWING AND WILLFUL VIOLATIONS.—**Any  
4 person who knowingly and willfully violates section 9  
5 shall be fined not more than \$500,000, imprisoned  
6 not more than 1 year, or both for each such viola-  
7 tion.

8 (2) **EXECUTIVES AND AGENTS.—**Any individual  
9 director, officer, or agent of a business entity who  
10 knowingly and willfully authorizes, orders, or per-  
11 forms any of the acts or practices constituting in  
12 whole or in part a violation of section 9 shall be sub-  
13 ject to penalties under this section, without regard  
14 to any penalties to which that person may be other-  
15 wise subject.

16 (b) **CIVIL PENALTIES.—**

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

23 (2) **PUBLICATION OF SCHEDULE OF PEN-**  
24 **ALTIES.—**Not later than December 1, 2009, and De-  
25 cember 1 of each fifth year thereafter, the Commis-  
26 sion shall prescribe and publish in the Federal Reg-

1       ister a schedule of the maximum authorized civil  
2       penalty that shall apply for any violation of section  
3       9 that occurs on or after January 1 of the year im-  
4       mediately following the date of such publication.

5           (3) RELEVANT FACTORS IN DETERMINING  
6       AMOUNT OF PENALTY.—In determining the amount  
7       of any civil penalty in an action for a violation of  
8       section 9, the Commission—

9           (A) shall consider—

10                  (i) the nature of the consumer finan-  
11                  cial product;

12                  (ii) the severity of the unreasonable  
13                  risk to the consumer;

14                  (iii) the number of products or serv-  
15                  ices sold or distributed;

16                  (iv) the occurrence or absence of con-  
17                  sumer injury; and

18                  (v) the appropriateness of such pen-  
19                  alty in relation to the size of the business  
20                  of the person charged; and

21           (B) shall ensure that penalties in each case  
22       are sufficient to induce compliance by all regu-  
23       lated entities.

24           (4) COMPROMISE OF PENALTY; DEDUCTIONS  
25       FROM PENALTY.—

1 (A) IN GENERAL.—Any civil penalty under  
2 this section may be compromised by the Com-  
3 mission.

4 (B) CONSIDERATIONS.—In determining  
5 the amount of such penalty or whether it should  
6 be remitted or mitigated and in what amount,  
7 the Commission—

8 (i) shall consider—

9 (I) the nature of the consumer fi-  
10 nancial product;

11 (II) the severity of the unreason-  
12 able risk to the consumer;

13 (III) the number of offending  
14 products or services sold;

15 (IV) the occurrence or absence of  
16 consumer injury; and

17 (V) the appropriateness of such  
18 penalty to the size of the business of  
19 the person charged; and

20 (ii) shall ensure that compromise pen-  
21 alties remain sufficient to induce compli-  
22 ance by all regulated entities.

23 (C) AMOUNT.—The amount of a penalty  
24 compromised under this paragraph, when fi-  
25 nally determined, or the amount agreed on com-

1           promise, may be deducted from any sums owing  
2           by the United States to the person charged.

3           (c) COLLECTION AND USE OF PENALTIES.—

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

8           (2) USE OF FUND.—The fund established  
9           under this subsection shall be used to defray the  
10          costs of the operations of the Commission or, where  
11          appropriate, provide restitution to harmed con-  
12          sumers.

13          (d) PRIVATE ENFORCEMENT.—

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

18                  (A) any actual damages sustained by such  
19                  person as a result of such violation, if actual  
20                  damages resulted;

21                  (B) twice the amount of any finance  
22                  charge in connection with the transaction, ex-  
23                  cept that such liability shall not be less than  
24                  \$1,000, such minimum to be adjusted on an an-

1           nual basis by the Commission based upon the  
2           consumer price index; and

3                   (C) reasonable attorney fees and costs.

4       (e) JURISDICTION.—

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

10          (2) RULES OF CONSTRUCTION.—This section  
11       does not bar a person from asserting a violation of  
12       this Act in an action to collect a debt, or if fore-  
13       closure has been initiated, as a matter of defense by  
14       recoupment or set-off. An action under this Act shall  
15       not be the basis for removal of an action to a United  
16       States district court. Neither this section nor any  
17       other section of this Act preempts or otherwise dis-  
18       places claims and remedies available under State  
19       law, except as otherwise specifically provided in this  
20       Act.

21       (f) STATE ACTIONS FOR VIOLATIONS.—

22           (1) AUTHORITY OF STATES.—In addition to  
23       such other remedies as are provided under State  
24       law, if the chief law enforcement officer of a State,  
25       or an official or agency designated by a State, has

1       reason to believe that any person has violated or is  
2       violating section 9, the State—

3               (A) may bring an action to enjoin such vio-  
4       lation in any appropriate United States district  
5       court or in any other court of competent juris-  
6       diction;

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

9                   (i) damages for which the person is  
10       liable to such residents under subsection  
11       (d) as a result of the violation; and

12                  (ii) civil penalties, as established  
13       under subsection (b); and

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

18       (2) RIGHTS OF FEDERAL REGULATORS.—

19               (A) NOTICE OF STATE ACTION.—A State  
20       shall serve prior written notice of any action  
21       under paragraph (1) upon the Commission and  
22       provide the Commission with a copy of its com-  
23       plaint, except in any case in which such prior  
24       notice is not feasible, in which case the State

1           shall serve such notice immediately upon insti-  
2           tuting such action.

3                   (B) COMMISSION AUTHORIZATION.—Upon  
4           notice of an action under subparagraph (A), the  
5           Commission shall have the right—

6                           (i) to intervene in the action;

7                           (ii) upon so intervening, to be heard  
8           on all matters arising therein;

9                           (iii) to remove the action to the appro-  
10          priate United States district court; and

11                          (iv) to file petitions for appeal.

12                   (3) INVESTIGATORY POWERS.—For purposes of  
13          bringing any action under this subsection, nothing in  
14          this subsection or in any other provision of Federal  
15          law shall prevent the chief law enforcement officer of  
16          a State, or an official or agency designated by a  
17          State, from exercising the powers conferred on the  
18          chief law enforcement officer or such official by the  
19          laws of such State to conduct investigations or to  
20          administer oaths or affirmations or to compel the at-  
21          tendance of witnesses or the production of documen-  
22          tary and other evidence.

23                   (4) LIMITATION ON STATE ACTION WHILE FED-  
24          ERAL ACTION PENDING.—If the Commission has in-  
25          stituted a civil action or an administrative action for

1 a violation of section 9, a State may not, during the  
2 pendency of such action, bring an action under this  
3 section against any defendant named in the com-  
4 plaint of the Commission for any violation of section  
5 9 that is alleged in that complaint.

6 **SEC. 11. REPORTS.**

7 (a) **REPORTS TO THE PUBLIC.**—The Commission  
8 shall determine what reports should be produced and dis-  
9 tributed to the public on a recurring and ad hoc basis,  
10 and shall prepare and publish such reports on a website  
11 that provides free access to the general public.

12 (b) **REPORT TO THE PRESIDENT AND CONGRESS.**—

13 (1) **IN GENERAL.**—The Commission shall pre-  
14 pare and submit to the President and the appro-  
15 priate committees of Congress, at the beginning of  
16 each regular session of Congress, a comprehensive  
17 report on the administration of this Act for the pre-  
18 ceding fiscal year.

19 (2) **REPORT CONTENT.**—The reports required  
20 by this subsection shall include—

21 (A) a thorough appraisal, including statis-  
22 tical analyses, estimates, and long-term projec-  
23 tions, of the incidence and effects of practices  
24 associated with the provision of consumer finan-  
25 cial products that are inconsistent with the ob-

1           jectives specified in section 5(a), with a break-  
2           down, insofar as practicable, among the various  
3           sources of injury, as the Commission finds ap-  
4           propriate;

5           (B) a list of consumer financial product  
6           safety rules prescribed or in effect during such  
7           year;

8           (C) an evaluation of the degree of observ-  
9           ance of consumer financial product safety rules,  
10          including a list of enforcement actions, court  
11          decisions, and compromises of civil penalties, by  
12          location and company name;

13          (D) a summary of outstanding problems  
14          confronting the administration of this Act in  
15          order of priority;

16          (E) an analysis and evaluation of public  
17          and private consumer financial product safety  
18          research activities;

19          (F) a list, with a brief statement of the  
20          issues, of completed or pending judicial actions  
21          under this Act;

22          (G) the extent to which technical informa-  
23          tion was disseminated to the research and con-  
24          sumer communities and consumer information  
25          was made available to the public;

1 (H) the extent of cooperation between  
2 Commission officials, representatives of the con-  
3 sumer financial products industry, and other in-  
4 terested parties in the implementation of this  
5 Act, including a log or summary of meetings  
6 held between Commission officials and rep-  
7 resentatives of industry and other interested  
8 parties;

9 (I) an appraisal of significant actions of  
10 State and local governments relating to the re-  
11 sponsibilities of the Commission;

12 (J) such recommendations for additional  
13 legislation as the Commission deems necessary  
14 to carry out the purposes of this Act; and

15 (K) the extent of cooperation with, and the  
16 joint efforts undertaken by, the Commission in  
17 conjunction with other regulators with whom  
18 the Commission shares responsibilities for con-  
19 sumer financial product safety.

20 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated to the Com-  
22 mission for purposes of carrying out this Act such sums  
23 as may be necessary.