

THE FINANCIAL PRODUCT SAFETY COMMISSION ACT OF 2009

The Obama Administration is pushing new legislation which would create a financial services regulatory commission. The commission would be called "The Financial Product Safety Commission" and it would regulate all mortgages, credit cards, and mutual funds. [The Washington Post's](#) Zachary A. Goldfarb, Binyamin Appelbaum and David Cho wrote an [article](#) on May 20, 2009.

The Senate version of this bill under [Section 10: Enforcement](#) has some very strong criminal and civil money penalties that could further strengthen consumer protections against businesses. The current senate & house versions of the bill could add considerable consumer protections against loan servicing companies which under Section 6 of RESPA offer consumers very little protection from some mortgage servicing companies abusive practices. This is definitely one of those bills to keep an eye on as the ramifications could be huge for businesses and consumers.

The current Senate version of the bill allows the Financial Product Safety Commission:

- "(1) to minimize unreasonable consumer risk associated with buying and using consumer financial products;
- (2) to prevent and eliminate practices that lead consumers to incur unreasonable, inappropriate, or excessive debt, or make it difficult for consumers to repay existing debt, including practices or product features that are abusive, fraudulent, unfair, deceptive, predatory, anticompetitive, or otherwise inconsistent with consumer protection;
- (3) to promote practices that assist and encourage consumers to use credit and consumer financial products responsibly, avoid excessive debt, and avoid unnecessary or excessive charges derived from or associated with consumer financial products;
- (4) to ensure that providers of consumer financial products provide credit based on the ability of the consumer to repay the debt incurred;
- (5) to ensure that consumer credit history is maintained, reported, and used fairly and accurately;
- (6) to maintain strong privacy protections for consumer transactions, credit history, and other personal information associated with the use of consumer financial products;
- (7) to collect, investigate, resolve, and inform the public about consumer complaints regarding consumer financial products;
- (8) to ensure a fair resolution of consumer disputes regarding consumer financial products; and
- (9) to take such other steps as are reasonable to protect users of consumer financial product."

See Elizabeth Razzi's [article](#) in the Washington Post for more information.

[SENATE VERSION 566](#) AND [HOUSE](#) VERSION 1705 OF THE FINANCIAL PRODUCT SAFETY COMMISSION ACT OF 2009:

SEC. 10. ENFORCEMENT.

(a) Criminal Penalties-

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

(2) EXECUTIVES AND AGENTS- Any individual director, officer, or agent of a business entity who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 9 shall be subject to penalties under this section, without regard to any penalties to which that person may be otherwise subject.

(b) Civil Penalties-

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

(2) PUBLICATION OF SCHEDULE OF PENALTIES- Not later than December 1, 2009, and December 1 of each fifth year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of the maximum authorized civil penalty that shall apply for any violation of section 9 that occurs on or after January 1 of the year immediately following the date of such publication.

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

(A) shall consider--

(i) the nature of the consumer financial product;

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

(iii) the number of products or services sold or distributed;

(iv) the occurrence or absence of consumer injury; and

(v) the appropriateness of such penalty in relation to the size of the business of the person charged; and

(B) shall ensure that penalties in each case are sufficient to induce compliance by all regulated entities.

(4) COMPROMISE OF PENALTY; DEDUCTIONS FROM PENALTY-

(A) IN GENERAL- Any civil penalty under this section may be compromised by the Commission.

(B) CONSIDERATIONS- In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the Commission--

(i) shall consider--

(I) the nature of the consumer financial product;

(II) the severity of the unreasonable risk to the consumer;

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

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

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

(ii) shall ensure that compromise penalties remain sufficient to induce compliance by all regulated entities.

(C) AMOUNT- The amount of a penalty compromised under this paragraph, when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(c) Collection and Use of Penalties-

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

(2) USE OF FUND- The fund established under this subsection shall be used to defray the costs of the operations of the Commission or, where appropriate, provide restitution to harmed consumers.

(d) Private Enforcement-

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

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

(B) twice the amount of any finance charge in connection with the transaction, except that such liability shall not be less than \$1,000, such minimum to be adjusted on an annual basis by the Commission based upon the consumer price index; and

(C) reasonable attorney fees and costs.

(e) Jurisdiction-

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

(2) RULES OF CONSTRUCTION- This section does not bar a person from asserting a violation of this Act in an action to collect a debt, or if foreclosure has been initiated, as a matter of defense by recoupment or set-off. An action under this Act shall not be the basis for removal of an action to a United States district court. Neither this section nor any other section of this Act preempts or otherwise displaces claims and remedies available under State law, except as otherwise specifically provided in this Act.

(f) State Actions for Violations-

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

(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(B) may bring an action on behalf of the residents of the State to recover--

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

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

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees, as determined by the court.

(2) RIGHTS OF FEDERAL REGULATORS-

(A) NOTICE OF STATE ACTION- A State shall serve prior written notice of any action under paragraph (1) upon the Commission and provide the Commission with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

(B) COMMISSION AUTHORIZATION- Upon notice of an action under subparagraph (A), the Commission shall have the right--

(i) to intervene in the action;

- (ii) upon so intervening, to be heard on all matters arising therein;
- (iii) to remove the action to the appropriate United States district court; and
- (iv) to file petitions for appeal.

(3) INVESTIGATORY POWERS- For purposes of bringing any action under this subsection, nothing in this subsection or in any other provision of Federal law shall prevent the chief law enforcement officer of a State, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING- If the Commission has instituted a civil action or an administrative action for a violation of section 9, a State may not, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of section 9 that is alleged in that complaint.