

112TH CONGRESS
2D SESSION

S. 3426

To amend the Truth in Lending Act to address certain issues related to the extension of consumer credit, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 24, 2012

Mr. MERKLEY (for himself, Mr. UDALL of New Mexico, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Truth in Lending Act to address certain issues related to the extension of consumer credit, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stopping Abuse and
5 Fraud in Electronic Lending Act of 2012” or the “SAFE
6 Lending Act of 2012”.

7 **SEC. 2. CONSUMER CONTROL OVER BANK ACCOUNTS.**

8 (a) PROHIBITING UNAUTHORIZED REMOTELY CRE-
9 ATED CHECKS.—Section 905 of the Electronic Fund

1 Transfer Act (15 U.S.C. 1693c) is amended by adding at
2 the end the following:

3 “(d) LIMITATIONS ON REMOTELY CREATED
4 CHECKS.—

5 “(1) IN GENERAL.—Subject to the limitations
6 set forth under paragraph (2) and any additional
7 limitations that the Bureau may establish, by rule,
8 a remotely created check may only be issued by a
9 person designated in writing by the consumer, such
10 designation specifically provided in writing by the
11 consumer to the insured depository institution at
12 which the consumer maintains the account from
13 which the check is to be drawn.

14 “(2) ADDITIONAL LIMITATIONS.—

15 “(A) IN GENERAL.—An authorization pro-
16 vided under paragraph (1) may be revoked at
17 any time by the consumer.

18 “(B) CONSUMER FINANCIAL PROTECTION
19 LAWS.—No payment order, including a re-
20 motely created check, may be issued by any per-
21 son in response to the exercise of, or attempt to
22 exercise, any rights by a consumer under any
23 Federal consumer financial law (as defined in
24 section 1002(14) of the Consumer Financial
25 Protection Act of 2010 (12 U.S.C. 5481(14)))

1 or any other provision of any law or regulation
2 within the jurisdiction of the Bureau.

3 “(3) REMOTELY CREATED CHECK DEFINED.—

4 For purposes of this subsection, the term ‘remotely
5 created check’ means a check (including paper and
6 electronic checks and any other payment order that
7 the Bureau, by rule, determines is appropriately cov-
8 ered by this subsection) that—

9 “(A) is not created by the financial institu-
10 tion that holds the customer account from
11 which the check is to be paid; and

12 “(B) does not bear a signature applied, or
13 purported to be applied, by the person from
14 whose account the check is to be paid.”.

15 (b) CONSUMER PROTECTIONS FOR CERTAIN ONE-
16 TIME ELECTRONIC FUND TRANSFERS.—Section 913 of
17 the Electronic Fund Transfer Act (15 U.S.C. 1693k) is
18 amended—

19 (1) by inserting “(a) IN GENERAL.—” before
20 “No person”;

21 (2) striking “preauthorized electronic fund
22 transfers” and inserting “an electronic fund trans-
23 fer”; and

24 (3) by adding at the end the following:

1 “(b) TREATMENT FOR ELECTRONIC FUND TRANS-
 2 FERS IN CREDIT EXTENSIONS.—If a consumer voluntarily
 3 agrees to repay an extension of small-dollar consumer
 4 credit transaction (as defined in section 140B(b) of the
 5 Truth in Lending Act) by means of an electronic fund
 6 transfer, such electronic fund transfer shall be treated as
 7 a preauthorized electronic fund transfer subject to the pro-
 8 tections of this title.”.

9 **SEC. 3. CONSISTENT APPLICATION OF LAW FOR SMALL-**
 10 **DOLLAR LENDING.**

11 Chapter 2 of the Truth in Lending Act (15 U.S.C.
 12 1601 et seq.) is amended by adding at the end the fol-
 13 lowing:

14 **“SEC. 140B. CONSISTENT APPLICATION OF LAW FOR**
 15 **SMALL-DOLLAR LENDING.**

16 “(a) IN GENERAL.—Notwithstanding any other pro-
 17 vision of law or any agreement between the parties to a
 18 transaction, and except to the extent that Federal or tribal
 19 law affords greater protection to the consumer, any small-
 20 dollar consumer credit transaction made over the Internet,
 21 telephone, facsimile, mail, electronic mail, or other elec-
 22 tronic communication and any small-dollar consumer cred-
 23 it transaction conducted by an insured depository institu-
 24 tion (as defined in section 3 of the Federal Deposit Insur-
 25 ance Act) shall comply with the laws of the State in which

1 the consumer resides with respect to annual percentage
2 rates, interest, fees, charges, and such other similar or re-
3 lated matters as the Bureau may, by rule, determine.

4 “(b) DEFINITION.—As used in this section, the term
5 ‘small-dollar consumer credit transaction’ means any
6 transaction that extends, facilitates, brokers, arranges, or
7 gathers applications for credit that is—

8 “(1) made to a consumer in an amount of not
9 more than \$5,000, or such greater amount as the
10 Bureau may, by rule, determine, such amount to be
11 adjusted annually to reflect changes in the Con-
12 sumer Price Index for all urban consumers published
13 by the Department of Labor; and

14 “(2) extended pursuant to an agreement that
15 is—

16 “(A) other than an open-end credit plan
17 and is payable in one or more installments of
18 less than 12 months (or such longer period as
19 the Bureau may, by rule, determine);

20 “(B) an open-end credit plan in which each
21 advance is fully repayable within a defined time
22 or in connection with a defined event, or both;
23 or

24 “(C) such other plan as the Bureau deter-
25 mines, by rule.”.

1 **SEC. 4. PROHIBITION ON LEAD GENERATION AND ANONYM-**
2 **ITY IN SMALL-DOLLAR CONSUMER CREDIT**
3 **TRANSACTIONS.**

4 Chapter 2 of the Truth in Lending Act (15 U.S.C.
5 1601 et seq.), as amended by this Act, is amended by add-
6 ing at the end the following:

7 **“SEC. 140C. PROHIBITION ON LEAD GENERATION AND ANO-**
8 **NYMITY IN SMALL-DOLLAR CONSUMER CRED-**
9 **IT TRANSACTIONS.**

10 “(a) IDENTIFICATION INFORMATION.—Any person
11 engaged in the business of facilitating, brokering, arrang-
12 ing, gathering applications for, distributing sensitive per-
13 sonal financial information, or extending credit in connec-
14 tion with small-dollar consumer credit transactions shall
15 prominently disclose information by which they may be
16 contacted or identified, including for service of process and
17 for identification of the registrant of any domain name
18 registered or used.

19 “(b) PROHIBITION ON LEAD GENERATION IN SMALL-
20 DOLLAR CONSUMER CREDIT TRANSACTIONS.—No person
21 may engage in the business of facilitating, brokering, ar-
22 ranging, gathering applications for, or distributing sen-
23 sitive personal financial information in connection with
24 small-dollar consumer credit transactions, unless the per-
25 son is directly extending the small-dollar consumer credit
26 to the consumer.

1 “(c) DEFINITIONS.—For purposes of this section—

2 “(1) the term ‘sensitive personal financial infor-
3 mation’ means the consumer’s Social Security num-
4 ber, financial account number, bank routing number,
5 bank account number, or any required security or
6 access code that are immediately necessary to permit
7 access to the financial account of an individual; and

8 “(2) the term ‘small-dollar consumer credit
9 transaction’ has the same meaning as in section
10 140B(b).

11 “(d) RULE OF CONSTRUCTION.—

12 “(1) IN GENERAL.—Nothing in this section
13 may be interpreted to limit the authority of the Bu-
14 reau to further restrict activities covered by this sec-
15 tion.

16 “(2) CLARIFICATION.—It shall not be consid-
17 ered ‘facilitating’ in connection with small-dollar
18 consumer credit transactions to be engaged solely
19 in—

20 “(A) the provision of a telecommunications
21 service, or of an Internet access service or
22 Internet information location tool (as those
23 terms are defined in section 231 of the Commu-
24 nications Act of 1934 (47 U.S.C. 231)); or

1 “(B) the transmission, storage, retrieval,
 2 hosting, formatting, or translation (or any com-
 3 bination thereof) of a communication, without
 4 selection or alteration of the content of the
 5 communication, except that deletion of a par-
 6 ticular communication or material made by an-
 7 other person in a manner consistent with sec-
 8 tion 230(e) of the Communications Act of 1934
 9 (47 U.S.C. 230(c)).

10 “(e) CIVIL LIABILITY.—Violations of this section
 11 shall be subject to the civil liability provisions of section
 12 130, and any person who violates this section shall be
 13 treated as a creditor for purposes of section 130.”.

14 **SEC. 5. ENHANCED ENFORCEMENT AUTHORITY AGAINST**
 15 **CERTAIN INTERNET LENDING.**

16 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
 17 is amended by inserting after section 108 the following:

18 **“SEC. 108A. ENHANCED ENFORCEMENT AUTHORITY**
 19 **AGAINST CERTAIN INTERNET LENDING.**

20 “(a) DEFINITIONS.—In this section, the following
 21 definitions shall apply:

22 “(1) COMPLAINANT.—The term ‘complainant’
 23 means a State attorney general or State or tribal
 24 agency with enforcement authority over prohibited

1 activity who files a complaint with the Bureau under
2 subsection (d).

3 “(2) COVERED OFFSHORE PERSON.—

4 “(A) IN GENERAL.—The term ‘covered off-
5 shore person’ means a person (and if such per-
6 son is not known, the Internet site or other
7 electronic representation of such person, such
8 as a telephone number, text message service, or
9 mobile application) that—

10 “(i) conducts business directed to resi-
11 dents of the United States;

12 “(ii) does not have a domain name
13 that is registered or assigned by a domain
14 name registrar, domain name registry, or
15 other domain name registration authority
16 that is located within a judicial district of
17 the United States; and

18 “(iii) is not operated by an entity that
19 is located within a judicial district of the
20 United States.

21 “(B) BUSINESS DIRECTED TO RESIDENTS
22 OF THE UNITED STATES.—For purposes of
23 making a determination under subparagraph
24 (A)(i), the Bureau may consider, among other
25 indicators, whether—

1 “(i) the person extends, facilitates,
2 brokers, arranges, or gathers applications
3 for credit to persons located in the United
4 States;

5 “(ii) the person has reasonable meas-
6 ures in place to prevent its services from
7 being accessed from or delivered to the
8 United States; and

9 “(iii) any prices for goods and services
10 provided are indicated in the currency of
11 the United States.

12 “(3) COVERED ONSHORE PERSON.—The term
13 ‘covered onshore person’ means a State government
14 or an Indian tribe.

15 “(4) COVERED PERSON.—The term ‘covered
16 person’ means a covered offshore person and covered
17 onshore person.

18 “(5) FEDERAL CONSUMER FINANCIAL LAW.—
19 The term ‘Federal consumer financial law’ has the
20 same meaning as in section 1002 of the Consumer
21 Financial Protection Act of 2010 (12 U.S.C. 5481).

22 “(6) FINANCIAL TRANSACTION PROVIDER.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), the term ‘financial trans-

1 action provider’ has the same meaning as in
2 section 5362(4) of title 31, United States Code.

3 “(B) EXCEPTION.—The term ‘financial
4 transaction provider’ does not include an Inter-
5 net service platform or an affiliate of an Inter-
6 net service platform.

7 “(7) INDIAN TRIBE.—The term ‘Indian tribe’
8 has the same meaning as in section 4 of the Indian
9 Self-Determination and Education Assistance Act
10 (25 U.S.C. 450b).

11 “(8) INTERNET SERVICE PLATFORM.—The
12 term ‘Internet service platform’ means an interactive
13 digital service the provider of which—

14 “(A) does not act merely as a payment
15 intermediary between a user and a supplier of
16 goods or services; and

17 “(B) provides additional services to facili-
18 tate interaction between users unrelated to pur-
19 chases from suppliers of goods and services.

20 “(9) INTERNET SITE.—The term ‘Internet site’
21 means the collection of digital assets, including links,
22 indexes, or pointers to digital assets, accessible
23 through the Internet that are addressed relative to
24 a common domain name.

1 “(10) OPERATOR.—The term ‘operator’, when
2 used in connection with an Internet site, includes
3 any person with authority to operate the Internet
4 site.

5 “(11) OWNER.—The term ‘owner’, when used
6 in connection with an Internet site, includes any
7 owner of a majority interest in the Internet site.

8 “(12) STATE CONSUMER FINANCIAL LAW.—The
9 term ‘State consumer financial law’ means a provi-
10 sion of State law that either constitutes a ‘State
11 consumer financial law’ as that term is defined in
12 section 5136C of title LXII of the Revised Statutes
13 of the United States (12 U.S.C. 21 et seq.), or pro-
14 hibits unfair or deceptive acts or practices.

15 “(b) APPLICABILITY OF SECTION.—It shall be a vio-
16 lation of this section for a covered person to violate a Fed-
17 eral, State, or tribal consumer financial law.

18 “(c) INVESTIGATION OF VIOLATIONS BY BUREAU.—

19 “(1) IN GENERAL.—The Bureau—

20 “(A) may investigate any alleged violation
21 of subsection (b) on its own initiative; and

22 “(B) shall—

23 “(i) review any alleged violation of
24 subsection (b) upon receiving a complaint
25 filed under subsection (d); and

1 “(ii) adjudicate and otherwise inves-
2 tigate and respond to such complaint, as
3 appropriate.

4 “(2) CONSULTATIONS.—In taking action under
5 paragraph (1), the Bureau shall, as the Bureau de-
6 termines appropriate, consult with and seek advice
7 and information from the Attorney General of the
8 United States, the Federal Trade Commission, the
9 International Trade Commission (in any case involv-
10 ing a covered offshore person), the Bureau of Indian
11 Affairs (in the case of matters involving an Indian
12 tribe), federally recognized Indian tribes (in the case
13 of rulemakings involving Indian tribes), and such
14 other agencies and officials as the Bureau considers
15 appropriate.

16 “(3) LIMITATION ON INVESTIGATIONS OF DO-
17 MAIN NAMES; CONSENT TO JURISDICTION.—

18 “(A) IN GENERAL.—Subject to subpara-
19 graphs (B) and (C) and such limitations as the
20 Bureau may, by rule, determine, the Bureau
21 shall terminate, or not initiate, an investigation
22 or adjudication under paragraph (1) with re-
23 spect to a covered person—

24 “(i) if the covered person provides to
25 the public and to the Bureau—

1 “(I) the name of an individual
2 authorized to receive process on behalf
3 of the covered person;

4 “(II) an address at which process
5 may be served;

6 “(III) a telephone number at
7 which the individual described in
8 clause (i) may be contacted; and

9 “(IV) a statement that the cov-
10 ered person consents to the jurisdic-
11 tion and venue of the United States
12 district courts with respect to a viola-
13 tion of the relevant consumer lending
14 laws.

15 “(B) ACCEPTANCE OF JURISDICTION.—In
16 the event of the filing of any civil action in the
17 appropriate United States district court for a
18 violation of State or tribal consumer lending
19 laws, the covered person shall accept service
20 and waive, in a timely manner, any objections
21 to jurisdiction, as set forth in the statement de-
22 scribed in subparagraph (A)(iv).

23 “(C) INVESTIGATIONS.—Any limitations on
24 investigations under this paragraph shall not
25 apply if—

1 “(i) any of the information provided
2 by the covered person is inaccurate in any
3 way; or

4 “(ii) at any point, the covered person
5 fails to respond to or abide by any order
6 or request of the relevant court.

7 “(4) RULE OF CONSTRUCTION.—It shall not be
8 considered a violation of this section to be engaged
9 solely in—

10 “(A) the provision of a telecommunications
11 service, or of an Internet access service or
12 Internet information location tool (as those
13 terms are defined in section 231 of the Commu-
14 nications Act of 1934 (47 U.S.C. 231)); or

15 “(B) the transmission, storage, retrieval,
16 hosting, formatting, or translation (or any com-
17 bination thereof) of a communication, without
18 selection or alteration of the content of the
19 communication, except that deletion of a par-
20 ticular communication or material made by an-
21 other person in a manner consistent with sec-
22 tion 230(e) of the Communications Act of 1934
23 (47 U.S.C. 230(e)).

24 “(d) COMPLAINTS.—

1 “(1) IN GENERAL.—A complaint alleging, under
2 oath, that a covered person is in violation of sub-
3 section (b) may be filed with the Bureau.

4 “(2) NOTICE WITH RESPECT TO OFFSHORE
5 PERSONS.—

6 “(A) IN GENERAL.—Upon filing a com-
7 plaint under paragraph (1), if the identity of
8 the subject covered offshore person is not
9 known, but the Internet site or other electronic
10 representation is known, the complainant shall
11 send a notice of the violation alleged in the
12 complaint to the registrant of the domain name
13 of the Internet site (or relevant operator of the
14 electronic representation) alleged to be operated
15 or maintained in violation of subsection (b)—

16 “(i) at the postal and e-mail addresses
17 appearing in the applicable publicly acces-
18 sible database of registrations, if any, to
19 the extent such addresses are reasonably
20 available;

21 “(ii) via the postal and e-mail ad-
22 dresses of the registrar, registry, or other
23 domain name registration authority that
24 registered or assigned the domain name
25 (or relevant electronic representation), to

1 the extent such addresses are reasonably
2 available; and

3 “(iii) in any other such form as the
4 Bureau finds necessary.

5 “(B) RULE OF CONSTRUCTION.—For pur-
6 poses of this subsection, the actions described
7 in this subparagraph shall constitute service of
8 process.

9 “(3) IDENTIFICATION OF, AND NOTICE TO, EN-
10 TITIES THAT MAY BE REQUIRED TO TAKE ACTION
11 PURSUANT TO THIS SECTION.—

12 “(A) IDENTIFICATION.—A complaint filed
13 under paragraph (1) shall identify any financial
14 transaction provider that may be required to
15 take measures described in subsection (g)(2) if
16 the Bureau issues an order under subsection (f)
17 with respect to the complaint and the order is
18 served on the provider or service pursuant to
19 subsection (g)(1).

20 “(B) NOTICE.—Upon filing a complaint
21 under paragraph (1), the complainant shall pro-
22 vide notice to any financial transaction provider
23 identified in the complaint pursuant to subpara-
24 graph (A) or any amendments to the complaint.

25 “(C) INTERVENTION.—

1 “(i) IN GENERAL.—A financial trans-
2 action provider or identified in a complaint
3 pursuant to subparagraph (A) may inter-
4 vene upon timely request filed with the Bu-
5 reau in—

6 “(I) an investigation initiated
7 under subsection (c) pursuant to the
8 complaint; or

9 “(II) pursuant to subsection
10 (f)(3), an action to modify, suspend,
11 or vacate an order issued pursuant to
12 the complaint.

13 “(ii) RULE OF CONSTRUCTION.—Fail-
14 ure to intervene under clause (i) in an in-
15 vestigation under subsection (c) does not
16 preclude a financial transaction provider
17 notified of the investigation from subse-
18 quently seeking an order to modify, sus-
19 pend, or vacate an order issued by the Bu-
20 reau under subsection (f).

21 “(e) DETERMINATIONS.—

22 “(1) IN GENERAL.—Unless waived in writing by
23 the covered person, the Bureau shall determine, with
24 respect to each investigation initiated under sub-
25 section (c) and not otherwise terminated subject to

1 the provisions of this section, whether the covered
2 person under investigation is in violation of sub-
3 section (b).

4 “(2) EFFECTIVE DATE.—A determination made
5 under paragraph (1) shall take effect on the date on
6 which the Bureau publishes the determination in the
7 Federal Register.

8 “(3) ELECTRONIC SUBMISSION OF INFORMA-
9 TION AND PROCEEDINGS.—The Bureau may, in
10 making any determination under this section—

11 “(A) allow the submission of information
12 electronically; and

13 “(B) hold hearings electronically or obtain
14 testimony or other information electronically or
15 by such means as the Bureau determines allows
16 participation in proceedings under this section
17 at as low a cost as possible to participants in
18 the proceedings.

19 “(f) CEASE AND DESIST ORDERS.—

20 “(1) IN GENERAL.—If the Bureau determines
21 under subsection (e) that a covered person is in vio-
22 lation of subsection (b), in addition to any actions
23 which the Bureau may otherwise take, the Bureau
24 may—

1 “(A) issue an order to cease and desist
2 from the violation of subsection (b) to the cov-
3 ered person (and if the identity of the subject
4 covered offshore person is not known, to the
5 relevant Internet site and to the owner and the
6 operator of the Internet site or relevant elec-
7 tronic representation); and

8 “(B) cause the order to be served on the
9 covered person.

10 “(2) TEMPORARY AND PRELIMINARY CEASE
11 AND DESIST ORDERS.—

12 “(A) PETITION BY COMPLAINANT.—A
13 complainant may file with the Bureau a peti-
14 tion, in accordance with this paragraph, for the
15 issuance of a temporary or preliminary order.

16 “(B) OPPORTUNITY TO BE HEARD.—

17 “(i) IN GENERAL.—Before issuing a
18 temporary or preliminary cease and desist
19 order under this paragraph, the Bureau
20 shall provide to any person (including any
21 applicable Internet site or electronic rep-
22 resentation and the owner and the oper-
23 ator of such Internet site or electronic rep-
24 resentation) alleged to be in violation of
25 subsection (b) an opportunity to be heard

1 and to submit relevant information to the
2 Bureau.

3 “(ii) ELECTRONIC SUBMISSION OF IN-
4 FORMATION AND PROCEEDINGS.—The Bu-
5 reau may provide an opportunity to be
6 heard and to submit information under
7 clause (i) electronically or in such other
8 manner as the Bureau determines appro-
9 priate.

10 “(C) ISSUANCE OF ORDER.—If, upon re-
11 ceiving a petition under subparagraph (A) and
12 after providing an opportunity to be heard
13 under subparagraph (B), the Bureau deter-
14 mines that the covered person is in violation of
15 subsection (b), in addition to any actions which
16 the Director may otherwise take, the Bureau
17 may issue a temporary or preliminary cease and
18 desist order against, and cause the order to be
19 served on the relevant person pursuant to para-
20 graph (1).

21 “(D) STANDARD FOR RELIEF.—If the Bu-
22 reau issues a temporary or preliminary cease
23 and desist order under this paragraph, the
24 order shall be issued in a manner consistent
25 with the provisions of rule 65 of the Federal

1 Rules of Civil Procedure, or any successor
2 thereto, relating to preliminary injunctions and
3 temporary restraining orders.

4 “(E) PROCEDURES FOR TEMPORARY
5 CEASE AND DESIST ORDER.—

6 “(i) EXPEDITED CONSIDERATION.—

7 Upon a showing of extraordinary cir-
8 cumstances by the complainant filing a pe-
9 tition for a temporary cease and desist
10 order under subparagraph (A), the Bureau
11 may make a determination with respect to
12 the petition on an expedited basis.

13 “(ii) EXPIRATION OF ORDER.—

14 “(I) IN GENERAL.—Except as
15 provided in subclause (II), a tem-
16 porary cease and desist order issued
17 under this paragraph shall expire at a
18 time determined by the Bureau that is
19 not later than 14 days after the
20 issuance of the order.

21 “(II) EXTENSION OF ORDER.—

22 The Bureau may extend a temporary
23 cease and desist order issued under
24 this paragraph for additional periods
25 of not more than 14 days for good

1 cause or with the consent of the entity
2 against which the order is issued.

3 “(F) PROCEDURES FOR PRELIMINARY
4 CEASE AND DESIST ORDER.—

5 “(i) IN GENERAL.—Except as pro-
6 vided in clause (ii), the Bureau shall make
7 a determination with respect to a petition
8 for a preliminary cease and desist order
9 not later than 30 days after the Bureau
10 publishes notice of the initiation of an in-
11 vestigation under subsection (c) in the
12 Federal Register.

13 “(ii) EXTENSIONS OF TIME FOR DE-
14 TERMINATION.—The Bureau may extend
15 the date by which the Bureau is required
16 to make a determination under clause (i)
17 with respect to a petition for a preliminary
18 cease and desist order for an additional 30
19 days, if the Bureau—

20 “(I) determines that the petition
21 presents a more complicated case; and

22 “(II) publishes in the Federal
23 Register an explanation of why the
24 Bureau determined that the case is
25 more complicated under subclause (I).

1 “(3) MODIFICATION OR REVOCATION OF OR-
2 DERS.—

3 “(A) IN GENERAL.—At any time after the
4 issuance of an order under this subsection, a
5 motion to modify, suspend, or vacate the order
6 may be filed by—

7 “(i) any covered person, bound by the
8 order;

9 “(ii) the owner or operator of any
10 Internet site or electronic representation
11 subject to the order;

12 “(iii) any domain name registrar or
13 registry that has registered or assigned the
14 domain name of the Internet site subject
15 to the order; or

16 “(iv) a financial transaction provider
17 on which a copy of an order has been
18 served pursuant to paragraph (1) of sub-
19 section (g) requiring the provider or service
20 to take action described in paragraph (2)
21 of that subsection.

22 “(B) RELIEF.—The Bureau shall modify,
23 suspend, or vacate an order, as appropriate, if
24 the Bureau determines that—

1 “(i) the subject to the order is no
2 longer, or never was in violation of sub-
3 section (b); or

4 “(ii) the interests of justice require
5 that the order be modified, suspended, or
6 vacated.

7 “(C) CONSIDERATION.—In making a de-
8 termination under subparagraph (B), the Bu-
9 reau may consider whether any domain name of
10 an Internet site (or the relevant electronic rep-
11 resentation) subject to the order has expired or
12 has been re-registered by a different entity.

13 “(4) AMENDMENT OF ORDERS.—A complainant
14 may petition the Bureau to amend an order issued
15 under this subsection if any relevant Internet site or
16 electronic representation determined under sub-
17 section (e) to be in violation of subparagraph (B) is
18 accessible or has been reconstituted at a different
19 domain name.

20 “(5) OPPORTUNITY TO BE HEARD FOR CERTAIN
21 ENTITIES.—Before the Bureau issues an order
22 under this subsection or modifies, suspends, vacates,
23 or amends such an order under paragraph (3) or
24 (4), a financial transaction provider that intervened
25 pursuant to subsection (d)(3) in an investigation or

1 action relating to the order shall have an oppor-
2 tunity to be heard before the Bureau with respect to
3 whether the Bureau should issue the order and the
4 scope of relief available under the order or whether
5 the Bureau should modify, suspend, vacate, or
6 amend the order, as the case may be.

7 “(6) EXPIRATION OF ORDERS WITH RESPECT
8 TO INTERNET SITE.—An order issued under this
9 subsection against an Internet site (or relevant elec-
10 tronic representation) shall cease to have any force
11 or effect upon expiration of the registration of the
12 domain name of the Internet site (or relevant elec-
13 tronic representation).

14 “(g) REQUIRED ACTIONS BASED ON BUREAU OR-
15 DERS.—

16 “(1) IN GENERAL.—If the Bureau reasonably
17 believes that a financial transaction provider identi-
18 fied in a complaint pursuant to subsection (d)(3), or
19 any amendment to the complaint, supplies services
20 to the covered person that is subject to the order
21 issued under subsection (f) with respect to the com-
22 plaint—

23 “(A) the Bureau may give permission to
24 the complainant to serve a copy of the order on
25 the financial transaction provider;

1 “(B) if the Bureau gives permission to the
2 complainant under subparagraph (A), the com-
3 plainant shall file proof of service with the Bu-
4 reau; and

5 “(C) upon receiving a copy of the order
6 pursuant to subparagraph (A), the financial
7 transaction provider shall implement the meas-
8 ures described in paragraph (2).

9 “(2) MEASURES TO BE IMPLEMENTED BY FI-
10 NANCIAL TRANSACTION PROVIDERS.—

11 “(A) IN GENERAL.—Subject to subpara-
12 graph (B), a financial transaction provider
13 shall, as expeditiously as is reasonable, take
14 reasonable and technically feasible measures, as
15 expeditiously as reasonable, designed to prevent
16 or prohibit the completion of payment trans-
17 actions by the provider that involve customers
18 located in the United States and the covered
19 person (including the relevant Internet site or
20 electronic representation) subject to the order
21 issued under subsection (f).

22 “(B) LIMITATIONS ON MEASURES.—A fi-
23 nancial transaction provider may not be re-
24 quired pursuant to subparagraph (A)—

1 “(i) to implement measures that are
2 not commercially reasonable;

3 “(ii) to modify services or facilities of
4 the provider to comply with the order
5 issued under subsection (f); or

6 “(iii) to prevent or prohibit the com-
7 pletion of a payment transaction if the pro-
8 vider could not reasonably determine in ad-
9 vance whether the entity was using the
10 Internet site subject to the order.

11 “(3) COMMUNICATION WITH USERS.—A finan-
12 cial transaction provider required to implement
13 measures described in paragraph (2) shall determine
14 how to communicate with the users or customers of
15 the provider or service, as the case may be, with re-
16 spect to those measures.

17 “(4) RULES OF CONSTRUCTION.—

18 “(A) LIMITATION ON OBLIGATIONS.—A fi-
19 nancial transaction provider required to imple-
20 ment measures described in paragraph (2) shall
21 not be required to take measures or actions in
22 addition to the measures described in para-
23 graph (2) pursuant to this section or an order
24 issued under this section.

1 “(B) MANNER OF COMPLIANCE.—A finan-
2 cial transaction provider required to implement
3 measures described in paragraph (2) shall be in
4 compliance with this subsection if the provider
5 implements the measures described in that
6 paragraph with respect to accounts of the pro-
7 vider, as of the date on which a copy of an
8 order is served under paragraph (1) or, if appli-
9 cable, the date on which the order is modified
10 or amended under paragraph (3) or (4) of sub-
11 section (f).

12 “(5) ACTIONS PURSUANT TO BUREAU ORDER.—

13 “(A) IMMUNITY FROM CIVIL ACTIONS.—No
14 cause of action shall lie in any court against a
15 financial transaction provider on which a copy
16 of an order is served under paragraph (1), or
17 against any director, officer, employee, or agent
18 thereof, other than in an action pursuant to
19 subsection (h), for—

20 “(i) any act reasonably designed to
21 comply with this subsection or reasonably
22 arising from the order; or

23 “(ii) any act, failure, or inability to
24 meet the obligations under this subsection
25 of the provider or service if the provider or

1 service, as the case may be, makes a good
2 faith effort to comply with such obliga-
3 tions.

4 “(B) IMMUNITY FROM LIABILITY.—A fi-
5 nancial transaction provider on which a copy of
6 an order is served under paragraph (1), and
7 any director, officer, employee, or agent thereof,
8 shall not be liable to any person for any acts
9 reasonably designed to comply with this sub-
10 section or reasonably arising from the order,
11 other than in an action pursuant to subsection
12 (h).

13 “(C) IMMUNITY FROM ACTIONS OF THIRD
14 PARTIES.—An action taken by a third party to
15 circumvent any measures implemented pursuant
16 to an order served on a financial transaction
17 provider under paragraph (1) may not be used
18 by any person in any claim or cause of action
19 against the provider or service, as the case may
20 be, other than in an action pursuant to sub-
21 section (h).

22 “(h) ENFORCEMENT OF ORDERS.—

23 “(1) IN GENERAL.—In order to compel compli-
24 ance with this section, the Bureau and any State At-
25 torney General (or other appropriate State or tribal

1 entity) having enforcement authority over prohibited
2 activity may bring an action for injunctive relief
3 against any person subject to an order issued under
4 subsection (f) or on which such an order is served
5 under subsection (g) that fails to comply with the
6 order.

7 “(2) RULE OF CONSTRUCTION.—The authority
8 granted to the Bureau, State, and tribal authorities
9 under paragraph (1) shall be the sole legal remedy
10 for enforcing the obligations under subsection (g) of
11 a financial transaction provider on which an order is
12 served under paragraph (1) of that subsection.

13 “(3) AFFIRMATIVE DEFENSES.—A defendant in
14 an action commenced under paragraph (1) may es-
15 tablish an affirmative defense by showing that the
16 defendant does not have the technical means to com-
17 ply with this section without incurring an unreason-
18 able economic burden or that the order is incon-
19 sistent with this section. That showing shall serve as
20 a defense only to the extent of the inability of the
21 defendant to comply or to the extent of the incon-
22 sistency.

23 “(i) SANCTIONS FOR ABUSE OF PROCESS AND DIS-
24 COVERY.—The Bureau may, by rule, prescribe sanctions
25 for abuse of process in a manner consistent with the provi-

1 sions of rule 11 and rule 37 of the Federal Rules of Civil
2 Procedure.

3 “(j) IMMUNITY FOR ENFORCEMENT OF ORDERS.—
4 No cause of action shall lie in any court, no person may
5 rely on any claim or cause of action, and no liability for
6 damages to any person shall be granted, against a finan-
7 cial transaction provider for taking any action pursuant
8 to subsection (g)(2).

9 “(k) SAVINGS CLAUSE.—Nothing in this section, in-
10 cluding subsection (c), may be construed to limit the au-
11 thority or jurisdiction of the Bureau, any other Federal
12 agency, or any State or tribe to review, regulate, inves-
13 tigate, enforce against, or otherwise restrict activities cov-
14 ered by this section.”.

15 **SEC. 6. STUDIES.**

16 Not later than 180 days after enactment of this sec-
17 tion, the Government Accountability Office (in this section
18 referred to as the “GAO”) shall conduct a study regarding
19 the availability of capital on reservations of Indian tribes
20 (as such term is defined in section 4 of the Indian Self-
21 Determination and Education Assistance Act (25 U.S.C.
22 450b)) and the impact that small-dollar consumer credit
23 extended through Internet and non-Internet means to
24 members of Indian tribes has had on economic opportunity
25 and wealth for members of Indian tribes. In conducting

1 the study, the GAO shall consult, as appropriate, with the
2 Bureau of Consumer Financial Protection, the Board of
3 Governors of the Federal Reserve System, the Bureau of
4 Indian Affairs, federally recognized Indian tribes, and
5 community development financial institutions operating in
6 Indian lands. The report shall be presented to the Com-
7 mittee on Banking, Housing, and Urban Affairs and the
8 Committee on Indian Affairs of the Senate and the Com-
9 mittee on Financial Services and the Committee on Nat-
10 ural Resources of the House of Representatives.

11 **SEC. 7. RULEMAKING.**

12 Not later than 1 year after the date of enactment
13 of this Act, the Bureau shall adopt any final rules nec-
14 essary to implement the provisions of this Act and the
15 amendments made by this Act.

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