

capitalized, and critically undercapitalized enterprises, respectively.

Subsec. (c)(1). Pub. L. 110-289, § 1151(2)(A), (3)(C), substituted “practice” for “conduct” in two places and inserted “, unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order” before period at end.

Subsec. (c)(2). Pub. L. 110-289, § 1151(2)(B), (3)(A), (C), inserted “or entity-affiliated party” before “consents” and substituted “director, or entity-affiliated party” for “or director”, “the regulated entity” for “the enterprise” in two places, and “practice” for “conduct” wherever appearing.

Subsec. (d). Pub. L. 110-289, § 1151(3)(B), (C), (4)(A), in introductory provisions, substituted “a regulated entity” for “an enterprise”, “director, or entity-affiliated party” for “or director”, and “practice” for “conduct”, and inserted “to require a regulated entity or entity-affiliated party” after “includes the authority”.

Subsec. (d)(1). Pub. L. 110-289, § 1151(4)(B)(i), (ii), in introductory provisions, struck out “to require an executive officer or a director to” before “make restitution” and substituted “loss, if” for “loss to the enterprise to the extent that such person”.

Subsec. (d)(1)(A). Pub. L. 110-289, § 1151(3)(C), (4)(B)(iii), inserted “such entity or party or finance facility” before “was unjustly” and substituted “practice” for “conduct”.

Subsec. (d)(1)(B). Pub. L. 110-289, § 1151(4)(B)(iv), added subpar. (B) and struck out former subpar. (B) which read as follows: “engaged in conduct or a violation that would subject such person to a civil penalty pursuant to section 4636(b)(3) of this title;”.

Subsec. (d)(2). Pub. L. 110-289, § 1151(3)(B), substituted “a regulated entity” for “an enterprise”.

Subsec. (d)(3). Pub. L. 110-289, § 1151(3)(A), substituted “the regulated entity” for “the enterprise”.

Subsec. (d)(4). Pub. L. 110-289, § 1151(3)(A), (4)(C), substituted “the regulated entity” for “the enterprise” and inserted “loan or” before “asset”.

Subsec. (d)(5) to (7). Pub. L. 110-289, § 1151(3)(A), substituted “the regulated entity” for “the enterprise”.

Subsec. (e). Pub. L. 110-289, § 1151(3)(A), (5), substituted “the regulated entity” for “the enterprise” in two places and inserted “or entity-affiliated party” before “or any executive” and before period at end.

Subsec. (f). Pub. L. 110-289, § 1151(6), substituted “regulated entity, finance facility,” for “enterprise” and “director, or entity-affiliated party” for “or director”.

§ 4632. Temporary cease-and-desist orders

(a) Grounds for issuance

(1) In general

If the Director determines that the actions specified in the notice of charges served upon a regulated entity or any entity-affiliated party pursuant to section 4631(a) of this title, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of that entity, or is likely to weaken the condition of that entity prior to the completion of the proceedings conducted pursuant to sections 4631 and 4633 of this title, the Director may—

(A) issue a temporary order requiring that regulated entity or entity-affiliated party to cease and desist from any such violation or practice; and

(B) require that regulated entity or entity-affiliated party to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.

(2) Additional requirements

An order issued under paragraph (1) may include any requirement authorized under subsection 4631(d) of this title.

(b) Effective date

An order issued pursuant to subsection (a) shall become effective upon service upon the regulated entity, executive officer, director, or entity-affiliated party and, unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until the Director dismisses the charges specified in the notice or until superseded by a cease-and-desist order issued pursuant to section 4631 of this title.

(c) Incomplete or inaccurate records

(1) Temporary order

If a notice of charges served under section 4631(a) or (b) of this title specifies on the basis of particular facts and circumstances that the books and records of the regulated entity served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of the regulated entity or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that regulated entity, the Director may issue a temporary order requiring—

(A) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(B) affirmative action to restore the books or records to a complete and accurate state.

(2) Effective period

Any temporary order issued under paragraph (1)—

(A) shall become effective upon service; and

(B) unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable until the earlier of—

(i) the completion of the proceeding initiated under section 4631 of this title in connection with the notice of charges; or

(ii) the date the Director determines, by examination or otherwise, that the books and records of the regulated entity are accurate and reflect the financial condition of the regulated entity.

(d) Judicial review

A regulated entity, executive officer, director, or entity-affiliated party that has been served with a temporary order pursuant to this section may apply to the United States District Court for the District of Columbia within 10 days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the enterprise, executive officer, director, or entity-affiliated party under section 4631(a) or (b) of this

title. Such court shall have jurisdiction to issue such injunction.

(e) Enforcement by Attorney General

In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Director may bring an action in the United States District Court for the District of Columbia for an injunction to enforce such order. If the court finds any such violation, threatened violation, or failure to obey, the court shall issue such injunction.

(Pub. L. 102-550, title XIII, § 1372, Oct. 28, 1992, 106 Stat. 3988; Pub. L. 110-289, div. A, title I, § 1152, July 30, 2008, 122 Stat. 2769.)

Editorial Notes

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289, § 1152(1), added subsec. (a) and struck out former subsec. (a) which related to grounds for issuance and scope of temporary cease-and-desist orders.

Subsec. (b). Pub. L. 110-289, § 1152(2), substituted “director, or entity-affiliated party” for “or director” and “regulated entity” for “enterprise”.

Subsec. (c). Pub. L. 110-289, § 1152(3), substituted “regulated entity” for “enterprise” wherever appearing.

Subsec. (d). Pub. L. 110-289, § 1152(4), substituted “A regulated entity” for “An enterprise” and “director, or entity-affiliated party” for “or director” in two places.

Subsec. (e). Pub. L. 110-289, § 1152(5)(B), which directed the striking of “or may, under the direction and control of the Attorney General, bring such action”, was executed by striking “or may, under the direction and control of the Attorney General, bring such an action” after “such order” to reflect the probable intent of Congress.

Pub. L. 110-289, § 1152(5)(A), struck out “request the Attorney General of the United States to” after “Director may”.

§ 4633. Hearings

(a) Requirements

(1) Venue and record

Any hearing under section 4631, 4636(c), or 4636a of this title shall be held on the record and in the District of Columbia.

(2) Timing

Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4631 or 4636a of this title or determination to impose a penalty under section 4636 of this title, unless an earlier or a later date is set by the hearing officer at the request of the party served.

(3) Procedure

Any such hearing shall be conducted in accordance with chapter 5 of title 5.

(4) Failure to appear

If the party served fails to appear at the hearing through a duly authorized representative, such party shall be deemed to have consented to the issuance of the cease-and-desist or removal or prohibition order or the imposition of the penalty for which the hearing is held.

(b) Issuance of order

(1) In general

After any such hearing, and within 90 days after the parties have been notified that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this subchapter.

(2) Modification

Judicial review of any such order shall be exclusively as provided in section 4634 of this title. Unless such a petition for review is timely filed as provided in section 4634 of this title, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(Pub. L. 102-550, title XIII, § 1373, Oct. 28, 1992, 106 Stat. 3989; Pub. L. 110-289, div. A, title I, § 1153(b)(1)(B), July 30, 2008, 122 Stat. 2774.)

Editorial Notes

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-289, § 1153(b)(1)(B)(i), substituted “section 4631, 4636(c), or 4636a of this title” for “section 4631 or 4636(c) of this title”.

Subsec. (a)(2). Pub. L. 110-289, § 1153(b)(1)(B)(ii), inserted “or 4636a” after “section 4631”.

Subsec. (a)(4). Pub. L. 110-289, § 1153(b)(1)(B)(iii), which directed amendment of par. (4) by inserting “or removal or prohibition” after “cease and desist”, was executed by making the insertion after “cease-and-desist” to reflect the probable intent of Congress.

§ 4634. Judicial review

(a) Commencement

Any party to a proceeding under section 4631¹ 4513b, 4636, or 4636a of this title may obtain review of any final order issued under this chapter by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(b) Filing of record

Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of section 4633(b)(2) of this title) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

¹ So in original. Probably should be followed by a comma.