

(d) Review

Review of such proceedings shall be governed by chapter 7 of title 5.

(e) Order to pay penalty

Such court shall have the authority in any such review to order payment of any penalty imposed by the Director under this subchapter.

(f) No automatic stay

The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

(Pub. L. 102-550, title XIII, §1374, Oct. 28, 1992, 106 Stat. 3990; Pub. L. 110-289, div. A, title I, §1153(b)(1)(C), July 30, 2008, 122 Stat. 2775.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this title”, meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289 substituted “4513b, 4636, or 4636a of this title” for “or 4636 of this title” and “this chapter” for “such section”.

§ 4635. Enforcement and jurisdiction**(a) Enforcement**

The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued under this subchapter or subchapter II, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.

(b) Limitation on jurisdiction

Except as otherwise provided in this subchapter and sections 4619¹ and 4623 of this title, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 4631, 4632, 4513b, 4636, or 4636a of this title, or subchapter II, or to review, modify, suspend, terminate, or set aside any such notice or order.

(Pub. L. 102-550, title XIII, §1375, Oct. 28, 1992, 106 Stat. 3990; Pub. L. 110-289, div. A, title I, §1154, July 30, 2008, 122 Stat. 2775.)

Editorial Notes

REFERENCES IN TEXT

Section 4619 of this title, referred to in subsec. (b), was repealed by Pub. L. 110-289, div. A, title I, §1145(b)(4), July 30, 2008, 122 Stat. 2767.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289, §1154(1), added subsec. (a) and struck out former subsec. (a). Prior to

¹ See References in Text note below.

amendment, text read as follows: “The Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under this subchapter or subchapter II of this chapter or may, under the direction and control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance herewith.”

Subsec. (b). Pub. L. 110-289, §1154(2), substituted “4513b, 4636, or 4636a of this title” for “or 4636 of this title”.

§ 4636. Civil money penalties**(a) In general**

The Director may impose a civil money penalty in accordance with this section on any regulated entity or any entity-affiliated party. The Director shall not impose a civil penalty in accordance with this section on any regulated entity or any entity-affiliated party for any violation that is addressed under section 4585(a) of this title.

(b) Amount of penalty**(1) First tier**

A regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than \$10,000 for each day during which a violation continues, if such regulated entity or party—

(A) violates any provision of this chapter, the authorizing statutes, or any order, condition, rule, or regulation under this chapter or any authorizing statute;

(B) violates any final or temporary order or notice issued pursuant to this chapter;

(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

(D) violates any written agreement between the regulated entity and the Director.

(2) Second tier

Notwithstanding paragraph (1), a regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than \$50,000 for each day during which a violation, practice, or breach continues, if—

(A) the regulated entity or entity-affiliated party, respectively—

(i) commits any violation described in any subparagraph of paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of the regulated entity; or

(iii) breaches any fiduciary duty; and

(B) the violation, practice, or breach—

(i) is part of a pattern of misconduct;

(ii) causes or is likely to cause more than a minimal loss to the regulated entity; or

(iii) results in pecuniary gain or other benefit to such party.

(3) Third tier

Notwithstanding paragraphs (1) and (2), any regulated entity or entity-affiliated party shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for

each day during which such violation, practice, or breach continues, if such regulated entity or entity-affiliated party—

(A) knowingly—

(i) commits any violation described in any subparagraph of paragraph (1);

(ii) engages in any unsafe or unsound practice in conducting the affairs of the regulated entity; or

(iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

(4) Maximum amounts of penalties for any violation described in paragraph (3)

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in paragraph (3) is—

(A) in the case of any entity-affiliated party, an amount not to exceed \$2,000,000; and

(B) in the case of any regulated entity, \$2,000,000.

(c) Procedures

(1) Establishment

The Director shall establish standards and procedures governing the imposition of civil money penalties under subsections (a) and (b). Such standards and procedures—

(A) shall provide for the Director to notify the regulated entity or entity-affiliated party in writing of the Director's determination to impose the penalty, which shall be made on the record;

(B) shall provide for the imposition of a penalty only after the regulated entity, executive officer, or director or entity-affiliated party has been given an opportunity for a hearing on the record pursuant to section 4633 of this title; and

(C) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Factors in determining amount of penalty

In determining the amount of a penalty under this section, the Director shall give consideration to such factors as the gravity of the violation, any history of prior violations, the effect of the penalty on the safety and soundness of the regulated entity, any injury to the public, any benefits received, and deterrence of future violations, and any other factors the Director may determine by regulation to be appropriate.

(3) Review of imposition of penalty

The order of the Director imposing a penalty under this section shall not be subject to review, except as provided in section 4634 of this title.

(d) Action to collect penalty

If a regulated entity, executive officer, director, or entity-affiliated party fails to comply with an order of the Director imposing a civil money penalty under this section, after the

order is no longer subject to review as provided under subsection (c)(1), the Director may bring an action in the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, to obtain a monetary judgment against the regulated entity, executive officer, director, or entity-affiliated party and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order of the Director imposing the penalty shall not be subject to review.

(e) Settlement by Director

The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) Availability of other remedies

Any civil money penalty under this section shall be in addition to any other available civil remedy and may be imposed whether or not the Director imposes other administrative sanctions.

(g) Prohibition of reimbursement or indemnification

A regulated entity may not reimburse or indemnify any individual for any penalty imposed under subsection (b)(3).

(h) Deposit of penalties

The Director shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

(i) Applicability

A penalty under this section may be imposed only for conduct or violations under subsection (a) occurring after October 28, 1992.

(Pub. L. 102-550, title XIII, §1376, Oct. 28, 1992, 106 Stat. 3991; Pub. L. 110-289, div. A, title I, §1155, July 30, 2008, 122 Stat. 2775.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1)(A), (B), was in the original "this title", meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289, §1155(1), added subsec. (a) and struck out former subsec. (a) which related to violations or conduct for which the Director could impose a civil money penalty in accordance with this section.

Subsec. (b). Pub. L. 110-289, §1155(2), added subsec. (b) and struck out former subsec. (b) which related to the amount of penalty the Director could impose for violations or conduct described in former subsection (a).

Subsec. (c)(1)(A). Pub. L. 110-289, §1155(3)(A), (B), substituted "regulated entity" for "enterprise" and inserted "or entity-affiliated party" before "in writing".

Subsec. (c)(1)(B). Pub. L. 110-289, §1155(3)(A), (C), substituted "regulated entity" for "enterprise" and in-

serted “or entity-affiliated party” before “has been given”.

Subsec. (c)(2). Pub. L. 110-289, §1155(3)(A), substituted “regulated entity” for “enterprise”.

Subsec. (d). Pub. L. 110-289, §1155(4)(G), struck out “and section 4634 of this title” after “subsection (c)(1)”.

Pub. L. 110-289, §1155(4)(F), which directed the striking out of “, or may, under the direction and control of the Attorney General of the United States, bring such an action”, was executed by striking out “, or may, under the direction and control of the Attorney General, bring such an action” after “may be available”, to reflect the probable intent of Congress.

Pub. L. 110-289, §1155(4)(A)–(E), substituted “director, or entity-affiliated party” for “or director” in two places, “a regulated entity” for “an enterprise”, and “the regulated entity” for “the enterprise”, inserted “, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located,” after “District of Columbia”, and struck out “request the Attorney General of the United States to” after “Director may”.

Subsec. (g). Pub. L. 110-289, §1155(5), substituted “A regulated entity” for “An enterprise”.

§ 4636a. Removal and prohibition authority

(a) Authority to issue order

(1) In general

The Director may serve upon a party described in paragraph (2), or any officer, director, or management of the Office of Finance a written notice of the intention of the Director to suspend or remove such party from office, or prohibit any further participation by such party, in any manner, in the conduct of the affairs of the regulated entity.

(2) Applicability

A party described in this paragraph is an entity-affiliated party or any officer, director, or management of the Office of Finance, if the Director determines that—

(A) that party, officer, or director has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease and desist order which has become final;

(III) any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

(IV) any written agreement between such regulated entity and the Director;

(ii) engaged or participated in any unsafe or unsound practice in connection with any regulated entity or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party’s fiduciary duty;

(B) by reason of the violation, practice, or breach described in subparagraph (A)—

(i) such regulated entity or business institution has suffered or will probably suffer financial loss or other damage; or

(ii) such party has received financial gain or other benefit; and

(C) the violation, practice, or breach described in subparagraph (A)—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity or business institution.

(b) Suspension order

(1) Suspension or prohibition authority

If the Director serves written notice under subsection (a) upon a party subject to that subsection (a), the Director may, by order, suspend or remove such party from office, or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity, if the Director—

(A) determines that such action is necessary for the protection of the regulated entity; and

(B) serves such party with written notice of the order.

(2) Effective period

Any order issued under this subsection—

(A) shall become effective upon service; and

(B) unless a court issues a stay of such order under subsection (g), shall remain in effect and enforceable until—

(i) the date on which the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

(ii) the effective date of an order issued under subsection (b).

(3) Copy of order

If the Director issues an order under subsection (b) to any party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

(c) Notice, hearing, and order

(1) Notice

A notice under subsection (a) of the intention of the Director to issue an order under this section shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action.

(2) Timing of hearing

A hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after the date of service of notice under subsection (a), unless an earlier or a later date is set by the Director at the request of—

(A) the party receiving such notice, and good cause is shown; or

(B) the Attorney General of the United States.

(3) Consent

Unless the party that is the subject of a notice delivered under subsection (a) appears at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order under this section.

(4) Issuance of order of suspension

The Director may issue an order under this section, as the Director may deem appropriate, if—