

insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

(Pub. L. 111-203, title X, §1042, July 21, 2010, 124 Stat. 2012.)

Editorial Notes

REFERENCES IN TEXT

This title, referred to in subsecs. (a), (b)(1)(A), and (d)(2), (3), is title X of Pub. L. 111-203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1048 of Pub. L. 111-203, set out as a note under section 5551 of this title.

§ 5553. Preservation of existing contracts

This title,¹ and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before July 21, 2010, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

(Pub. L. 111-203, title X, §1043, July 21, 2010, 124 Stat. 2014.)

Editorial Notes

REFERENCES IN TEXT

This title, referred to in text, is title X of Pub. L. 111-203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1048 of Pub. L. 111-203, set out as a note under section 5551 of this title.

PART E—ENFORCEMENT POWERS

§ 5561. Definitions

For purposes of this part, the following definitions shall apply:

(1) Bureau investigation

The term “Bureau investigation” means any inquiry conducted by a Bureau investigator

for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation, as defined in this section.

(2) Bureau investigator

The term “Bureau investigator” means any attorney or investigator employed by the Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

(3) Custodian

The term “custodian” means the custodian or any deputy custodian designated by the Bureau.

(4) Documentary material

The term “documentary material” includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium.

(5) Violation

The term “violation” means any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.

(Pub. L. 111-203, title X, §1051, July 21, 2010, 124 Stat. 2018.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 111-203, title X, §1058, July 21, 2010, 124 Stat. 2035, provided that: “This subtitle [subtitle E (§§1051-1058), enacting this part] shall become effective on the designated transfer date.”

[The term “designated transfer date” is defined in section 5481(9) of this title as the date established under section 5582 of this title.]

§ 5562. Investigations and administrative discovery

(a) Joint investigations

(1) In general

The Bureau or, where appropriate, a Bureau investigator, may engage in joint investigations and requests for information, as authorized under this title.¹

(2) Fair lending

The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations with, and requests for information from, the Secretary of Housing and Urban Development, the Attorney General of the United States, or both.

(b) Subpoenas

(1) In general

The Bureau or a Bureau investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.¹

(2) Failure to obey

In the case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph

¹ See References in Text note below.

¹ See References in Text note below.

and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Bureau or a Bureau investigator and after notice to such person, may issue an order requiring such person to appear and give testimony or to appear and produce documents or other material.

(3) Contempt

Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(c) Demands

(1) In general

Whenever the Bureau has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Bureau may, before the institution of any proceedings under the Federal consumer financial law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) Requirements

Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) Production of documents

Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) Production of things

Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) Demand for written reports or answers

Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) Oral testimony

Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Bureau investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) Service

Any civil investigative demand issued, and any enforcement petition filed, under this section may be served—

(A) by any Bureau investigator at any place within the territorial jurisdiction of any court of the United States; and

(B) upon any person who is not found within the territorial jurisdiction of any court of the United States—

(i) in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation; and

(ii) to the extent that the courts of the United States have authority to assert jurisdiction over such person, consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) Method of service

Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(A) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at the principal office or place of business of such person.

(9) Proof of service**(A) In general**

A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(B) Return receipts

In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) Production of documentary material

The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) Submission of tangible things

The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(12) Separate answers

Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) Testimony**(A) In general****(i) Oath and recordation**

The examination of any person pursuant to a demand for oral testimony served under this subsection shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place at which the exam-

ination is held. The officer before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under the direction of and in the presence of the officer, record the testimony of the witness.

(ii) Transcription

The testimony shall be taken stenographically and transcribed.

(iii) Transmission to custodian

After the testimony is fully transcribed, the officer investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) Parties present

Any Bureau investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons, except the person giving the testimony, the attorney for that person, the officer before whom the testimony is to be taken, an investigator or representative of an agency with which the Bureau is engaged in a joint investigation, and any stenographer taking such testimony.

(C) Location

The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Bureau investigator before whom the oral testimony of such person is to be taken and such person.

(D) Attorney representation**(i) In general**

Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(ii) Authority

The attorney may advise a person described in clause (i), in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) Objections

A person described in clause (i), or the attorney for that person, may object on the record to any question, in whole or in part, and such person shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and such person or attorney shall not otherwise interrupt the oral examination.

(iv) Refusal to answer

If a person described in clause (i) refuses to answer any question—

(I) the Bureau may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question; and

(II) if the refusal is on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18.

(E) Transcripts

For purposes of this subsection—

(i) after the testimony of any witness is fully transcribed, the Bureau investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript;

(ii) the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness;

(iii) any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Bureau investigator, with a statement of the reasons given by the witness for making such changes;

(iv) the transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign; and

(v) if the transcript is not signed by the witness during the 30-day period following the date on which the witness is first afforded a reasonable opportunity to examine the transcript, the Bureau investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) Certification by investigator

The Bureau investigator shall certify on the transcript that the witness was duly sworn by him or her and that the transcript is a true record of the testimony given by the witness, and the Bureau investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) Copy of transcript

The Bureau investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Bureau may for good cause limit such witness to inspection of the official transcript of his testimony.

(H) Witness fees

Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) Confidential treatment of demand material**(1) In general**

Documentary materials and tangible things received as a result of a civil investigative de-

mand shall be subject to requirements and procedures regarding confidentiality, in accordance with rules established by the Bureau.

(2) Disclosure to Congress

No rule established by the Bureau regarding the confidentiality of materials submitted to, or otherwise obtained by, the Bureau shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the Bureau is permitted to adopt rules allowing prior notice to any party that owns or otherwise provided the material to the Bureau and had designated such material as confidential.

(e) Petition for enforcement**(1) In general**

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Bureau, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

(2) Service of process

All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) Petition for order modifying or setting aside demand**(1) In general**

Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Bureau investigator named in the demand, such person may file with the Bureau a petition for an order by the Bureau modifying or setting aside the demand.

(2) Compliance during pendency

The time permitted for compliance with the demand in whole or in part, as determined proper and ordered by the Bureau, shall not run during the pendency of a petition under paragraph (1) at the Bureau, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) Specific grounds

A petition under paragraph (1) shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) Custodial control

At any time during which any custodian is in custody or control of any documentary mate-

rial, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section or rule promulgated by the Bureau.

(h) Jurisdiction of court

(1) In general

Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section.

(2) Appeal

Any final order entered as described in paragraph (1) shall be subject to appeal pursuant to section 1291 of title 28.

(Pub. L. 111-203, title X, §1052, July 21, 2010, 124 Stat. 2019.)

Editorial Notes

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(1) and (b)(1), is title X of Pub. L. 111-203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1058 of Pub. L. 111-203, set out as a note under section 5561 of this title.

§ 5563. Hearings and adjudication proceedings

(a) In general

The Bureau is authorized to conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5 in order to ensure or enforce compliance with—

(1) the provisions of this title,¹ including any rules prescribed by the Bureau under this title;¹ and

(2) any other Federal law that the Bureau is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the Bureau from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) Special rules for cease-and-desist proceedings

(1) Orders authorized

(A) In general

If, in the opinion of the Bureau, any covered person or service provider is engaging

or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the Bureau, the Bureau may, subject to sections 5514, 5515, and 5516 of this title, issue and serve upon the covered person or service provider a notice of charges in respect thereof.

(B) Content of notice

The notice under subparagraph (A) shall contain a statement of the facts constituting the alleged violation or violations, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the covered person or service provider, such hearing to be held not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Bureau, at the request of any party so served.

(C) Consent

Unless the party or parties served under subparagraph (B) appear at the hearing personally or by a duly authorized representative, such person shall be deemed to have consented to the issuance of the cease-and-desist order.

(D) Procedure

In the event of consent under subparagraph (C), or if, upon the record, made at any such hearing, the Bureau finds that any violation specified in the notice of charges has been established, the Bureau may issue and serve upon the covered person or service provider an order to cease and desist from the violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the covered person or service provider to cease and desist from the subject activity, and to take affirmative action to correct the conditions resulting from any such violation.

(2) Effectiveness of order

A cease-and-desist order shall become effective at the expiration of 30 days after the date of service of an order under paragraph (1) upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as the order is stayed, modified, terminated, or set aside by action of the Bureau or a reviewing court.

(3) Decision and appeal

Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or principal office or place of business of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. After such hearing, and within 90 days after the Bureau has notified the parties that the case has been submitted to the Bureau for final decision, the Bureau shall render its decision (which shall include findings of fact upon

¹ See References in Text note below.