

Consumer Financial Protection Bureau (CFPB) in the Obama Administration's Second Term: The Potential Impact on Securities and Financial Industry Class Actions¹

I. Introduction

- A. Mid-1990s – 2000s, trend of federal banking agencies preempting state actions against federally-chartered financial institutions develops. Lack of state power to stop banking abuses.
- B. Congress responds with Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”).
 - 1. Dodd-Frank has broad reach, covering financial markets and market participants, as well as individual consumer products.
 - 2. Three strategies to promote consumer protection:
 - a. Infrastructure design – creation of Consumer Financial Protection Bureau (“CFPB”) with centralized rule making power and adjudicative authority;
 - b. Enacting substantive rules; and
 - c. Channeling forces of federalism in limiting agency preemption and empowering state attorneys general.

II. Regulatory Infrastructure

- A. Foundation of consumer financial protection pre-Dodd-Frank.
 - 1. Federal UDAP ban:
 - a. FTC empowered to regulate and enforce federal prohibition on “unfair or deceptive acts and practices” (“UDAP”), but no power to enforce against federal depositories;
 - b. Federal Reserve Board (“Fed”) charged with rulemaking power over federal depositories; and

¹ These materials are based largely on a draft of a research paper by Mark Totten entitled “Credit Reform and the States: The Vital Role of Attorneys General after Dodd-Frank,” which can be downloaded without charge from the Social Science Research Network Electronic Paper Collection at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2207726.

- c. Federal banking agencies charged with enforcement of UDAP against federal depositories.
 2. State UDAP bans:
 - a. By 1981, all states have adopted state-level consumer protection acts, many modeled after little FTC Acts; and
 - b. Most states' laws include private right of action and recoupment of attorney's fees, allowing direct access to courts for consumers, rather than relying on action by FTC.
 3. Federal consumer laws target specific issues:
 - a. Truth in Lending Act, Fair Credit Reporting Act, Fair Debt Collection Practice Act, etc.; and
 - b. Dispersed enforcement powers among federal agencies, e.g., Fed has rulemaking power under TILA, but enforcement power held by nine different federal agencies, including FTC.
- B. Structural weakness leads to recession.
 1. Inaction by federal regulators, e.g., by 1994, Fed had authority to issue rules to stop UDAP in the mortgage lending market, but despite recognized risky practices in subprime and Alt-A mortgage markets, failed to act until July 2008, after the mortgage market crash.
 2. In face of federal inaction, states enacted consumer laws aimed at abusive lending practices, only to meet aggressive preemption challenges by federal agencies.
 3. Inaction/Preemption stem from:
 - a. Conflicted purposes, e.g. banking agencies' mission is to protect "safety and soundness" of the banks they oversee, not necessarily to protect consumers; and
 - b. Misaligned incentives of agencies, e.g. banking agencies receive funding from the institutions they regulate leading to "captured agency" syndrome.

C. Reconstruction under Title X of Dodd-Frank – CFPB highlights

1. CFPB created under Title X of Dodd-Frank (12 U.S.C. §§ 5481-5603, select statutory sections provided):
 - a. Independent, autonomous agency within Federal Reserve;

- b. Set funding stream based on Fed's annual earnings – not dependent on regulated institutions;
 - c. Director appointed by President with Senate consent, serves five-year term subject only to removal for cause; and
 - d. Sole mission is protecting consumers: “The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.” 12 U.S.C. § 5511(a).
2. Sweeping protection powers transferred to CFPB:
- a. Authority to regulate “the offering of and provision of consumer financial products or services” under “Federal consumer financial laws,” with few exceptions. 12 U.S.C. § 5481(14), §5491;
 - b. “Federal consumer financial law” includes the provisions of Title X, the “enumerated consumer laws,” which include eighteen existing consumer financial laws brought under CFPB’s purview. Among these are the Fair Credit Reporting Act, Home Ownership and Equity Protection Act, TILA and RESPA. See 12 U.S.C. § 5481(12) for complete list of enumerated consumer laws; and
 - c. Exceptions – persons/services excluded from agency authority include credit extended by merchants for sole purpose of allowing purchase of goods, real estate brokerage activities, sale of manufactured homes, accountants, attorneys, etc. See 12. U.S.C. § 5481(15)(C)(i), 12 U.S.C. § 5517.
3. New protections created:
- a. Broad prohibition on “unfair, deceptive, or abusive act[s] or practice[s] (“UDAAP”). (See Section IV, *infra*); and
 - b. UDAAP prohibition extends to “any person that engages in offering or providing a consumer financial product or service” (“Covered Person”) as well as any “any person that provides a material service” to a Covered Person (“Service Provider”). 12 U.S.C. § 5481(15), (26).

4. Rulemaking, supervisory and enforcement powers:
 - a. Non-depositories:
 - i. Exclusive rulemaking, supervisory and enforcement power among federal regulators with regard to non-depositories, such as mortgage lenders and servicers, private student lenders, payday lenders and any “large participant” in the market for consumer financial products. 12 U.S.C. § 5514.
 - ii. Under rulemaking power, CFPB has defined “larger participant” to include major credit reporting agencies and debt collectors.
 - b. Depositories:
 - i. Exclusive rulemaking and supervisory authority over depositories with greater than \$10 billion in assets. 12 U.S.C. § 5515.
 - ii. CFPB is primary enforcement authority among federal regulators over depositories with greater than \$10 billion in assets, with prudential regulators (the depository’s existing federal banking regulator) retaining enforcement authority over smaller depositories. 12 U.S.C. § 5516.
5. Enforcement tools:
 - a. Include civil investigative demands (“CIDs”), administrative proceedings and civil actions; and
 - b. Seeking remedies including rescission or reformation of contracts, refunds or return of real property, restitution, disgorgement, damages, public notification, limits on future activities and civil penalties.
6. Additional substantive laws enacted, shifting from disclosure based model to examining substance of deals and assessing whether consumers understand terms disclosed (use of disclosures under rational choice theory v. realistic view of consumer decision making under behavioral economics theory).

III. Enforcement – CFPB and State Attorneys General.

- A. Dodd-Frank continues recent trend of giving State Attorneys General (SAGs) limited powers to enforce federal consumer finance laws, including:

1. RESPA anti-kickback provision (1983);
2. Enhanced TILA disclosures and other limitations under Home Ownership Equity Protection Act (1994);
3. Creation, maintenance and use of consumer credit reports under amendment to Fair Credit Reporting Act (1996);
4. FTC's prescribed rules to prevent UDAP in mortgage lending (2009); and
5. While SAGs have been especially active in regulating so-called "foreclosure rescue" services under the 2009 FTC rules with regard to mortgage lending, SAGs have rarely exercised their dual enforcement powers in the other three areas.

B. Scope of SAG substantive enforcement powers under Dodd-Frank:

1. Under Title X section which created dual enforcement powers, SAGs may "bring a civil action . . . to enforce provisions of this title or regulations issued under this title." 12 U.S.C. § 5552(a)(1).

a. Title X's prohibited acts statute states:

It shall be unlawful for any covered person or service provider (A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or (B) to engage in any unfair, deceptive, or abusive act or practice.

12 U.S.C. § 5536(a)(1).

- i. Subsection B, a wholly new section, is clearly a "provision" of Title X. SAGs have power to bring civil actions to enforce UDAAP and related CFPB-enacted regulations. 12 U.S.C. § 5552(a)(1).
- ii. However, in Subsection A, did Congress prohibit acts already unlawful? Question of interpretation whether Subsection A constitutes a "provision of this title." If so, SAGs may also bring actions to enforce "Federal consumer financial law" – including the eighteen consumer financial laws brought in under CFPB's purview -- existing regulations and any future CFPB-enacted regulations related to those laws.

1. National Consumer Law Center and National Association of Attorneys General support broad reading of statute – SAGs have right to enforce all Federal consumer financial law, including eighteen

statutes.

2. Law firms representing regulated entities favor narrow view (e.g. Morrison & Foerster) – SAGs’ enforcement power limited to UDAAP and those other Federal consumer financial laws that expressly grant concurrent enforcement power to states, e.g., Dodd-Frank’s Title XIV, which amends TILA to provide such powers to SAGs. (15 U.S.C. 1640(e)). See Section III.B.2, *supra*.
 - b. Exception to SAG enforcement powers: as to federally-chartered depositories, SAGs may only enforce CFPB-enacted regulations. 12 U.S.C. § 5552(a)(2)(B).
2. Dodd-Frank amends TILA to give SAGs power to enforce new substantive limits on mortgage originators and servicers, addressing several predatory lending practices that helped cause the economic crisis, including:
 - a. Prohibiting “steering,” the practice of compensating a mortgage broker based on the loan’s terms and conditions, rather than the loan amount;
 - b. Requiring creditors to make a good faith determination that the borrower has the ability to re-pay a loan;
 - c. Prohibiting certain prepayment penalties;
 - d. Creating standards assuring independence in appraisals; and
 - e. Requiring prompt crediting of home loan payments, among others. See Regulation Z, 12 C.F.R. 226.
3. Under one unusual circumstance, SAGs could effectively have sole enforcement authority of the new CFPB powers, including the UDAAP provision. Under Title X, the Secretary of the Treasury has limited authority to operate the CFPB while it lacks a director, but no authority to enforce the new CFPB powers. Note that President Obama appointed the current director, Richard Cordray, during the usual recess period under the Recess Appointment Clause. That clause allows appointments without confirmation while the Senate is in recess, but the Senate must approve the appointment before the end of the next legislative session, or the appointment is vacated. Cordray’s appointment has been challenged in several courts, on the argument that the President did not have appointment authority under the clause, since the House did not assent to the recess and the House and Senate held *pro forma* sessions during the regular recess period. If those challenges succeed and Cordray is removed

by the courts, or if the challenges fail but the Senate fails to approve the appointment, the CFPB will be without a director and SAGs will be the sole enforcers of these new powers.

C. UDAAP enforcement:

1. What constitutes “Abuse:”

a. UDAAP bears close connection to FTC Act prohibition on “unfair or deceptive acts or practices” (“UDAP”);

i. Title X defines “unfair” nearly identically to the FTC Act, requiring that:

[T]he act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoided [“avoidable” in the FTC Act] by consumers; and such substantial injury is not outweighed by countervailing benefits to consumers or competition. 12 U.S.C. § 5531(c)(1), 15 U.S.C. § 45(n).

ii. Like FTC Act, Title X does not define “deceptive act or practice.” Instead, the CFPB expressly adopts the FTC’s definition in its Supervision and Examination Manual.

b. No FTC or related definition of “abusive:”

i. Under Title X an act or practice is “abusive” if it:

1. materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

2. takes unreasonable advantage of:

a) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

b) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

c) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

12 U.S.C. § 5531(d).

- ii. Subjective element, looks to understanding of “reasonable” consumer.
2. Power to enforce UDAAP removes limits of state law.
- a. Different levels of consumer protection under state laws:
 - i. Some states consumer protection laws provide for strong FTC-type bans on UDAP (Washington), others prohibit only specific acts, requiring enactment of new laws to prohibit new harms as those harms develop (Colorado).
 - ii. Some exempt entire industries (Washington – utilities).
 - iii. Some require proof of knowledge or intent, a barrier to relief (Nevada).
 - iv. Some provide for weak remedies.
 - v. Even with strong bans on UDAP, SAGs faced preemption challenges from federal regulators, where they sought to enforce state UDAP laws against regulated entities.
 - b. UDAAP provides strong consumer protections, filling gaps in weak UDAP states:
 - i. UDAAP ban is broad, not limited to specific acts.
 - ii. No industry-specific exemptions, except as limited by reach of Dodd-Frank, e.g., exemption of large federal depositories from SAG enforcement of UDAAP.
 - iii. Civil penalties may be greater, up to \$5,000 per violation per day, \$25,000 per day where violation is reckless, and \$1 million per day if knowing. 12 U.S.C. § 5565(c).
 - iv. Additional damages available, such as rescission or reformation of contracts; refund of moneys or return of real property; restitution; and disgorgement or compensation for unjust enrichment. 12 U.S.C. § 5565(a)(2).

- v. SAGs can recover all costs.
- vi. The statute precludes punitive damages.

D. SAG procedural powers and limits.

1. Investigation – no express power under Title X.

- a. Under state UDAP laws, SAGs generally have power to investigate state law violations, which may include pre-complaint discovery through issuance of CID;
- b. Title X grants investigative powers to “the Bureau,” with no provision for investigation by SAGs. So far, CFPB has been silent with regard to SAGs’ investigative powers;
- c. Some states give their SAGs broad statutory authority to make investigative demands to protect the public interest, including the power to demand documents, other materials and testimony pertinent to an investigation, prior to filing a civil or criminal complaint. (California.); and
- d. Most authorities recognize SAGs’ wide authority to issue CIDs under common law:
 - i. A few states’ laws grant express authority to SAGs to investigate violations of federal law. Under Washington law its attorney general has the power to issue a CID and petition for judicial enforcement prior to filing suit, when relevant to an investigation of a possible violation of the state’s UDAP law or “federal statutes dealing with the same or similar matters that the attorney general is authorized to enforce.” See RCW 19.86.110(1).
 - ii. But see *Cuomo v. Clearing House Assn., LLC*, 557 U.S. 519 (2009) (prohibiting state exercise of “visitorial powers” or CID powers before filing a civil action). Under *Cuomo*, SAGs may be prevented from conducting pre-complaint discovery against national banks, to determine whether or not to file a law enforcement action.

2. CFPB intervention and removal powers:

- a. Under procedural rules, SAGs must give notice to CFPB before bringing enforcement action. 12 U.S.C. § 5552;
- b. The CFPB may intervene as a party and remove the action to federal court, and may appeal any order or judgment in the action, to the same extent as a party. 12 U.S.C. § 5552(b); and

- c. The statute preserves SAG authority to bring actions arising “solely under state law.” 12 U.S.C. § 5552(d).
3. Forum selection under Title X:
 - a. Title X allows SAGs to bring a civil action in either federal court within the state, or in a state’s state court with jurisdiction over the defendant. 12 U.S.C. § 5552(a)(1). SAGs may prefer to bring actions in their home court;
 - b. However, CFPB’s intervention and removal powers mean many state actions may be removed to federal court. 12 U.S.C. § 5552(b);
 - c. While removal to federal court could offer broader personal jurisdiction, i.e., nationwide personal jurisdiction under federal statutes as compared to state long arm jurisdiction, which require minimum contact with the particular state, Congress did not give federal courts this under Title X. cf. FRCP 4(k)(1)(A). However, the federal court will have personal jurisdiction over a foreign defendant – one outside the bounds of any state law -- so long as he has minimal contacts with the U.S. as a whole. FRCP 4(k)(2). This may prove helpful in SAG enforcement actions against some foreign actors, such as internet service providers;
 - d. Most courts have rejected the application of the Class Action Fairness Act removal rules regarding class actions to SAG enforcement actions, to the extent that SAG actions are brought *parens patriae*, with the state as the real party in interest. See Alexander Lemann, Note, Sheep in Wolves' Clothing: Removing Parens Patriae Suits under the Class Action Fairness Act, 111 Colum L Rev 121, 122 n 9, 134 (2011); and
 - e. Removal to federal court may give SAGs easier discovery process powers over out-of-state persons under *International Shoe*, including uniform federal court subpoena powers.
4. Implications for multi-district litigation (“MDL”) and class actions:
 - a. Forum restrictions in Title X would preclude SAGs from joining together in one action – each SAG must file in a state or federal court in his own state;
 - b. However, SAGs may file separate actions in their home state’s federal court, and then seek consolidation in one federal court by the Judicial Panel on Multidistrict Litigation, under 28 U.S.C. §1407;

- c. One provision of Title X may have a direct effect on class action litigation. Title X requires that the CFPB conduct a study of the use of mandatory arbitration clauses in consumer financial contracts and, if supported by the study, gives the CFPB authority to prohibit or limit their use. The CFPB has sought public comment on the scope of the study, and many of filed comments cite the negative effects on consumers of class action waivers contained in arbitration agreements. The CFPB has not yet begun the actual study. This will be an important issue to watch, as the CFPB could by regulation limit the scope of *AT&T Mobility v. Concepcion*, 131 S. Ct. 1740 (2011).
5. SAG hiring of outside counsel:
 - a. Title X is silent on whether SAGs can employ outside counsel;
 - b. In other cases, when Congress intended to limit how SAGs can enforce federal law, it has expressly prohibited hiring private counsel. See 15 U.S.C. § 15g(1)(A); and
 - c. A presidential executive order banning contingency-fee outside counsel applies only to “individuals who provide such services to or on behalf of the United States.” Exec. Order No. 13,433, 72 Fed. Reg. 28,441.
6. Remedial powers:
 - a. Title X grants SAGs power to recover damages on behalf of citizens, without establishing a quasi-sovereign interest. 12 U.S.C. § 5552(a)(1); § 5565(a);
 - b. Unlike common law quasi-sovereign doctrine, SAGs may recover for citizens regardless of whether the underlying consumer financial protection law contains a private right of action. *Id.*;
 - c. While changes in drafts of Title X lead some to believe recovery for private citizens had been stricken, types of remedies available, including “restitution,” “disgorgement or compensation for unjust enrichment,” and “payment of damages or other monetary relief” confirm that such recovery is allowed; and
 - d. For additional discussion of damages, See Section III.C.2.b., *infra*.

IV. Implementation of Title X.

- A. Potential for coordinated investigation and enforcement partnerships between SAGs and CFPB – Dodd-Frank Working Group, made up of CFPB and state attorneys general, has issued a Joint Statement outlining broad principals to guide

its partnership.

B. CFPB complaint system.

1. Collects detailed complaint information, including information regarding type of consumer product, identity of covered person or service provider, region of complained-of action, and resolution of complaint.
2. Title X requires CFPB to share this detailed information with the states.

CFPB has discretion to share other reports or confidential supervisory information with the states. The Bureau has made clear that it will not routinely share confidential supervisory information, and has begun entering MOUs in which states pledge to protect the confidentiality of any shared information.

V. Implications for Private Enforcement.

- A. Violation of CFPB rules is unlawful – private plaintiffs enforce rule violations under state consumer protection statutes.
- B. SAGs engage private counsel to enforce consumer laws on behalf of state’s citizens as special deputy AGs?

VI. Conclusion.

- A. With Dodd-Frank, Congress employed three strategies to bolster consumer protection in the financial marketplace:
 1. Institutional design:
 - a. Independent agency;
 - b. Consolidated powers; and
 - c. Sole mission to protect consumers.
 2. New substantive rules:
 - a. “Abusive” acts;
 - b. Rule making power; and
 - c. Federalism based strategies:
 - i. Limited preemption of state laws;
 - ii. Federal law is a floor, not a ceiling; and
 - iii. Empowering states to enforce federal law.

§ 5481. Definitions, 12 USCA § 5481

United States Code Annotated
 Title 12. Banks and Banking
 Chapter 53. Wall Street Reform and
 Consumer Protection
 Subchapter V. Bureau of Consumer
 Financial Protection
 12 U.S.C.A. § 5481
 § 5481. Definitions
 Effective: July 22, 2010
 Currentness

Except as otherwise provided in this subchapter, for purposes of this subchapter, the following definitions shall apply:

(1) Affiliate

The term “affiliate” means any person that controls, is controlled by, or is under common control with another person.

(2) Bureau

The term “Bureau” means the Bureau of Consumer Financial Protection.

(3) Business of insurance

The term “business of insurance” means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(4) Consumer

The term “consumer” means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) Consumer financial product or service

The term “consumer financial product or service” means any financial product or service that is described in one or more categories under--

(A) paragraph (15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(B) clause (i), (iii), (ix), or (x) of paragraph (15)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).

(6) Covered person

The term “covered person” means--

(A) any person that engages in offering or providing a consumer financial product or service; and

(B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

(7) Credit

The term “credit” means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(8) Deposit-taking activity

The term “deposit-taking activity” means--

(A) the acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts;

(B) the acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union; or

(C) the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.

(9) Designated transfer date

The term “designated transfer date” means the date established under section 5582 of this title.

(10) Director

The term “Director” means the Director of the Bureau.

§ 5481. Definitions, 12 USCA § 5481

(11) Electronic conduit services

The term “electronic conduit services”--

(A) means the provision, by a person, of electronic data transmission, routing, intermediate or transient storage, or connections to a telecommunications system or network; and

(B) does not include a person that provides electronic conduit services if, when providing such services, the person--

(i) selects or modifies the content of the electronic data;

(ii) transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such financial data is differentiated from other types of data of the same form that such person transmits, routes, or stores, or with respect to which, provides connections; or

(iii) is a payee, payor, correspondent, or similar party to a payment transaction with a consumer.

(12) Enumerated consumer laws

Except as otherwise specifically provided in section 5519 of this title, subtitle G or subtitle H, the term “enumerated consumer laws” means--

(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act;

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Home Owners' Protection Act of 1998 (12 U.S.C. 4901 et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)-(f));

(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802-6809) except for section 505 as it applies to section 501(b);

(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.);

(Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111-8); and

(R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

(13) Fair lending

The term “fair lending” means fair, equitable, and nondiscriminatory access to credit for consumers.

(14) Federal consumer financial law

The term “Federal consumer financial law” means the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this subchapter, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H. The term does not include the Federal Trade Commission Act.

(15) Financial product or service

§ 5481. Definitions, 12 USCA § 5481

(A) In general

The term “financial product or service” means--

(i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if--

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau;

(iii) providing real estate settlement services, except such services excluded under subparagraph (C), or performing appraisals of real estate or personal property;

(iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

(v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this clause--

(I) a seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(II) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial

control over the terms or conditions;

(vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person--

(I) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating payments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(II) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services (other than services relating to securities provided by a person regulated by the Commission or a person regulated by a State securities Commission, but only to the extent that such person acts in a regulated capacity) to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer), including--

(I) providing credit counseling to any consumer; and

(II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding

§ 5481. Definitions, 12 USCA § 5481

foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that--

(I) a person--

(aa) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person;

(bb) provides the information described in item (aa) to an affiliate of such person; or

(cc) provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service, including a decision for employment, government licensing, or a residential lease or tenancy involving a consumer; and

(II) the information described in subclause (I)(aa) is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer, other than credit described in section 5517(a)(2)(A) of this title;

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this subchapter, if the Bureau finds that such financial product or service is--

(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or

(II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding

company, and has, or likely will have, a material impact on consumers.

(B) Rule of construction

(i) In general

For purposes of subparagraph (A)(xi)(II), and subject to clause (ii) of this subparagraph, the following activities provided to a covered person shall not, for purposes of this subchapter, be considered incidental or complementary to a financial activity permissible for a financial holding company to engage in under any provision of a Federal law or regulation applicable to a financial holding company:

(I) Providing information products or services to a covered person for identity authentication.

(II) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(III) Providing document retrieval or delivery services.

(IV) Providing public records information retrieval.

(V) Providing information products or services for anti-money laundering activities.

(ii) Limitation

Nothing in clause (i) may be construed as modifying or limiting the authority of the Bureau to exercise any--

(I) examination or enforcement powers authority under this subchapter with respect to a covered person or service provider engaging in an activity described in subparagraph (A)(ix); or

(II) powers authorized by this subchapter to prescribe rules, issue orders, or take other actions under any enumerated consumer law or law for which the authorities are transferred under subtitle F or H.

(C) Exclusions

The term "financial product or service" does not include--

§ 5481. Definitions, 12 USCA § 5481

(i) the business of insurance; or

(ii) electronic conduit services.

(16) Foreign exchange

The term “foreign exchange” means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(17) Insured credit union

The term “insured credit union” has the same meaning as in section 1752 of this title.

(18) Payment instrument

The term “payment instrument” means a check, draft, warrant, money order, traveler’s check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(19) Person

The term “person” means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(20) Person regulated by the Commodity Futures Trading Commission

The term “person regulated by the Commodity Futures Trading Commission” means any person that is registered, or required by statute or regulation to be registered, with the Commodity Futures Trading Commission, but only to the extent that the activities of such person are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

(21) Person regulated by the Commission

The term “person regulated by the Commission” means a person who is--

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940, and any company that has elected to be regulated as a business development company under that Act;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any self-regulatory organization that is required to be registered with the Commission;

(H) any nationally recognized statistical rating organization that is required to be registered with the Commission;

(I) any securities information processor that is required to be registered with the Commission;

(J) any municipal securities dealer that is required to be registered with the Commission;

(K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and

(L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

(22) Person regulated by a State insurance regulator

The term “person regulated by a State insurance regulator” means any person that is engaged in the business of insurance and subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(23) Person that performs income tax preparation activities for consumers

The term “person that performs income tax preparation

§ 5481. Definitions, 12 USCA § 5481

activities for consumers” means--

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of Title 31, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(24) Prudential regulator

The term “prudential regulator” means--

(A) in the case of an insured depository institution or depository institution holding company (as defined in section 3 of the Federal Deposit Insurance Act), or subsidiary of such institution or company, the appropriate Federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(25) Related person

The term “related person”--

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 1841 of this title), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of any provision of Federal consumer financial law; and

(C) means--

(i) any director, officer, or employee charged with managerial responsibility for, or controlling shareholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs

of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any--

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(26) Service provider

(A) In general

The term “service provider” means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that--

(i) participates in designing, operating, or maintaining the consumer financial product or service; or

(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

(B) Exceptions

The term “service provider” does not include a person solely by virtue of such person offering or providing to a covered person--

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(C) Rule of construction

A person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.

§ 5481. Definitions, 12 USCA § 5481

(27) State

The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 479a-1(a) of Title 25.

(28) Stored value

(A) In general

The term "stored value" means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(B) Exclusion

Notwithstanding subparagraph (A), the term "stored value" does not include a special purpose card or certificate, which shall be defined for purposes of this paragraph as funds or monetary value represented in any electronic format, whether or not specially encrypted, that is--

- (i) issued by a merchant, retailer, or other seller of nonfinancial goods or services;
- (ii) redeemable only for transactions with the merchant, retailer, or seller of nonfinancial goods or services or with an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services;
- (iii) issued in a specified amount that, except in the case of a card or product used solely for telephone services, may not be increased or reloaded;
- (iv) purchased on a prepaid basis in exchange for payment; and
- (v) honored upon presentation to such merchant, retailer, or seller of nonfinancial goods or services or an affiliate of such person, which affiliate itself

is a merchant, retailer, or seller of nonfinancial goods or services, only for any nonfinancial goods or services.

(29) Transmitting or exchanging funds

The term "transmitting or exchanging funds" means receiving currency, monetary value, or payment instruments from a consumer for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or through other businesses that facilitate third-party transfers within the United States or to or from the United States.

Credits

(Pub.L. 111-203, Title X, § 1002, July 21, 2010, 124 Stat. 1955.)

Footnotes

1

So in original. Probably should be "Homeowners".

2

So in original.

12 U.S.C.A. § 5481, 12 USCA § 5481
Current through P.L. 112-283 approved 1-15-13

End of Document

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§ 5511. Purpose, objectives, and functions, 12 USCA § 5511

United States Code Annotated
 Title 12. Banks and Banking
 Chapter 53. Wall Street Reform and
 Consumer Protection
 Subchapter V. Bureau of Consumer
 Financial Protection
 Part B. General Powers of the Bureau
 12 U.S.C.A. § 5511
 § 5511. Purpose, objectives, and functions
 Effective: July 21, 2010
 Currentness

(a) Purpose

The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

(b) Objectives

The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services--

- (1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;
- (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;
- (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;
- (4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and
- (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

(c) Functions

The primary functions of the Bureau are--

- (1) conducting financial education programs;
- (2) collecting, investigating, and responding to consumer complaints;
- (3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;
- (4) subject to sections 5514 through 5516 of this title, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;
- (5) issuing rules, orders, and guidance implementing Federal consumer financial law; and
- (6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.

Credits

(Pub.L. 111-203, Title X, § 1021, July 21, 2010, 124 Stat. 1979.)

12 U.S.C.A. § 5511, 12 USCA § 5511
 Current through P.L. 112-283 approved 1-15-13

End of Document

§ 5514. Supervision of nondepository covered persons, 12 USCA § 5514

United States Code Annotated
 Title 12. Banks and Banking
 Chapter 53. Wall Street Reform and
 Consumer Protection
 Subchapter V. Bureau of Consumer
 Financial Protection
 Part B. General Powers of the Bureau
 12 U.S.C.A. § 5514
 § 5514. Supervision of nondepository covered
 persons
 Effective: July 21, 2010
 Currentness

(a) Scope of coverage

(1) Applicability

Notwithstanding any other provision of this subchapter, and except as provided in paragraph (3), this section shall apply to any covered person who--

(A) offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans;

(B) is a larger participant of a market for other consumer financial products or services, as defined by rule in accordance with paragraph (2);

(C) the Bureau has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, based on complaints collected through the system under section 5493(b)(3) of this title or information from other sources, that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(D) offers or provides to a consumer any private education loan, as defined in section 1650 of Title 15, notwithstanding section 5517(a)(2)(A) of this title and subject to section 5517(a)(2)(C) of this title; or

(E) offers or provides to a consumer a payday loan.

(2) Rulemaking to define covered persons subject to

this section

The Bureau shall consult with the Federal Trade Commission prior to issuing a rule, in accordance with paragraph (1)(B), to define covered persons subject to this section. The Bureau shall issue its initial rule not later than 1 year after the designated transfer date.

(3) Rules of construction

(A) Certain persons excluded

This section shall not apply to persons described in section 5515(a) or 5516(a) of this title.

(B) Activity levels

For purposes of computing activity levels under paragraph (1) or rules issued thereunder, activities of affiliated companies (other than insured depository institutions or insured credit unions) shall be aggregated.

(b) Supervision

(1) In general

The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of--

(A) assessing compliance with the requirements of Federal consumer financial law;

(B) obtaining information about the activities and compliance systems or procedures of such person; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) Risk-based supervision program

The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a)(1), is based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable--

(A) the asset size of the covered person;

§ 5514. Supervision of nondepository covered persons, 12 USCA § 5514

(B) the volume of transactions involving consumer financial products or services in which the covered person engages;

(C) the risks to consumers created by the provision of such consumer financial products or services;

(D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and

(E) any other factors that the Bureau determines to be relevant to a class of covered persons.

(3) Coordination

To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including establishing their respective schedules for examining persons described in subsection (a)(1) and requirements regarding reports to be submitted by such persons.

(4) Use of existing reports

The Bureau shall, to the fullest extent possible, use--

(A) reports pertaining to persons described in subsection (a)(1) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) Preservation of authority

Nothing in this subchapter may be construed as limiting the authority of the Director to require reports from persons described in subsection (a)(1), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) Reports of tax law noncompliance

The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(7) Registration, recordkeeping and other requirements for certain persons

(A) In general

The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers.

(B) Recordkeeping

The Bureau may require a person described in subsection (a)(1), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

(C) Requirements concerning obligations

The Bureau may prescribe rules regarding a person described in subsection (a)(1), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.

(D) Consultation with State agencies

In developing and implementing requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(c) Enforcement authority

(1) The Bureau to have enforcement authority

Except as provided in paragraph (3) and section 5581 of this title, with respect to any person described in subsection (a)(1), to the extent that Federal law authorizes the Bureau and another Federal agency to enforce Federal consumer financial law, the Bureau shall have exclusive authority to enforce that Federal consumer financial law.

(2) Referral

Any Federal agency authorized to enforce a Federal consumer financial law described in paragraph (1) may recommend in writing to the Bureau that the Bureau initiate an enforcement proceeding, as the Bureau is authorized by that Federal law or by this subchapter.

§ 5514. Supervision of nondepository covered persons, 12 USCA § 5514

(3) Coordination with the Federal Trade Commission

(A) In general

The Bureau and the Federal Trade Commission shall negotiate an agreement for coordinating with respect to enforcement actions by each agency regarding the offering or provision of consumer financial products or services by any covered person that is described in subsection (a)(1), or service providers thereto. The agreement shall include procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce any Federal law regarding the offering or provision of consumer financial products or services.

(B) Civil actions

Whenever a civil action has been filed by, or on behalf of, the Bureau or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law--

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint; and

(ii) the Bureau or the Federal Trade Commission may intervene as a party in any such action brought by the other agency, and, upon intervening--

(I) be heard on all matters arising in such enforcement action; and

(II) file petitions for appeal in such actions.

(C) Agreement terms

The terms of any agreement negotiated under subparagraph (A) may modify or supersede the provisions of subparagraph (B).

(D) Deadline

The agencies shall reach the agreement required under subparagraph (A) not later than 6 months after the designated transfer date.

(d) Exclusive rulemaking and examination authority

Notwithstanding any other provision of Federal law and except as provided in section 5581 of this title, to the extent that Federal law authorizes the Bureau and another Federal agency to issue regulations or guidance, conduct examinations, or require reports from a person described in subsection (a)(1) under such law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions with regard to a person described in subsection (a)(1), subject to those provisions of law.

(e) Service providers

A service provider to a person described in subsection (a)(1) shall be subject to the authority of the Bureau under this section, to the same extent as if such service provider were engaged in a service relationship with a bank, and the Bureau were an appropriate Federal banking agency under section 1867(c) of this title. In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator, as applicable.

(f) Preservation of Farm Credit Administration authority

No provision of this subchapter may be construed as modifying, limiting, or otherwise affecting the authority of the Farm Credit Administration.

Credits

(Pub.L. 111-203, Title X, § 1024, July 21, 2010, 124 Stat. 1987.)

12 U.S.C.A. § 5514, 12 USCA § 5514

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End of Document

§ 5515. Supervision of very large banks, savings associations,...., 12 USCA § 5515

United States Code Annotated
 Title 12. Banks and Banking
 Chapter 53. Wall Street Reform and
 Consumer Protection
 Subchapter V. Bureau of Consumer
 Financial Protection
 Part B. General Powers of the Bureau
 12 U.S.C.A. § 5515
 § 5515. Supervision of very large banks, savings
 associations, and credit unions
 Effective: July 21, 2010
 Currentness

(a) Scope of coverage

This section shall apply to any covered person that is--

- (1) an insured depository institution with total assets of more than \$10,000,000,000 and any affiliate thereof; or
- (2) an insured credit union with total assets of more than \$10,000,000,000 and any affiliate thereof.

(b) Supervision

(1) In general

The Bureau shall have exclusive authority to require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of--

- (A) assessing compliance with the requirements of Federal consumer financial laws;
- (B) obtaining information about the activities subject to such laws and the associated compliance systems or procedures of such persons; and
- (C) detecting and assessing associated risks to consumers and to markets for consumer financial products and services.

(2) Coordination

To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including consultation regarding their respective schedules for examining such persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(3) Use of existing reports

The Bureau shall, to the fullest extent possible, use--

- (A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and
- (B) information that has been reported publicly.

(4) Preservation of authority

Nothing in this subchapter may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(5) Reports of tax law noncompliance

The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) Primary enforcement authority

(1) The Bureau to have primary enforcement authority

To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) Referral

Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) Backup enforcement authority of other Federal agency

If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau

§ 5515. Supervision of very large banks, savings associations, ..., 12 USCA § 5515

receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, including performing follow up supervisory and support functions incidental thereto, to assure compliance with such proceeding.

(d) Service providers

A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 1867(c) of this title. In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

(e) Simultaneous and coordinated supervisory action

(1) Examinations

A prudential regulator and the Bureau shall, with respect to each insured depository institution, insured credit union, or other covered person described in subsection (a) that is supervised by the prudential regulator and the Bureau, respectively--

(A) coordinate the scheduling of examinations of the insured depository institution, insured credit union, or other covered person described in subsection (a);

(B) conduct simultaneous examinations of each insured depository institution or insured credit union, unless such institution requests examinations to be conducted separately;

(C) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

(D) prior to issuing a final report of examination or taking supervisory action, take into consideration concerns, if any, raised in the comments made by the other agency.

(2) Coordination with State bank supervisors

The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate examinations, consistent with paragraph (1).

(3) Avoidance of conflict in supervision

(A) Request

If the proposed supervisory determinations of the Bureau and a prudential regulator (in this section referred to collectively as the "agencies") are conflicting, an insured depository institution, insured credit union, or other covered person described in subsection (a) may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) Joint statement

The agencies shall provide a joint statement under subparagraph (A), not later than 30 days after the date of receipt of the request of the insured depository institution, credit union, or covered person described in subsection (a).

(4) Appeals to governing panel

(A) In general

If the agencies do not resolve the conflict or issue a joint statement required by subparagraph (B), or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, an insured depository institution, insured credit union, or other covered person described in subsection (a) may institute an appeal to a governing panel, as provided in this subsection, not later than 30 days after the expiration of the period during which a joint statement is required to be filed under paragraph (3)(B).

(B) Composition of governing panel

The governing panel for an appeal under this paragraph shall be composed of--

(i) a representative from the Bureau and a representative of the prudential regulator, both of whom--

(I) have not participated in the material supervisory determinations under appeal; and

(II) do not directly or indirectly report to the person who participated materially in the supervisory determinations under appeal; and

 § 5515. Supervision of very large banks, savings associations,...., 12 USCA § 5515

(ii) one individual representative, to be determined on a rotating basis, from among the Board of Governors, the Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency, other than any agency involved in the subject dispute.

(C) Conduct of appeal

In an appeal under this paragraph--

(i) the insured depository institution, insured credit union, or other covered person described in subsection (a)--

(I) shall include in its appeal all the facts and legal arguments pertaining to the matter; and

(II) may, through counsel, employees, or representatives, appear before the governing panel in person or by telephone; and

(ii) the governing panel--

(I) may request the insured depository institution, insured credit union, or other covered person described in subsection (a), the Bureau, or the prudential regulator to produce additional information relevant to the appeal; and

(II) by a majority vote of its members, shall provide a final determination, in writing, not later than 30 days after the date of filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, insured credit union, or other covered person described in subsection (a) may jointly agree.

(D) Public availability of determinations

A governing panel shall publish all information contained in a determination by the governing panel, with appropriate redactions of information that would be subject to an exemption from disclosure under section 552 of Title 5.

(E) Prohibition against retaliation

The Bureau and the prudential regulators shall prescribe rules to provide safeguards from retaliation against the insured depository institution, insured

credit union, or other covered person described in subsection (a) instituting an appeal under this paragraph, as well as their officers and employees.

(F) Limitation

The process provided in this paragraph shall not apply to a determination by a prudential regulator to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 1831o of this title or section 1790a of this title, as applicable.

(G) Effect on other authority

Nothing in this section shall modify or limit the authority of the Bureau to interpret, or take enforcement action under, any Federal consumer financial law, or the authority of a prudential regulator to interpret or take enforcement action under any other provision of Federal law for safety and soundness purposes.

Credits

(Pub.L. 111-203, Title X, § 1025, July 21, 2010, 124 Stat. 1990.)

12 U.S.C.A. § 5515, 12 USCA § 5515

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End of Document

§ 5516. Other banks, savings associations, and credit unions, 12 USCA § 5516

United States Code Annotated
 Title 12. Banks and Banking
 Chapter 53. Wall Street Reform and
 Consumer Protection
 Subchapter V. Bureau of Consumer
 Financial Protection
 Part B. General Powers of the Bureau
 12 U.S.C.A. § 5516
 § 5516. Other banks, savings associations, and
 credit unions
 Effective: July 21, 2010
 Currentness

(a) Scope of coverage

This section shall apply to any covered person that is--

- (1) an insured depository institution with total assets of \$10,000,000,000 or less; or
- (2) an insured credit union with total assets of \$10,000,000,000 or less.

(b) Reports

The Director may require reports from a person described in subsection (a), as necessary to support the role of the Bureau in implementing Federal consumer financial law, to support its examination activities under subsection (c), and to assess and detect risks to consumers and consumer financial markets.

(1) Use of existing reports

The Bureau shall, to the fullest extent possible, use--

- (A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and
- (B) information that has been reported publicly.

(2) Preservation of authority

Nothing in this subsection may be construed as limiting the authority of the Director from requiring from a person described in subsection (a), as permitted under paragraph (1), information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(3) Reports of tax law noncompliance

The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) Examinations

(1) In general

The Bureau may, at its discretion, include examiners on a sampling basis of the examinations performed by the prudential regulator to assess compliance with the requirements of Federal consumer financial law of persons described in subsection (a).

(2) Agency coordination

The prudential regulator shall--

- (A) provide all reports, records, and documentation related to the examination process for any institution included in the sample referred to in paragraph (1) to the Bureau on a timely and continual basis;
- (B) involve such Bureau examiner in the entire examination process for such person; and
- (C) consider input of the Bureau concerning the scope of an examination, conduct of the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings.

(d) Enforcement

(1) In general

Except for requiring reports under subsection (b), the prudential regulator is authorized to enforce the requirements of Federal consumer financial laws and, with respect to a covered person described in subsection (a), shall have exclusive authority (relative to the Bureau) to enforce such laws .

(2) Coordination with prudential regulator

(A) Referral

When the Bureau has reason to believe that a person described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau shall notify the prudential regulator in

§ 5516. Other banks, savings associations, and credit unions, 12 USCA § 5516

writing and recommend appropriate action to respond.

(B) Response

Upon receiving a recommendation under subparagraph (A), the prudential regulator shall provide a written response to the Bureau not later than 60 days thereafter.

(e) Service providers

A service provider to a substantial number of persons described in subsection (a) shall be subject to the authority of the Bureau under section 5515 of this title to the same extent as if the Bureau were an appropriate Federal bank agency under section 1867(c) of this title. When conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

Credits

(Pub.L. 111-203, Title X, § 1026, July 21, 2010, 124 Stat. 1993.)

12 U.S.C.A. § 5516, 12 USCA § 5516
Current through P.L. 112-283 approved 1-15-13

End of Document

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§ 5517. Limitations on authorities of the Bureau; preservation of..., 12 USCA § 5517

United States Code Annotated
 Title 12. Banks and Banking
 Chapter 53. Wall Street Reform and
 Consumer Protection
 Subchapter V. Bureau of Consumer
 Financial Protection
 Part B. General Powers of the Bureau
 12 U.S.C.A. § 5517

§ 5517. Limitations on authorities of the Bureau;
 preservation of authorities
 Effective: July 21, 2010

Currentness

(a) Exclusion for merchants, retailers, and other sellers of nonfinancial goods or services

(1) Sale or brokerage of nonfinancial good or service

The Bureau may not exercise any rulemaking, supervisory, enforcement or other authority under this subchapter with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service and is engaged in the sale or brokerage of such nonfinancial good or service, except to the extent that such person is engaged in offering or providing any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(2) Offering or provision of certain consumer financial products or services in connection with the sale or brokerage of nonfinancial good or service

(A) In general

Except as provided in subparagraph (B), and subject to subparagraph (C), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this subchapter with respect to a merchant, retailer, or seller of nonfinancial goods or services, but only to the extent that such person--

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller;

(ii) directly, or through an agreement with another person, collects debt arising from credit extended

as described in clause (i); or

(iii) sells or conveys debt described in clause (i) that is delinquent or otherwise in default.

(B) Applicability

Subparagraph (A) does not apply to any credit transaction or collection of debt, other than as described in subparagraph (C)(i), arising from a transaction described in subparagraph (A)--

(i) in which the merchant, retailer, or seller of nonfinancial goods or services assigns, sells or otherwise conveys to another person such debt owed by the consumer (except for a sale of debt that is delinquent or otherwise in default, as described in subparagraph (A)(ii));

(ii) in which the credit extended significantly exceeds the market value of the nonfinancial good or service provided, or the Bureau otherwise finds that the sale of the nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this subchapter; or

(iii) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is subject to a finance charge.

(C) Limitations

(i) In general

Notwithstanding subparagraph (B), subparagraph (A) shall apply with respect to a merchant, retailer, or seller of nonfinancial goods or services that is not engaged significantly in offering or providing consumer financial products or services.

(ii) Exception

Subparagraph (A) and clause (i) of this subparagraph do not apply to any merchant, retailer, or seller of nonfinancial goods or services--

(I) if such merchant, retailer, or seller of nonfinancial goods or services is engaged in a transaction described in subparagraph (B)(i) or (B)(ii); or

(II) to the extent that such merchant, retailer, or

§ 5517. Limitations on authorities of the Bureau; preservation of..., 12 USCA § 5517

seller is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(D) Rules

(i) Authority of other agencies

No provision of this subchapter shall be construed as modifying, limiting, or superseding the supervisory or enforcement authority of the Federal Trade Commission or any other agency (other than the Bureau) with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase nonfinancial goods or services directly from the merchant or retailer.

(ii) Small businesses

A merchant, retailer, or seller of nonfinancial goods or services that would otherwise be subject to the authority of the Bureau solely by virtue of the application of subparagraph (B)(iii) shall be deemed not to be engaged significantly in offering or providing consumer financial products or services under subparagraph (C)(i), if such person--

(I) only extends credit for the sale of nonfinancial goods or services, as described in subparagraph (A)(i);

(II) retains such credit on its own accounts (except to sell or convey such debt that is delinquent or otherwise in default); and

(III) meets the relevant industry size threshold to be a small business concern, based on annual receipts, pursuant to section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder.

(iii) Initial year

A merchant, retailer, or seller of nonfinancial goods or services shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) during the first year of operations of that business concern if, during that year, the receipts

of that business concern reasonably are expected to meet that size threshold.

(iv) Other standards for small business

With respect to a merchant, retailer, or seller of nonfinancial goods or services that is a classified on a basis other than annual receipts for the purposes of section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder, such merchant, retailer, or seller shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) if such merchant, retailer, or seller meets the relevant industry size threshold to be a small business concern based on the number of employees, or other such applicable measure, established under that Act.

(E) Exception from State enforcement

To the extent that the Bureau may not exercise authority under this subsection with respect to a merchant, retailer, or seller of nonfinancial goods or services, no action by a State attorney general or State regulator with respect to a claim made under this subchapter may be brought under subsection 5552(a) of this title, with respect to an activity described in any of clauses (i) through (iii) of subparagraph (A) by such merchant, retailer, or seller of nonfinancial goods or services.

(b) Exclusion for real estate brokerage activities

(1) Real estate brokerage activities excluded

Without limiting subsection (a), and except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this subchapter with respect to a person that is licensed or registered as a real estate broker or real estate agent, in accordance with State law, to the extent that such person--

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the provision of financing with

 § 5517. Limitations on authorities of the Bureau; preservation of..., 12 USCA § 5517

respect to any such transaction); or

(D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).

(2) Description of activities

The Bureau may exercise rulemaking, supervisory, enforcement, or other authority under this subchapter with respect to a person described in paragraph (1) when such person is--

(A) engaged in an activity of offering or providing any consumer financial product or service, except that the Bureau may exercise such authority only with respect to that activity; or

(B) otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(c) Exclusion for manufactured home retailers and modular home retailers

(1) In general

The Director may not exercise any rulemaking, supervisory, enforcement, or other authority over a person to the extent that--

(A) such person is not described in paragraph (2); and

(B) such person--

(i) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(ii) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(iii) offers to engage in any activity described in clause (i) or (ii).

(2) Description of activities

A person is described in this paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or

any law for which authorities are transferred under subtitle F or H.

(3) Definitions

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

(A) Manufactured home

The term "manufactured home" has the same meaning as in section 5402 of Title 42.

(B) Modular home

The term "modular home" means a house built in a factory in 2 or more modules that meet the State or local building codes where the house will be located, and where such modules are transported to the building site, installed on foundations, and completed.

(d) Exclusion for accountants and tax preparers

(1) In general

Except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority over--

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph, when such person is performing or offering to perform--

(i) customary and usual accounting activities, including the provision of accounting, tax, advisory, or other services that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or

(ii) other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided--

(I) by the person separate and apart from such customary and usual accounting activities; or

(II) to consumers who are not receiving such customary and usual accounting activities; or

§ 5517. Limitations on authorities of the Bureau; preservation of..., 12 USCA § 5517

(B) any person, other than a person described in subparagraph (A) that performs income tax preparation activities for consumers.

(2) Description of activities

(A) In general

Paragraph (1) shall not apply to any person described in paragraph (1)(A) or (1)(B) to the extent that such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is the offering or provision of any consumer financial product or service, except to the extent that a person described in paragraph (1)(A) is engaged in an activity which is a customary and usual accounting activity described in paragraph (1)(A), or incidental thereto.

(B) Not a customary and usual accounting activity

For purposes of this subsection, extending or brokering credit is not a customary and usual accounting activity, or incidental thereto.

(C) Rule of construction

For purposes of subparagraphs (A) and (B), a person described in paragraph (1)(A) shall not be deemed to be extending credit, if such person is only extending credit directly to a consumer, exclusively for the purpose of enabling such consumer to purchase services described in clause (i) or (ii) of paragraph (1)(A) directly from such person, and such credit is--

(i) not subject to a finance charge; and

(ii) not payable by written agreement in more than 4 installments.

(D) Other limitations

Paragraph (1) does not apply to any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(e) Exclusion for practice of law

(1) In general

Except as provided under paragraph (2), the Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law.

(2) Rule of construction

Paragraph (1) shall not be construed so as to limit the exercise by the Bureau of any supervisory, enforcement, or other authority regarding the offering or provision of a consumer financial product or service described in any subparagraph of section 5481(5) of this title--

(A) that is not offered or provided as part of, or incidental to, the practice of law, occurring exclusively within the scope of the attorney-client relationship; or

(B) that is otherwise offered or provided by the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such financial product or service.

(3) Existing authority

Paragraph (1) shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(f) Exclusion for persons regulated by a State insurance regulator

(1) In general

No provision of this subchapter shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by a State insurance regulator. Except as provided in paragraph (2), the Bureau shall have no authority to exercise any power to enforce this subchapter with respect to a person regulated by a State insurance regulator.

(2) Description of activities

Paragraph (1) does not apply to any person described in such paragraph to the extent that such person is engaged in the offering or provision of any consumer

§ 5517. Limitations on authorities of the Bureau; preservation of..., 12 USCA § 5517

financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(3) State insurance authority under Gramm-Leach-Bliley

Notwithstanding paragraph (2), the Bureau shall not exercise any authorities that are granted a State insurance authority under section 6805(a)(6) of Title 15 with respect to a person regulated by a State insurance authority.

(g) Exclusion for employee benefit and compensation plans and certain other arrangements under the Internal Revenue Code of 1986

(1) Preservation of authority of other agencies

No provision of this subchapter shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to any specified plan or arrangement.

(2) Activities not constituting the offering or provision of any consumer financial product or service

For purposes of this subchapter, a person shall not be treated as having engaged in the offering or provision of any consumer financial product or service solely because such person is--

(A) a specified plan or arrangement;

(B) engaged in the activity of establishing or maintaining, for the benefit of employees of such person (or for members of an employee organization), any specified plan or arrangement; or

(C) engaged in the activity of establishing or maintaining a qualified tuition program under section 529(b)(1) of the Internal Revenue Code of 1986 offered by a State or other prepaid tuition program offered by a State.

(3) Limitation on Bureau authority

(A) In general

Except as provided under subparagraphs (B) and (C), the Bureau may not exercise any rulemaking or

enforcement authority with respect to products or services that relate to any specified plan or arrangement.

(B) Bureau action pursuant to agency request

(i) Agency request

The Secretary and the Secretary of Labor may jointly issue a written request to the Bureau regarding implementation of appropriate consumer protection standards under this subchapter with respect to the provision of services relating to any specified plan or arrangement.

(ii) Agency response

In response to a request by the Bureau, the Secretary and the Secretary of Labor shall jointly issue a written response, not later than 90 days after receipt of such request, to grant or deny the request of the Bureau regarding implementation of appropriate consumer protection standards under this subchapter with respect to the provision of services relating to any specified plan or arrangement.

(iii) Scope of Bureau action

Subject to a request or response pursuant to clause (i) or clause (ii) by the agencies made under this subparagraph, the Bureau may exercise rulemaking authority, and may act to enforce a rule prescribed pursuant to such request or response, in accordance with the provisions of this subchapter. A request or response made by the Secretary and the Secretary of Labor under this subparagraph shall describe the basis for, and scope of, appropriate consumer protection standards to be implemented under this subchapter with respect to the provision of services relating to any specified plan or arrangement.

(C) Description of products or services

To the extent that a person engaged in providing products or services relating to any specified plan or arrangement is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, subparagraph (A) shall not apply with respect to that law.

(4) Specified plan or arrangement

§ 5517. Limitations on authorities of the Bureau; preservation of..., 12 USCA § 5517

For purposes of this subsection, the term “specified plan or arrangement” means any plan, account, or arrangement described in section 220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, or 530 of the Internal Revenue Code of 1986, or any employee benefit or compensation plan or arrangement, including a plan that is subject to title I of the Employee Retirement Income Security Act of 1974, or any prepaid tuition program offered by a State.

(h) Persons regulated by a State securities commission**(1) In general**

No provision of this subchapter shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (f), the Bureau shall have no authority to exercise any power to enforce this subchapter with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) Description of activities

Paragraph (1) shall not apply to any person to the extent such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(i) Exclusion for persons regulated by the Commission**(1) In general**

No provision of this subchapter may be construed as altering, amending, or affecting the authority of the Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commission. The Bureau shall have no authority to exercise any power to enforce this subchapter with respect to a person regulated by the Commission.

(2) Consultation and coordination

Notwithstanding paragraph (1), the Commission shall consult and coordinate, where feasible, with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this subchapter or under any other law. In carrying out this paragraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for providing advance notice to the Bureau when the Commission is initiating a rulemaking.

(j) Exclusion for persons regulated by the Commodity Futures Trading Commission**(1) In general**

No provision of this subchapter shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Bureau shall have no authority to exercise any power to enforce this subchapter with respect to a person regulated by the Commodity Futures Trading Commission.

(2) Consultation and coordination

Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this subchapter or under any other law.

(k) Exclusion for persons regulated by the Farm Credit Administration**(1) In general**

No provision of this subchapter shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Farm Credit Administration. The Bureau shall have no authority to exercise any power to enforce this subchapter with

§ 5517. Limitations on authorities of the Bureau; preservation of..., 12 USCA § 5517

respect to a person regulated by the Farm Credit Administration.

(2) Definition

For purposes of this subsection, the term “person regulated by the Farm Credit Administration” means any Farm Credit System institution that is chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(l) Exclusion for activities relating to charitable contributions

(1) In general

The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order penalties, over any activities related to the solicitation or making of voluntary contributions to a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer, or representative of such organizations to the extent the organization, agent, volunteer, or representative thereof is soliciting or providing advice, information, education, or instruction to any donor or potential donor relating to a contribution to the organization.

(2) Limitation

The exclusion in paragraph (1) does not apply to other activities not described in paragraph (1) that are the offering or provision of any consumer financial product or service, or are otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(m) Insurance

The Bureau may not define as a financial product or service, by regulation or otherwise, engaging in the business of insurance.

(n) Limited authority of the Bureau

Notwithstanding subsections (a) through (h) and (l), a person subject to or described in one or more of such provisions--

(1) may be a service provider; and

(2) may be subject to requests from, or requirements imposed by, the Bureau regarding information in order

to carry out the responsibilities and functions of the Bureau and in accordance with section 5512, 5562, or 5563 of this title.

(o) No authority to impose usury limit

No provision of this subchapter shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(p) Attorney General

No provision of this subchapter, including section 5514(c)(1) of this title, shall affect the authorities of the Attorney General under otherwise applicable provisions of law.

(q) Secretary of the Treasury

No provision of this subchapter shall affect the authorities of the Secretary, including with respect to prescribing rules, initiating enforcement proceedings, or taking other actions with respect to a person that performs income tax preparation activities for consumers.

(r) Deposit insurance and share insurance

Nothing in this subchapter shall affect the authority of the Corporation under the Federal Deposit Insurance Act or the National Credit Union Administration Board under the Federal Credit Union Act as to matters related to deposit insurance and share insurance, respectively.

(s) Fair Housing Act

No provision of this subchapter shall be construed as affecting any authority arising under the Fair Housing Act.

Credits

(Pub.L. 111-203, Title X, § 1027, July 21, 2010, 124 Stat. 1995.)

Footnotes

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

12 U.S.C.A. § 5517, 12 USCA § 5517

Current through P.L. 112-283 approved 1-15-13

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 § 5531. Prohibiting unfair, deceptive, or abusive acts or practices, 12 USCA § 5531

United States Code Annotated
 Title 12. Banks and Banking
 Chapter 53. Wall Street Reform and
 Consumer Protection
 Subchapter V. Bureau of Consumer
 Financial Protection
 Part C. Specific Bureau Authorities
 12 U.S.C.A. § 5531
 § 5531. Prohibiting unfair, deceptive, or abusive
 acts or practices
 Effective: July 21, 2010
 Currentness

(a) In general

The Bureau may take any action authorized under part E of this subchapter to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) Rulemaking

The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

(c) Unfairness

(1) In general

The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that--

(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and

(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) Consideration of public policies

In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(d) Abusive

The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice--

(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) takes unreasonable advantage of--

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

(e) Consultation

In prescribing rules under this section, the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

(f) Consideration of seasonal income

The rules of the Bureau under this section shall provide, with respect to an extension of credit secured by residential real estate or a dwelling, if documented income of the borrower, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, the creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

§ 5536. Prohibited acts, 12 USCA § 5536

United States Code Annotated
 Title 12. Banks and Banking
 Chapter 53. Wall Street Reform and
 Consumer Protection
 Subchapter V. Bureau of Consumer
 Financial Protection
 Part C. Specific Bureau Authorities
 12 U.S.C.A. § 5536
 § 5536. Prohibited acts
 Effective: July 21, 2010
 Currentness

advertisement.

Credits
 (Pub.L. 111-203, Title X, § 1036, July 21, 2010, 124 Stat.
 2010.)

12 U.S.C.A. § 5536, 12 USCA § 5536
 Current through P.L. 112-283 approved 1-15-13

End of Document

(a) In general

It shall be unlawful for--

(1) any covered person or service provider--

(A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or

(B) to engage in any unfair, deceptive, or abusive act or practice;

(2) any covered person or service provider to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder--

(A) to permit access to or copying of records;

(B) to establish or maintain records; or

(C) to make reports or provide information to the Bureau; or

(3) any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of section 5531 of this title, or any rule or order issued thereunder, and notwithstanding any provision of this subchapter, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

(b) Exception

No person shall be held to have violated subsection (a)(1) solely by virtue of providing or selling time or space to a covered person or service provider placing an

§ 5552. Preservation of enforcement powers of States, 12 USCA § 5552

United States Code Annotated
 Title 12. Banks and Banking
 Chapter 53. Wall Street Reform and
 Consumer Protection
 Subchapter V. Bureau of Consumer
 Financial Protection
 Part D. Preservation of State Law
 12 U.S.C.A. § 5552
 § 5552. Preservation of enforcement powers of
 States
 Effective: July 21, 2010
 Currentness

(a) In general

(1) Action by State

Except as provided in paragraph (2), the attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State in any district court of the United States in that State or in State court that is located in that State and that has jurisdiction over the defendant, to enforce provisions of this subchapter or regulations issued under this subchapter, and to secure remedies under provisions of this subchapter or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this subchapter or regulations issued under this subchapter with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law (except as provided in paragraph (2)), and to secure remedies under provisions of this subchapter or remedies otherwise provided under other provisions of law with respect to such an entity.

(2) Action by State against national bank or Federal savings association to enforce rules

(A) In general

Except as permitted under subparagraph (B), the attorney general (or equivalent thereof) of any State may not bring a civil action in the name of such State against a national bank or Federal savings association to enforce a provision of this subchapter.

(B) Enforcement of rules permitted

The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of

such State against a national bank or Federal savings association in any district court of the United States in the State or in State court that is located in that State and that has jurisdiction over the defendant to enforce a regulation prescribed by the Bureau under a provision of this subchapter and to secure remedies under provisions of this subchapter or remedies otherwise provided under other law.

(3) Rule of construction

No provision of this subchapter shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) Consultation required

(1) Notice

(A) In general

Before initiating any action in a court or other administrative or regulatory proceeding against any covered person as authorized by subsection (a) to enforce any provision of this subchapter, including any regulation prescribed by the Bureau under this subchapter, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau and the prudential regulator, if any, or the designee thereof.

(B) Emergency action

If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Bureau and the prudential regulator, if any, immediately upon instituting the action or proceeding.

(C) Contents of notice

The notification required under this paragraph shall, at a minimum, describe--

- (i) the identity of the parties;
- (ii) the alleged facts underlying the proceeding; and
- (iii) whether there may be a need to coordinate the

§ 5552. Preservation of enforcement powers of States, 12 USCA § 5552

prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.

(2) Bureau response

In any action described in paragraph (1), the Bureau may--

(A) intervene in the action as a party;

(B) upon intervening--

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment, to the same extent as any other party in the proceeding may.

(c) Regulations

The Bureau shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) Preservation of State authority

(1) State claims

No provision of this section shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.

(2) State securities regulators

No provision of this subchapter shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) State insurance regulators

No provision of this subchapter shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State 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.

Credits

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

12 U.S.C.A. § 5552, 12 USCA § 5552

Current through P.L. 112-283 approved 1-15-13

End of Document

§ 5565. Relief available, 12 USCA § 5565

United States Code Annotated
 Title 12. Banks and Banking
 Chapter 53. Wall Street Reform and
 Consumer Protection
 Subchapter V. Bureau of Consumer
 Financial Protection
 Part E. Enforcement Powers
 12 U.S.C.A. § 5565
 § 5565. Relief available
 Effective: July 21, 2010
 Currentness

(a) Administrative proceedings or court actions

(1) Jurisdiction

The court (or the Bureau, as the case may be) in an action or adjudication proceeding brought under Federal consumer financial law, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law, including a violation of a rule or order prescribed under a Federal consumer financial law.

(2) Relief

Relief under this section may include, without limitation--

- (A) rescission or reformation of contracts;
- (B) refund of moneys or return of real property;
- (C) restitution;
- (D) disgorgement or compensation for unjust enrichment;
- (E) payment of damages or other monetary relief;
- (F) public notification regarding the violation, including the costs of notification;
- (G) limits on the activities or functions of the person; and
- (H) civil money penalties, as set forth more fully in subsection (c).

(3) No exemplary or punitive damages

Nothing in this subsection shall be construed as

authorizing the imposition of exemplary or punitive damages.

(b) Recovery of costs

In any action brought by the Bureau, a State attorney general, or any State regulator to enforce any Federal consumer financial law, the Bureau, the State attorney general, or the State regulator may recover its costs in connection with prosecuting such action if the Bureau, the State attorney general, or the State regulator is the prevailing party in the action.

(c) Civil money penalty in court and administrative actions

(1) In general

Any person that violates, through any act or omission, any provision of Federal consumer financial law shall forfeit and pay a civil penalty pursuant to this subsection.

(2) Penalty amounts

(A) First tier

For any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty may not exceed \$5,000 for each day during which such violation or failure to pay continues.

(B) Second tier

Notwithstanding paragraph (A), for any person that recklessly engages in a violation of a Federal consumer financial law, a civil penalty may not exceed \$25,000 for each day during which such violation continues.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates a Federal consumer financial law, a civil penalty may not exceed \$1,000,000 for each day during which such violation continues.

(3) Mitigating factors

In determining the amount of any penalty assessed under paragraph (2), the Bureau or the court shall take into account the appropriateness of the penalty with

§ 5565. Relief available, 12 USCA § 5565

respect to--

- (A) the size of financial resources and good faith of the person charged;
- (B) the gravity of the violation or failure to pay;
- (C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;
- (D) the history of previous violations; and
- (E) such other matters as justice may require.

(4) Authority to modify or remit penalty

The Bureau may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (2). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(5) Notice and hearing

No civil penalty may be assessed under this subsection with respect to a violation of any Federal consumer financial law, unless--

- (A) the Bureau gives notice and an opportunity for a hearing to the person accused of the violation; or
- (B) the appropriate court has ordered such assessment and entered judgment in favor of the Bureau.

Credits

(Pub.L. 111-203, Title X, § 1055, July 21, 2010, 124 Stat. 2029.)

12 U.S.C.A. § 5565, 12 USCA § 5565

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