

(iii) discourage and reduce cases of misleading or fraudulent marketing; and

(C) a description of how the proposed activities would be coordinated with other State efforts; and

(2) any other information, as the Office determines is appropriate.

**(d) Performance objectives and reporting requirements**

The Office may establish such performance objectives and reporting requirements for States and eligible entities receiving a grant under this section as the Office determines are necessary to carry out and assess the effectiveness of the program under this section.

**(e) Maximum amount**

The amount of a grant under this section may not exceed—

(1) \$500,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted rules—

(A) on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

(B) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(C) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); and

(2) \$100,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted—

(A) rules on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto); or

(B) rules—

(i) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(ii) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum re-

quirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto).

**(f) Subgrants**

A State or eligible entity that receives a grant under this section may make a subgrant, as the State or eligible entity determines is necessary to carry out the activities funded using a grant under this section.

**(g) Reapplication**

A State or eligible entity that receives a grant under this section may reapply for a grant under this section, notwithstanding the limitations on grant amounts under subsection (e).

**(h) Authorization of appropriations**

There are authorized to be appropriated to carry out this section, \$8,000,000 for each of fiscal years 2011 through 2015.

(Pub. L. 111-203, title IX, § 989A, July 21, 2010, 124 Stat. 1941.)

**Editorial Notes**

**CODIFICATION**

Section was not enacted as part of subtitle C of title X of Pub. L. 111-203, which comprises this part.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE**

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of this title.

**§ 5538. Mortgage loans; rulemaking procedures; enforcement**

(a)(1) The Bureau of Consumer Financial Protection shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this paragraph shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Act of 2010 and a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

(2) The Bureau of Consumer Financial Protection shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as though all applicable terms and provisions of the Consumer Financial Protection Act of 2010 were incorporated into and made part of this subsection.

(3) Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], the Federal Trade Commission shall enforce the rules issued under paragraph (1), in the same manner, by the same means, and with the same jurisdiction, as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made part of this section.

(b)(1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in practices that violate such rule, the State, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate district court of the United States or other court of competent jurisdiction—

(A) to enjoin that practice;

(B) to enforce compliance with the rule;

(C) to obtain damages, restitution, or other compensation on behalf of the residents of the State; or

(D) to obtain penalties and relief provided under the Consumer Financial Protection Act of 2010, the Federal Trade Commission Act [15 U.S.C. 41 et seq.], and such other relief as the court deems appropriate.

(2) The State shall serve written notice to the Bureau of Consumer Financial Protection or the Commission, as appropriate<sup>1</sup> of any civil action under paragraph (1) at least 60 days prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide notice immediately upon instituting such civil action.

(3) Upon receiving the notice required by paragraph (2), and subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], the Bureau of Consumer Financial Protection or the Commission, as appropriate<sup>1</sup> may intervene in such civil action and upon intervening—

(A) be heard on all matters arising in such civil action;

(B) remove the action to the appropriate United States district court; and

(C) file petitions for appeal of a decision in such civil action.

(4) Nothing in this subsection shall prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence. Nothing in this section shall prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

(5) In a civil action brought under paragraph (1)—

(A) the venue shall be a judicial district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28; and

(B) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted.

(6) Whenever a civil action or an administrative action has been instituted by or on behalf of the Bureau of Consumer Financial Protection or

the Commission for violation of any provision of law or rule described in paragraph (1), no State may, during the pendency of such action instituted by or on behalf of the Bureau of Consumer Financial Protection or the Commission, institute a civil action under that paragraph against any defendant named in the complaint in such action for violation of any law or rule as alleged in such complaint.

(7) If the attorney general of a State prevails in any civil action under paragraph (1), the State can recover reasonable costs and attorney fees from the lender or related party.

(Pub. L. 111–8, div. D, title VI, § 626(a), (b), Mar. 11, 2009, 123 Stat. 678; Pub. L. 111–24, title V, § 511(a), May 22, 2009, 123 Stat. 1763; Pub. L. 111–203, title X, § 1097, July 21, 2010, 124 Stat. 2102.)

### Editorial Notes

#### REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (a) and (b)(1)(D), (3), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. Subtitle B of title X is classified generally to part B (§ 5511 et seq.) of this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Federal Trade Commission Act, referred to in subsecs. (a)(3) and (b)(1)(D), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

#### CODIFICATION

Section was enacted as part of the Omnibus Appropriations Act, 2009, and not as part of subtitle C of title X of Pub. L. 111–203, which comprises this part.

Section was formerly set out as a note under section 1638 of Title 15, Commerce and Trade.

#### AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, § 1097(1), added subsec. (a) and struck out former subsec. (a) which read as follows:

“(a)(1) Within 90 days after March 11, 2009, the Federal Trade Commission shall initiate a rulemaking proceeding with respect to mortgage loans in accordance with section 553 of title 5. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this subsection shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

“(2) Paragraph (1) shall not be construed to authorize the Federal Trade Commission to promulgate a rule with respect to an entity that is not subject to enforcement of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Commission.

“(3) Before issuing a final rule pursuant to the proceeding initiated under paragraph (1), the Federal Trade Commission shall consult with the Federal Reserve Board concerning any portion of the proposed rule applicable to acts or practices to which the provisions of the Truth in Lending Act (15 U.S.C. 1601 et seq.) may apply.

“(4) The Federal Trade Commission shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction,

<sup>1</sup> So in original. Probably should be followed by a comma.

powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made part of this section.”

Subsec. (b)(1). Pub. L. 111-203, §1097(2)(A), added par. (1) and struck out former par. (1) which read as follows: “Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in a practice that violates such rule, the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in an appropriate district court of the United States or other court of competent jurisdiction—

“(A) to enjoin that practice;

“(B) to enforce compliance with the rule;

“(C) to obtain damages, restitution, or other compensation on behalf of residents of the State; or

“(D) to obtain penalties and relief provided by the Federal Trade Commission Act and such other relief as the court considers appropriate.”

Subsec. (b)(2). Pub. L. 111-203, §1097(2)(B), substituted “the Bureau of Consumer Financial Protection or the Commission, as appropriate” for “the primary Federal regulator”.

Subsec. (b)(3). Pub. L. 111-203, §1097(2)(B), (C), inserted “and subject to subtitle B of the Consumer Financial Protection Act of 2010,” after “paragraph (2),” and substituted “the Bureau of Consumer Financial Protection or the Commission, as appropriate” for “the primary Federal regulator”.

Subsec. (b)(6). Pub. L. 111-203, §1097(2)(D), substituted “the Bureau of Consumer Financial Protection or the Commission” for “the primary Federal regulator” in two places.

2009—Subsec. (a). Pub. L. 111-24, §511(a), designated existing provisions as par. (1), inserted “Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services.”, and added pars. (2) to (4).

Subsec. (b)(1). Pub. L. 111-24, §511(a)(2)(A), added par. (1) and struck out former par. (1) which read as follows: “Except as provided in paragraph (6), a State, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate State or district court of the United States to enforce the provisions of section 128 of the Truth in Lending Act (15 U.S.C. 1638), any other provision of the Truth in Lending Act, or any mortgage loan rule promulgated by the Federal Trade Commission to obtain penalties and relief provided under such Act or rule whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of such Act or rule.”

Subsec. (b)(2), (3), (6). Pub. L. 111-24, §511(a)(2)(B), substituted “primary Federal regulator” for “Commission” wherever appearing.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

##### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-24, title V, §511(b), May 22, 2009, 123 Stat. 1764, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on March 12, 2009.”

#### PART D—PRESERVATION OF STATE LAW

### § 5551. Relation to State law

#### (a) In general

##### (1) Rule of construction

This title,<sup>1</sup> other than sections 1044 through 1048,<sup>1</sup> may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title<sup>1</sup> from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that any such provision of law is inconsistent with the provisions of this title,<sup>1</sup> and then only to the extent of the inconsistency.

##### (2) Greater protection under State law

For purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title<sup>1</sup> if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under this title.<sup>1</sup> A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title<sup>1</sup> may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.

#### (b) Relation to other provisions of enumerated consumer laws that relate to State law

No provision of this title,<sup>1</sup> except as provided in section 1083,<sup>1</sup> shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

#### (c) Additional consumer protection regulations in response to State action

##### (1) Notice of proposed rule required

The Bureau shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.

##### (2) Bureau considerations required for issuance of final regulation

Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

##### (3) Explanation of considerations

The Bureau—

<sup>1</sup> See References in Text note below.