

enterprises, to ensure that the holdings are backed by sufficient capital and consistent with the mission and the safe and sound operations of the enterprises. In establishing such criteria, the Director shall consider the ability of the enterprises to provide a liquid secondary market through securitization activities, the portfolio holdings in relation to the overall mortgage market, and adherence to the standards specified in section 4513b of this title.

(b) Temporary adjustments

The Director may, by order, make temporary adjustments to the established standards for an enterprise or both enterprises, such as during times of economic distress or market disruption.

(c) Authority to require disposition or acquisition

The Director shall monitor the portfolio of each enterprise. Pursuant to subsection (a) and notwithstanding the capital classifications of the enterprises, the Director may, by order, require an enterprise, under such terms and conditions as the Director determines to be appropriate, to dispose of or acquire any asset, if the Director determines that such action is consistent with the purposes of this Act or any of the authorizing statutes.

(Pub. L. 102-550, title XIII, § 1369E, as added Pub. L. 110-289, div. A, title I, § 1109(a)(2), July 30, 2008, 122 Stat. 2675.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

Statutory Notes and Related Subsidiaries

REGULATIONS

Pub. L. 110-289, div. A, title I, § 1109(b), July 30, 2008, 122 Stat. 2675, provided that: “Not later than the expiration of the 180-day period beginning on the effective date of this Act [probably means date of enactment of Pub. L. 110-289, approved July 30, 2008], the Director [of the Federal Housing Finance Agency] shall issue regulations pursuant to section 1369E(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4624(a)] (as added by subsection (a) of this section) establishing the portfolio holdings standards under such section.”

SUBCHAPTER III—ENFORCEMENT PROVISIONS

§ 4631. Cease-and-desist proceedings

(a) Issuance for unsafe or unsound practices and violations

(1) Authority of Director

If, in the opinion of the Director, a regulated entity or any entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or

the Office of Finance, or is violating or has violated, or the Director has reasonable cause to believe is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or the Office of Finance or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or entity-affiliated party a notice of charges in respect thereof.

(2) Limitation

The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart 2 of part B of subchapter I of this chapter, with section 4566 or 4567 of this title, with subsection (m) or (n) of section 1723a of this title, with subsection (e) or (f) of section 1456 of this title, or with paragraph (5) of section 1430(j) of this title.

(b) Issuance for unsatisfactory rating

If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of subsection (a).

(c) Procedure

(1) Notice of charges

Each notice of charges under this section shall contain a statement of the facts constituting the alleged practice or violation and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such practice or violation should issue, unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order.

(2) Issuance of order

If the Director finds on the record made at such hearing that any practice or violation specified in the notice of charges has been established (or the regulated entity or entity-affiliated party consents pursuant to section 4633(a)(4) of this title), the Director may issue and serve upon the regulated entity, executive officer, director, or entity-affiliated party an order requiring such party to cease and desist from any such practice or violation and to take affirmative action to correct or remedy the conditions resulting from any such practice or violation.

(d) Affirmative action to correct conditions resulting from violations or activities

The authority under this section and section 4632 of this title to issue any order requiring a regulated entity, executive officer, director, or entity-affiliated party to take affirmative action to correct or remedy any condition resulting from any practice or violation with respect to which such order is issued includes the authority to require a regulated entity or entity-affiliated party—

(1) make¹ restitution to, or provide reimbursement, indemnification, or guarantee against loss, if—

(A) such entity or party or finance facility was unjustly enriched in connection with such practice or violation; or

(B) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Director;

(2) to require a regulated entity to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(3) to restrict the growth of the regulated entity;

(4) to require the regulated entity to dispose of any loan or asset involved;

(5) to require the regulated entity to rescind agreements or contracts;

(6) to require the regulated entity to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); and

(7) to require the regulated entity to take such other action as the Director determines appropriate.

(e) Authority to limit activities

The authority to issue an order under this section or section 4632 of this title includes the authority to place limitations on the activities or functions of the regulated entity or entity-affiliated party or any executive officer or director of the regulated entity or entity-affiliated party.

(f) Effective date

An order under this section shall become effective upon the expiration of the 30-day period beginning on the service of the order upon the regulated entity, finance facility,² executive officer, director, or entity-affiliated party concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subchapter.

(Pub. L. 102-550, title XIII, § 1371, Oct. 28, 1992, 106 Stat. 3986; Pub. L. 110-289, div. A, title I, § 1151, July 30, 2008, 122 Stat. 2767.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original “this title”, meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110-289, § 1151(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to grounds for issuance against adequately capitalized enterprises and grounds for issuance against undercapitalized, significantly under-

capitalized, and critically undercapitalized enterprises, respectively.

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

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

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

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

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

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

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

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

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

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

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

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

§ 4632. Temporary cease-and-desist orders

(a) Grounds for issuance

(1) In general

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

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

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

¹ So in original. Probably should be “to make”.

² So in original.

(2) Additional requirements

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

(b) Effective date

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

(c) Incomplete or inaccurate records**(1) Temporary order**

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

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

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

(2) Effective period

Any temporary order issued under paragraph (1)—

(A) shall become effective upon service; and

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

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

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

(d) Judicial review

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

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

(e) Enforcement by Attorney General

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

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

Editorial Notes**AMENDMENTS**

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

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

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

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

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

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

§ 4633. Hearings**(a) Requirements****(1) Venue and record**

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

(2) Timing

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

(3) Procedure

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

(4) Failure to appear

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

(b) Issuance of order**(1) In general**

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

(2) Modification

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

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

Editorial Notes**AMENDMENTS**

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

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

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

§ 4634. Judicial review**(a) Commencement**

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

(b) Filing of record

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

(c) Jurisdiction

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

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

(d) Review

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

(e) Order to pay penalty

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

(f) No automatic stay

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

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

Editorial Notes**REFERENCES IN TEXT**

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

AMENDMENTS

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

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

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

(b) Limitation on jurisdiction

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

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

Editorial Notes**REFERENCES IN TEXT**

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

AMENDMENTS

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

¹ See References in Text note below.

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

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

§ 4636. Civil money penalties

(a) In general

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

(b) Amount of penalty

(1) First tier

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

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

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

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

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

(2) Second tier

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

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

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

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

(iii) breaches any fiduciary duty; and

(B) the violation, practice, or breach—

(i) is part of a pattern of misconduct;

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

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

(3) Third tier

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

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

(A) knowingly—

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

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

(iii) breaches any fiduciary duty; and

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

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

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

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

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

(c) Procedures

(1) Establishment

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

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

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

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

(2) Factors in determining amount of penalty

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

(3) Review of imposition of penalty

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

(d) Action to collect penalty

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

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

(e) Settlement by Director

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

(f) Availability of other remedies

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

(g) Prohibition of reimbursement or indemnification

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

(h) Deposit of penalties

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

(i) Applicability

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

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

Editorial Notes

REFERENCES IN TEXT

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

§ 4636a. Removal and prohibition authority

(a) Authority to issue order

(1) In general

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

(2) Applicability

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

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

(i) violated—

(I) any law or regulation;

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

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

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

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

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

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

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

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

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

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

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

(b) Suspension order

(1) Suspension or prohibition authority

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

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

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

(2) Effective period

Any order issued under this subsection—

(A) shall become effective upon service; and

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

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

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

(3) Copy of order

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

(c) Notice, hearing, and order

(1) Notice

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

(2) Timing of hearing

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

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

(B) the Attorney General of the United States.

(3) Consent

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

(4) Issuance of order of suspension

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

(A) a party is deemed to have consented to the issuance of an order under paragraph (3); or

(B) upon the record made at the hearing, the Director finds that any of the grounds specified in the notice have been established.

(5) Effectiveness of order

Any order issued under paragraph (4) shall become effective at the expiration of 30 days after the date of service upon the relevant regulated entity and party (except in the case of an order issued upon consent under paragraph (3), which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

(d) Prohibition of certain specific activities

Any person subject to an order issued under this section shall not—

(1) participate in any manner in the conduct of the affairs of any regulated entity or the Office of Finance;

(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;

(3) violate any voting agreement previously approved by the Director; or

(4) vote for a director, or serve or act as an entity-affiliated party of a regulated entity or as an officer or director of the Office of Finance.

(e) Industry-wide prohibition

(1) In general

Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in a regulated entity or the Office of Finance, or prohibited from participating in the conduct of the affairs of a regulated entity or the Office of Finance, may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity or the Office of Finance.

(2) Exception if Director provides written consent

If, on or after the date on which an order is issued under this section which removes or suspends from office any party, or prohibits such party from participating in the conduct of the affairs of a regulated entity or the Office of Finance, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity or such Office of Finance described in the written consent. Any such consent shall be publicly disclosed.

(3) Violation of paragraph (1) treated as violation of order

Any violation of paragraph (1) by any person who is subject to an order issued under subsection (h) shall be treated as a violation of the order.

(f) Applicability

This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business entity.

(g) Stay of suspension and prohibition of entity-affiliated party

Not later than 10 days after the date on which any entity-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of a regulated entity under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to subsection (c). The court shall have jurisdiction to stay such suspension or prohibition.

(h) Suspension or removal of entity-affiliated party charged with felony**(1) Suspension or prohibition****(A) In general**

Whenever any entity-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under Federal or State law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity.

(B) Provisions applicable to notice**(i) Copy**

A copy of any notice under subparagraph (A) shall be served upon the relevant regulated entity.

(ii) Effective period

A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in subparagraph (A) is finally disposed of, or until terminated by the Director.

(2) Removal or prohibition**(A) In general**

If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an entity-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order removing such party from office or prohibiting such party from further partici-

pation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director.

(B) Provisions applicable to order**(i) Copy**

A copy of any order under subparagraph (A) shall be served upon the relevant regulated entity, at which time the entity-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

(ii) Effect of acquittal

A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove a party from office or to prohibit further participation in the affairs of a regulated entity pursuant to subsection (a) or (b).

(iii) Effective period

Unless terminated by the Director, any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4).

(3) Authority of remaining board members**(A) In general**

If at any time, because of the suspension of 1 or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

(B) Appointment of temporary directors

If all of the directors of a regulated entity are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

(4) Hearing regarding continued participation**(A) In general**

Not later than 30 days after the date of service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2), the entity-affiliated party may request in writing an opportunity to appear before the Director to show that the continued service or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity, or threaten to impair public confidence in the regulated entity.

(B) Timing and form of hearing

Upon receipt of a request for a hearing under subparagraph (A), the Director shall

fix a time (not later than 30 days after the date of receipt of such request, unless extended at the request of such party) and place at which the entity-affiliated party may appear, personally or through counsel, before the Director or 1 or more designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument.

(C) Determination

Not later than 60 days after the date of a hearing under subparagraph (B), the Director shall notify the entity-affiliated party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for any adverse decision of the Director.

(5) Rules

The Director is authorized to prescribe such rules as may be necessary to carry out this subsection.

(Pub. L. 102-550, title XIII, §1377, as added Pub. L. 110-289, div. A, title I, §1153(a)(2), July 30, 2008, 122 Stat. 2770.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1377 of Pub. L. 102-550 was renumbered section 1379 and is classified to section 4637 of this title.

§ 4636b. Criminal penalty

Whoever, being subject to an order in effect under section 4636a of this title, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

(Pub. L. 102-550, title XIII, §1378, as added Pub. L. 110-289, div. A, title I, §1156(a), July 30, 2008, 122 Stat. 2777.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1378 of Pub. L. 102-550 was renumbered section 1379A and is classified to section 4638 of this title.

§ 4637. Notice after separation from service

The resignation, termination of employment or participation, or separation of an entity-affiliated party shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this subchapter against any such entity-affiliated party, if such notice is served before the end of the 6-year period begin-

ning on the date such entity-affiliated party ceases to be associated with the regulated entity.

(Pub. L. 102-550, title XIII, §1379, formerly §1377, Oct. 28, 1992, 106 Stat. 3992; renumbered §1379 and amended Pub. L. 110-289, div. A, title I, §§1153(a)(1), 1156(b)(1), 1157, July 30, 2008, 122 Stat. 2770, 2777.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1379 of Pub. L. 102-550 was renumbered section 1379B and is classified to section 4639 of this title.

AMENDMENTS

2008—Pub. L. 110-289, §1157(4), which directed the substitution of “regulated entity.” for “enterprise.” could not be executed because of the prior amendment by Pub. L. 110-289, §1156(b)(1). See below.

Pub. L. 110-289, §1157(3), which directed the substitution of “entity-affiliated party” for “director or officer” wherever appearing, was executed by making the substitution for “director or executive officer” in two places, to reflect the probable intent of Congress.

Pub. L. 110-289, §1157(2), which directed the substitution of “an entity-affiliated party” for “a director or executive officer of an enterprise”, was executed by making the substitution for “a director or executive officer of a regulated entity”, to reflect the probable intent of Congress and the prior amendment by Pub. L. 110-289, §1156(b)(1). See below.

Pub. L. 110-289, §1157(1), substituted “6-year” for “2-year”.

Pub. L. 110-289, §1156(b)(1), substituted “a regulated entity” for “an enterprise” and “the regulated entity” for “the enterprise”.

§ 4638. Private rights of action

This chapter shall not create any private right of action on behalf of any person against a regulated entity, or any director or executive officer of a regulated entity, or impair any existing private right of action under other applicable law.

(Pub. L. 102-550, title XIII, §1379A, formerly §1378, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379A and amended Pub. L. 110-289, div. A, title I, §§1153(a)(1), 1156(b)(2), July 30, 2008, 122 Stat. 2770, 2777.)

Editorial Notes

REFERENCES IN TEXT

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

PRIOR PROVISIONS

A prior section 1379A of Pub. L. 102-550 was renumbered section 1379C and is classified to section 4640 of this title.

AMENDMENTS

2008—Pub. L. 110-289, §1156(b)(2), which directed substitution of “a regulated entity” for “an enterprise”, was executed by making the substitution in two places to reflect the probable intent of Congress.

§ 4639. Public disclosure of final orders and agreements

(a) In general

The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this subchapter and that has become final in accordance with sections 4633 and 4634 of this title; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) Hearings

All hearings on the record with respect to any notice of charges issued by the Director shall be open to the public, unless the Director, in the Director's discretion, determines that holding an open hearing would be contrary to the public interest.

(c) Delay of public disclosure under exceptional circumstances

If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial health or security of the regulated entity, the Director may delay the public disclosure of such order for a reasonable time.

(d) Documents filed under seal in public enforcement hearings

The Director may file any document or part thereof under seal in any hearing commenced by the Director if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) Retention of documents

The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Director under this subchapter or any other law.

(f) Disclosures to Congress

This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

(Pub. L. 102-550, title XIII, §1379B, formerly §1379, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379B and amended Pub. L. 110-289, div. A, title I, §§1153(a)(1), 1156(b)(3), July 30, 2008, 122 Stat. 2770, 2777.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1379B of Pub. L. 102-550 was renumbered section 1379D and is classified to section 4641 of this title.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-289, §1156(b)(3), substituted “regulated entity” for “enterprise”.

§ 4640. Notice of service

Any service required or authorized to be made by the Director under this subchapter may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Director may by regulation or otherwise provide.

(Pub. L. 102-550, title XIII, §1379C, formerly §1379A, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379C, Pub. L. 110-289, div. A, title I, §1153(a)(1), July 30, 2008, 122 Stat. 2770.)

§ 4641. Subpoena authority

(a) In general

In the course of or in connection with any proceeding, examination, or investigation under this chapter, the Director or any designated representative thereof, including any person designated to conduct any hearing under this subchapter shall have the authority—

(1) to administer oaths and affirmations;

(2) to take and preserve testimony under oath;

(3) to issue subpoenas and subpoenas duces tecum; and

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum.

(b) Witnesses and documents

The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted.

(c) Enforcement

(1) In general

The Director, or any party to proceedings under this subchapter, may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district of the United States in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section.

(2) Power of court

The courts described under paragraph (1) shall have the jurisdiction and power to order and require compliance with any subpoena issued under paragraph (1).

(d) Fees and expenses

Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United

States. Any court having jurisdiction of any proceeding instituted under this section by an regulated entity enterprise-affiliated party¹ may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the regulated entity or from its assets.

(e) Penalties

A person shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than 1 year, or both, if that person willfully fails or refuses, in disobedience of a subpoena issued under subsection (c), to—

- (1) attend court;
- (2) testify in court;
- (3) answer any lawful inquiry; or
- (4) produce books, papers, correspondence, contracts, agreements, or such other records as requested in the subpoena.

(Pub. L. 102-550, title XIII, §1379D, formerly §1379B, Oct. 28, 1992, 106 Stat. 3994; renumbered §1379D and amended Pub. L. 110-289, div. A, title I, §§1153(a)(1), 1156(b)(4), 1158, July 30, 2008, 122 Stat. 2770, 2777, 2778.)

Editorial Notes

REFERENCES IN TEXT

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

CODIFICATION

Pub. L. 110-289, §1158, which directed amendment of section “1379B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4641)”, was executed to this section, which is section 1379D, formerly section 1379B, of the Act, to reflect the probable intent of Congress and the renumbering by Pub. L. 110-289, §1153(a)(1). See 2008 Amendment notes below.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289, §1158(a)(1)(A), in introductory provisions, struck out “administrative” after “with any”, inserted “, examination, or investigation” after “proceeding”, substituted “chapter” for “subchapter”, and inserted “or any designated representative thereof, including any person designated to conduct any hearing under this subchapter” after “Director”. See Codification note above.

Subsec. (a)(4). Pub. L. 110-289, §1158(a)(1)(B), struck out “issued by the Director” before period at end. See Codification note above.

Subsec. (b). Pub. L. 110-289, §1158(a)(2), inserted “or in any territory or other place subject to the jurisdiction of the United States” after “State”. See Codification note above.

Subsec. (c). Pub. L. 110-289, §1158(a)(3), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: “The Director may request the Attorney General of the United States to bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section

or may, under the direction and control of the Attorney General, bring such an action. Such courts shall have jurisdiction and power to order and require compliance therewith.” See Codification note above.

Subsec. (d). Pub. L. 110-289, §1158(a)(4), inserted “enterprise-affiliated party” before “may allow”. See Codification note above.

Pub. L. 110-289, §1156(b)(4), which directed substitution of “regulated entity” for “enterprise”, was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 110-289, §1158(a)(5), added subsec. (e). See Codification note above.

§ 4642. Reporting of fraudulent loans

(a) Requirement to report

The Director shall require a regulated entity to submit to the Director a timely report upon discovery by the regulated entity that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. The Director shall require each regulated entity to establish and maintain procedures designed to discover any such transactions.

(b) Protection from liability for reports

Any regulated entity that, in good faith, makes a report pursuant to subsection (a), and any entity-affiliated party, that, in good faith, makes or requires another to make any such report, shall not be liable to any person under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for such report or for any failure to provide notice of such report to the person who is the subject of such report or any other persons identified in the report.

(Pub. L. 102-550, title XIII, §1379E, as added Pub. L. 110-289, div. A, title I, §1115, July 30, 2008, 122 Stat. 2681.)

CHAPTER 47—COMMUNITY DEVELOPMENT BANKING

SUBCHAPTER I—COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS

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¹ So in original.