

Editorial Notes

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 111-203, July 21, 2010, 124 Stat. 1520, known as the Enhancing Financial Institution Safety and Soundness Act of 2010, which enacted this subchapter and sections 4b and 16 of this title, amended sections 1, 11, 248, 461, 481, 482, 1438, 1462, 1462a, 1463, to 1464, 1466a, 1467, 1467a, 1468, 1468a, to 1468b, 1470, 1701c, 1701p-1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78f, 78o-5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, section 41501 of Title 34, Crime Control and Law Enforcement, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 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.

§ 5437. Implementation plan and reports**(a) Plan submission**

Within 180 days of July 21, 2010, the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, shall jointly submit a plan to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors detailing the steps the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision will take to implement the provisions of sections 301 through 326,¹ and the provisions of the amendments made by such sections.

(b) Inspectors General review of the plan

Within 60 days of receiving the plan required under subsection (a), the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors shall jointly provide a written report to the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and shall submit a copy to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives detailing whether the plan conforms with the provisions of sections 301 through 326,¹ and the provisions of the amendments made by such sections, including—

(1) whether the plan sufficiently takes into consideration the orderly transfer of personnel;

(2) whether the plan describes procedures and safeguards to ensure that the Office of Thrift Supervision employees are not unfairly disadvantaged relative to employees of the Office of the Comptroller of the Currency and the Corporation;

(3) whether the plan sufficiently takes into consideration the orderly transfer of authority and responsibilities;

(4) whether the plan sufficiently takes into consideration the effective transfer of funds;

(5) whether the plan sufficiently takes in² consideration the orderly transfer of property; and

(6) any additional recommendations for an orderly and effective process.

(c) Implementation reports

Not later than 6 months after the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives receives the report required under subsection (b), and every 6 months thereafter until all aspects of the plan have been implemented, the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors shall jointly provide a written report on the status of the implementation of the plan to the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and shall submit a copy to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(Pub. L. 111-203, title III, § 327, July 21, 2010, 124 Stat. 1537.)

Editorial Notes

REFERENCES IN TEXT

Sections 301 through 326, referred to in subsecs. (a) and (b), are sections 301 to 326 of Pub. L. 111-203, which enacted sections 4b, 16, and 5401 to 5436 of this title, amended sections 1, 11, 248, 481, 482, 1813, and 1820 of this title and section 3502 of Title 44, Public Printing and Documents, and enacted provisions set out as notes under sections 1 and 16 of this title.

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.

PART C—OTHER MATTERS

§ 5451. Branching

Notwithstanding the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any other provision of Federal or State law, a savings association that becomes a bank may—

(1) continue to operate any branch or agency that the savings association operated imme-

¹ See References in Text note below.

² So in original. Probably should be “into”.

diately before the savings association became a bank; and

(2) establish, acquire, and operate additional branches and agencies at any location within any State in which the savings association operated a branch immediately before the savings association became a bank, if the law of the State in which the branch is located, or is to be located, would permit establishment of the branch if the bank were a State bank chartered by such State.

(Pub. L. 111-203, title III, §341, July 21, 2010, 124 Stat. 1540.)

Editorial Notes

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in text, is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

The Bank Holding Company Act of 1956, referred to in text, is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

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.

§ 5452. Office of Minority and Women Inclusion

(a) Office of Minority and Women Inclusion

(1) Establishment

(A) In general

Except as provided in subparagraph (B), not later than 6 months after July 21, 2010, each agency shall establish an Office of Minority and Women Inclusion that shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities.

(B) Bureau

The Bureau shall establish an Office of Minority and Women Inclusion not later than 6 months after the designated transfer date established under section 5582 of this title.

(2) Transfer of responsibilities

Each agency that, on the day before July 21, 2010, assigned the responsibilities described in paragraph (1) (or comparable responsibilities) to another office of the agency shall ensure that such responsibilities are transferred to the Office.

(3) Duties with respect to civil rights laws

The responsibilities described in paragraph (1) do not include enforcement of statutes, regulations, or executive orders pertaining to civil rights, except each Director shall coordinate with the agency administrator, or the designee of the agency administrator, regarding the design and implementation of any remedies resulting from violations of such statutes, regulations, or executive orders.

(b) Director

(1) In general

The Director of each Office shall be appointed by, and shall report to, the agency administrator. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined in section 3132 of title 5, or an equivalent designation.

(2) Duties

Each Director shall develop standards for—

(A) equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency;

(B) increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency, including standards for coordinating technical assistance to such businesses; and

(C) assessing the diversity policies and practices of entities regulated by the agency.

(3) Other duties

Each Director shall advise the agency administrator on the impact of the policies and regulations of the agency on minority-owned and women-owned businesses.

(4) Rule of construction

Nothing in paragraph (2)(C) may be construed to mandate any requirement on or otherwise affect the lending policies and practices of any regulated entity, or to require any specific action based on the findings of the assessment.

(c) Inclusion in all levels of business activities

(1) In general

The Director of each Office shall develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts.

(2) Contracts

The procedures established by each agency for review and evaluation of contract proposals and for hiring service providers shall include, to the extent consistent with applicable law, a component that gives consideration to the diversity of the applicant. Such procedure shall include a written statement, in a form and with such content as the Director shall prescribe, that a contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

(3) Termination

(A) Determination

The standards and procedures developed and implemented under this subsection shall include a procedure for the Director to make a determination whether an agency con-

tractor, and, as applicable, a subcontractor has failed to make a good faith effort to include minorities and women in their workforce.

(B) Effect of determination

(i) Recommendation to agency administrator

Upon a determination described in subparagraph (A), the Director shall make a recommendation to the agency administrator that the contract be terminated.

(ii) Action by agency administrator

Upon receipt of a recommendation under clause (i), the agency administrator may—

(I) terminate the contract;

(II) make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor; or

(III) take other appropriate action.

(d) Applicability

This section shall apply to all contracts of an agency for services of any kind, including the services of financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services. The contracts referred to in this subsection include all contracts for all business and activities of an agency, at all levels, including contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of the assets of the agency, the making of equity investments by the agency, and the implementation by the agency of programs to address economic recovery.

(e) Reports

Each Office shall submit to Congress an annual report regarding the actions taken by the agency and the Office pursuant to this section, which shall include—

(1) a statement of the total amounts paid by the agency to contractors since the previous report;

(2) the percentage of the amounts described in paragraph (1) that were paid to contractors described in subsection (c)(1);

(3) the successes achieved and challenges faced by the agency in operating minority and women outreach programs;

(4) the challenges the agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses; and

(5) any other information, findings, conclusions, and recommendations for legislative or agency action, as the Director determines appropriate.

(f) Diversity in agency workforce

Each agency shall take affirmative steps to seek diversity in the workforce of the agency at all levels of the agency in a manner consistent with applicable law. Such steps shall include—

(1) recruiting at historically black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities;

(3) placing employment advertisements in newspapers and magazines oriented toward minorities and women;

(4) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions;

(5) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring; and

(6) any other mass media communications that the Office determines necessary.

(g) Definitions

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

(1) Agency

The term “agency” means—

(A) the Departmental Offices of the Department of the Treasury;

(B) the Corporation;

(C) the Federal Housing Finance Agency;

(D) each of the Federal reserve banks;

(E) the Board;

(F) the National Credit Union Administration;

(G) the Office of the Comptroller of the Currency;

(H) the Commission; and

(I) the Bureau.

(2) Agency administrator

The term “agency administrator” means the head of an agency.

(3) Minority

The term “minority” has the same meaning as in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note).

(4) Minority-owned business

The term “minority-owned business” has the same meaning as in section 1441a(r)(4)(A) of this title, as in effect on the day before the transfer date.

(5) Office

The term “Office” means the Office of Minority and Women Inclusion established by an agency under subsection (a).

(6) Women-owned business

The term “women-owned business” has the meaning given the term “women's business” in section 1441a(r)(4)(B) of this title, as in effect on the day before the transfer date.

(Pub. L. 111–203, title III, §342, July 21, 2010, 124 Stat. 1541.)

Editorial Notes

REFERENCES IN TEXT

Section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (g)(3), is section 1204(c) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

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.

SUBCHAPTER IV—PAYMENT, CLEARING,
AND SETTLEMENT SUPERVISION

§ 5461. Findings and purposes

(a) Findings

Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities, and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

- (A) to provide consistency;
- (B) to promote robust risk management and safety and soundness;
- (C) to reduce systemic risks; and
- (D) to support the stability of the broader financial system.

(b) Purpose

The purpose of this subchapter is to mitigate systemic risk in the financial system and promote financial stability by—

- (1) authorizing the Board of Governors to promote uniform standards for the—
 - (A) management of risks by systemically important financial market utilities; and
 - (B) conduct of systemically important payment, clearing, and settlement activities by financial institutions;
- (2) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important financial market utilities;
- (3) strengthening the liquidity of systemically important financial market utilities; and
- (4) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

(Pub. L. 111-203, title VIII, § 802, July 21, 2010, 124 Stat. 1802.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 111-203, title VIII, § 814, July 21, 2010, 124 Stat. 1822, provided that: “This title [enacting this subchapter] is effective as of the date of enactment of this Act [July 21, 2010].”

SHORT TITLE

This subchapter known as the “Payment, Clearing, and Settlement Supervision Act of 2010”, see Short Title note set out under section 5301 of this title.

§ 5462. Definitions

In this subchapter, the following definitions shall apply:

(1) Appropriate financial regulator

The term “appropriate financial regulator” means—

(A) the primary financial regulatory agency, as defined in section 5301 of this title;

(B) the National Credit Union Administration, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. 1751 et seq.); and

(C) the Board of Governors, with respect to organizations operating under section 25A of the Federal Reserve Act (12 U.S.C. 611), and any other financial institution engaged in a designated activity.

(2) Designated activity

The term “designated activity” means a payment, clearing, or settlement activity that the Council has designated as systemically important under section 5463 of this title.

(3) Designated clearing entity

The term “designated clearing entity” means a designated financial market utility that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1).

(4) Designated financial market utility

The term “designated financial market utility” means a financial market utility that the Council has designated as systemically important under section 5463 of this title.

(5) Financial institution

(A) In general

The term “financial institution” means—

(i) a depository institution, as defined in section 1813 of this title;

(ii) a branch or agency of a foreign bank, as defined in section 3101 of this title;

(iii) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601-604a and 611 through 631);

(iv) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);¹

(v) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(vi) an investment company, as defined in section 80a-3 of title 15;

¹ See References in Text note below.