

(d) Securities and Exchange Commission rules**(1) Promulgation****(A) In general**

Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a), the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by persons described in paragraph (2).

(B) Exception

The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—

- (i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a); or
- (ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.

If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Securities and Exchange Commission shall publish in the Federal Register its determination with the reasons for it.

(2) Application**(A) In general**

The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in the preceding sentence.

(B) Definitions

For purposes of subparagraph (A)—

- (i) the terms “broker”, “dealer”, “transfer agent”, “municipal securities dealer”, “municipal securities broker”, “government securities broker”, and “government securities dealer” have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 78c(a) of this title;

(ii) the term “investment adviser” has the meaning given such term by section 80b-2(a)(11) of this title; and

(iii) the term “investment company” has the meaning given such term by section 80a-3(a) of this title.

(e) Commodity Futures Trading Commission rules**(1) Application**

The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in section 9b(1) of title 7.

(2) Omitted

(Pub. L. 103-297, §3, Aug. 16, 1994, 108 Stat. 1545; Pub. L. 107-56, title X, §1011(b)(1), (2), Oct. 26, 2001, 115 Stat. 396; Pub. L. 111-203, title X, §1100C(a), July 21, 2010, 124 Stat. 2110.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subssecs. (b) and (c)(2), is title X of Pub. L. 111-203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§5481 et seq.) of chapter 53 of Title 12, Banks and Banking, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

CODIFICATION

Section is comprised of section 3 of Pub. L. 103-297. Subsec. (e)(2) of section 3 of Pub. L. 103-297 enacted section 9b of Title 7, Agriculture.

AMENDMENTS

2010—Subsecs. (b), (c). Pub. L. 111-203 added subssecs. (b) and (c) and struck out former subssecs. (b) and (c) which read as follows:

“(b) RULEMAKING.—The Commission shall prescribe the rules under subsection (a) of this section within 365 days after August 16, 1994. Such rules shall be prescribed in accordance with section 553 of title 5.

“(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) of this section shall be treated as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices.”

2001—Subsec. (a)(2). Pub. L. 107-56, §1011(b)(1), inserted “which shall include fraudulent charitable solicitations, and” before “which may include”.

Subsec. (a)(3)(D). Pub. L. 107-56, §1011(b)(2), added subpar. (D).

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.

§ 6103. Actions by States**(a) In general**

Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 6102 of this title, the State, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to ob-

tain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

(b) Notice

The State shall serve prior written notice of any civil action under subsection (a) or (f)(2) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) Construction

For purposes of bringing any civil action under subsection (a), nothing in this chapter shall prevent an attorney general 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.

(d) Actions by Commission or the Bureau of Consumer Financial Protection

Whenever a civil action has been instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection for violation of any rule prescribed under section 6102 of this title, no State may, during the pendency of such action instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection, institute a civil action under subsection (a) or (f)(2) against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

(e) Venue; service of process

Any civil action brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(f) Actions by other State officials

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents. (Pub. L. 103-297, § 4, Aug. 16, 1994, 108 Stat. 1548; Pub. L. 111-203, title X, §1100C(b), July 21, 2010, 124 Stat. 2111.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 103-297, Aug. 16,

1994, 108 Stat. 1545, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-203 inserted "or the Bureau of Consumer Financial Protection" after "Commission" wherever appearing.

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.

§ 6104. Actions by private persons

(a) In general

Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 6102 of this title, or an authorized person acting on such person's behalf, may, within 3 years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of \$50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule of the Commission under section 6102 of this title, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

(b) Notice

The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(c) Action by Commission or the Bureau of Consumer Financial Protection

Whenever a civil action has been instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection for violation of any rule prescribed under section 6102 of this title, no person may, during the pendency of such action instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection, institute a civil action against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

(d) Cost and fees

The court, in issuing any final order in any action brought under subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

(e) Construction

Nothing in this section shall restrict any right which any person may have under any statute or common law.