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21 **UNITED STATES DISTRICT COURT**
 22 **FOR CENTRAL DISTRICT OF CALIFORNIA**

<p>23 FEDERAL TRADE COMMISSION</p> <p>24 Plaintiff,</p> <p>25 v.</p> <p>26 BCO CONSULTING SERVICES, INC., et</p> <p>27 al.,</p> <p>28 Defendants.</p>

Case No. 8:23-CV-0699-JWH
(ADSx)

**STIPULATION TO ENTRY OF
 [PROPOSED] STIPULATED
 ORDER FOR PERMANENT
 INJUNCTION, MONETARY
 RELIEF, AND OTHER RELIEF
 AS TO BRANDON CLORES,
 KISHAN BHAKTA, AND BCO
 CONSULTING SERVICES, INC.**

1 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its
2 Complaint for Permanent Injunction, Monetary Relief, and Other Relief
3 (“Complaint”) pursuant to Sections 13(b) and 19 of the Federal Trade Commission
4 Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer
5 Fraud and Abuse Prevention Act (“Telemarketing Act”), and Section 522(a) of the
6 Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. § 6822(a). The Commission and
7 Defendants Brandon Clores, Kishan Bhakta, and BCO Consulting Services, Inc.
8 (collectively, “Settling Defendants”) stipulate to the entry of the concurrently
9 lodged [Proposed] Stipulated Order for Permanent Injunction, Monetary Relief, and
10 Other Relief (“Order”) to resolve all matters in dispute in this action between them.

11 THEREFORE, IT IS ORDERED as follows:

12 **FINDINGS**

13 This Court has jurisdiction over this matter.

14 The Complaint charges that Defendants participated in deceptive acts or
15 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the
16 Telemarketing Sales Rule (the “TSR”), 16 C.F.R. Part 310, and Section 521 of the
17 Gramm-Leach-Bliley Act (the “GLB Act”), 15 U.S.C. § 6821, in the deceptive
18 marketing and sale of student loan debt relief services.

19 Only for purposes of this action, Settling Defendants admit the facts
20 necessary to establish jurisdiction.

21 Defendants waive any claim that they may have under the Equal Access to
22 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through
23 the date of this Order, and agree to bear their own costs and attorney fees.

24 Settling Defendants waive all rights to appeal or otherwise challenge or
25 contest the validity of this Order.

1 **DEFINITIONS**

2 For the purpose of this Order, the following definitions apply:

3 A. **“Assisting Others”** includes:

4 1. Performing customer service functions, including receiving or
5 responding to consumer complaints;

6 2. Formulating or providing, or arranging for the formulation or
7 provision of, any advertising or marketing material, including any telephone sales
8 script, direct mail solicitation, or the design, text, or use of images of any Internet
9 website, email, or other electronic communication;

10 3. Formulating or providing, or arranging for the formulation or
11 provision of, any marketing support material or service, including web or Internet
12 Protocol addresses or domain name registration for any Internet websites, affiliate
13 marketing services, or media placement services;

14 4. Providing names of, or assisting in the generation of, potential
15 customers;

16 5. Performing marketing, billing, payment processing, or payment
17 services of any kind; or

18 6. Acting or serving as an owner, officer, director, manager, or
19 principal of any entity.

20 B. **“Defendants”** means the Individual Defendants and the Corporate
21 Defendants, individually, collectively, or in any combination.

22 1. **“Corporate Defendant(s)”** means BCO Consulting Services,
23 Inc.(“BCO”) and SLA Consulting Services Inc. (“SLA”), and each of their
24 subsidiaries, affiliates, successors, and assigns.

1 2. **“Individual Defendant(s)”** means Gianni Olilang, Brandon
2 Clores, Kishan Bhakta, and Allan Radam, individually, collectively, or in any
3 combination.

4 3. **“Settling Defendants”** means Brandon Clores, Kishan Bhakta,
5 and BCO (along with its subsidiaries, affiliates, successors, and assigns),
6 individually, collectively, or in any combination.

7 4. **“Settling Individual Defendant(s)”** means Brandon Clores and
8 Kishan Bhakta, individually, collectively, or in any combination.

9 5. **“Settling Corporate Defendant(s)”** means BCO and each of
10 its subsidiaries, affiliates, successors, and assigns.

11 C. **“Person”** means a natural person, organization, or other legal entity,
12 including a corporation, partnership, proprietorship, association, cooperative, or
13 any other group or combination acting as an entity.

14 D. **“Receiver”** means Thomas W. McNamara.

15 E. **“Receivership Entity(ies)”** means the Settling Corporate
16 Defendant(s), as well as any other entity that has conducted any business related to
17 Settling Defendants’ student loan debt relief services business, including receipt of
18 assets derived from any activity that is the subject of the Complaint in this matter,
19 and which the Receiver has reason to believe is owned or controlled in whole or in
20 part by any Settling Defendant.

21 F. **“Secured or Unsecured Debt Relief Product or Service”** means:

22 1. With respect to any mortgage, loan, debt, or obligation between
23 a person and one or more secured or unsecured creditors or debt collectors, any
24 product, service, plan, or program represented, expressly or by implication, to:

25 a. stop, prevent, or postpone any mortgage or deed of
26 foreclosure sale for a person’s dwelling, any other sale of collateral, any
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1 repossession of a person's dwelling or other collateral, or otherwise save a person's
2 dwelling or other collateral from foreclosure or repossession;

3 b. negotiate, obtain, or arrange a modification, or
4 renegotiate, settle, reduce, or in any way alter any terms of the mortgage, loan,
5 debt, or obligation, including a reduction in the amount of interest, principal
6 balance, monthly payments, or fees owed by a person to a secured or unsecured
7 creditor or debt collector;

8 c. obtain any forbearance or modification in the timing of
9 payments from any secured or unsecured holder or servicer of any mortgage, loan,
10 debt, or obligation;

11 d. negotiate, obtain, or arrange any extension of the period
12 of time within which a person may (i) cure his or her default on the mortgage, loan,
13 debt, or obligation, (ii) reinstate his or her mortgage, loan, debt, or obligation, (iii)
14 redeem a dwelling or other collateral, or (iv) exercise any right to reinstate the
15 mortgage, loan, debt, or obligation or redeem a dwelling or other collateral;

16 e. obtain any waiver of an acceleration clause or balloon
17 payment contained in any promissory note or contract secured by any dwelling or
18 other collateral; or

19 f. negotiate, obtain, or arrange (i) a short sale of a dwelling
20 or other collateral, (ii) a deed-in-lieu of foreclosure, or (iii) any other disposition of
21 a mortgage, loan, debt, or obligation other than a sale to a third party that is not the
22 secured or unsecured loan holder.

23 The foregoing shall include any manner of claimed assistance, including auditing
24 or examining a person's application for the mortgage, loan, debt, or obligation.

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2. With respect to any loan, debt, or obligation between a person and one or more unsecured creditors or debt collectors, any product, service, plan, or program represented, expressly or by implication, to:

- a. repay one or more unsecured loans, debts, or obligations;
- or
- b. combine unsecured loans, debts, or obligations into one or more new loans, debts, or obligations.

G. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones, and which involves more than one interstate telephone call.

ORDER

I. BAN ON SECURED AND UNSECURED DEBT RELIEF PRODUCTS AND SERVICES

IT IS ORDERED that Settling Defendants are permanently restrained and enjoined from advertising, marketing, promoting, offering for sale, selling, or Assisting Others in the advertising, marketing, promoting, offering for sale, or selling, of any Secured or Unsecured Debt Relief Product or Service.

II. BAN ON TELEMARKETING

IT IS FURTHER ORDERED that Settling Defendants are permanently restrained and enjoined from participating in Telemarketing, whether directly or through an intermediary, and including by consulting, brokering, planning, investing, or advising others regarding Telemarketing.

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**III. PROHIBITION AGAINST
MISREPRESENTATIONS RELATING TO ANY
PRODUCTS OR SERVICES**

IT IS FURTHER ORDERED that Settling Defendants and Settling Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or selling of any product, service, plan, or program are permanently restrained and enjoined from misrepresenting, or Assisting Others in misrepresenting, expressly or by implication:

A. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;

B. That any Person is affiliated with, endorsed or approved by, or otherwise connected to any other Person; government entity; public, non-profit, or other non-commercial program; or any other program;

C. The nature, expertise, position, or job title of any Person who provides any product, service, plan, or program;

D. That the ability to improve or otherwise affect a consumer's credit record, credit history, credit rating, or ability to obtain credit, including that a consumer's credit record, credit history, credit rating, or ability to obtain credit can be improved by permanently removing negative information from the consumer's credit record or history, even where such information is accurate and not obsolete;

E. That a consumer will save money; or

1 F. Any other fact material to consumers concerning any good or service,
2 such as: the total costs; any restrictions, limitations, or conditions; or any aspect of
3 its performance, efficacy, nature, or central characteristics.

4 **IV. PROHIBITION AGAINST**
5 **UNSUBSTANTIATED CLAIMS**

6 IT IS FURTHER ORDERED that Settling Defendants and Settling
7 Defendants' officers, agents, employees, and attorneys, and all other Persons in
8 active concert or participation with any of them, who receive actual notice of this
9 Order, whether acting directly or indirectly, in connection with the advertising,
10 marketing, promoting, offering for sale, or selling of any product, service, plan, or
11 program are permanently restrained and enjoined from making any representation
12 or Assisting Others in making any misrepresentation, expressly or by implication,
13 about the benefits, performance, or efficacy of any product or service, unless the
14 representation is non-misleading, and, at the time such representation is made, that
15 Settling Defendant possesses and relies upon competent and reliable evidence that
16 is sufficient in quality and quantity based on standards generally accepted in
17 relevant fields, when considered in light of the entire body of relevant and reliable
18 evidence, to substantiate that the representation is true.

19 **V. PROHIBITION AGAINST OBTAINING**
20 **CUSTOMER INFORMATION BY FALSE**
21 **PRETENSES**

22 IT IS FURTHER ORDERED that Settling Defendants and Settling
23 Defendants' officers, agents, employees, and attorneys, and all other Persons in
24 active concert or participation with any of them, who receive actual notice of this
25 Order, whether acting directly or indirectly are permanently restrained and
26 enjoined from:
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1 A. Obtaining, or attempting to obtain customer information of a
2 financial institution (including bank account routing number, account number, or
3 log-in credentials) from a consumer by making false, fictitious, or fraudulent
4 representations to any consumer or financial institution; or

5 B. Violating the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809, §§
6 6821-6827, a copy of which is attached as **ATTACHMENT A**.

7 **VI. MONETARY JUDGMENT AND PARTIAL**
8 **SUSPENSION**

9 IT IS FURTHER ORDERED that:

10 A. Judgment in the amount of five million, eight hundred eighty-two
11 thousand, seventy-two Dollars and four cents (\$5,882,072.04) is entered in favor of
12 the Commission against Settling Defendants, jointly and severally, as monetary
13 relief. The liability of Settling Defendants for the judgment shall be joint and
14 several with judgment against any other Defendants by separate order.

15 B. The monetary judgment set out in Section VI.A is enforceable against
16 any asset, real or personal, whether located within the United States or outside the
17 United States, owned jointly or singly by, on behalf of, for the benefit of, in trust
18 by or for, or as a deposit for future goods or services to be provided to, any Settling
19 Defendant, whether held as tenants in common, joint tenants with or without the
20 right of survivorship, tenants by the entirety, and/or community property.

21 C. In partial satisfaction of the judgment against Settling Defendants:

22 1. Defendant Clores shall, within 20 days after the date of entry of
23 this Order, either (a) transfer to the FTC or its designated agent cash in the
24 amount of \$51,508 or (b) transfer to the Receiver title to the real property
25 located at [REDACTED], in which case
26 Defendant Clores shall cooperate fully with the Receiver and shall execute
27 any instrument or document presented by the Receiver, and do whatever else
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1 the Receiver deems necessary or desirable to effect such transfer. Upon such
2 transfer, the real property shall be an asset of the receivership estate, to be
3 governed by Section X of this Order.

4 2. Defendant Clores shall, within 20 days after the date of entry of
5 this Order, either (a) transfer to the FTC or its designated agent cash in the
6 amount of \$7,238 or (b) transfer to the Receiver title to the 2006 Porsche
7 Cayman S disclosed on his financial statement, in which case Defendant
8 Clores shall cooperate fully with the Receiver and shall execute any
9 instrument or document presented by the Receiver, and do whatever else the
10 Receiver deems necessary or desirable to effect such transfer. Upon such
11 transfer, the real property shall be an asset of the receivership estate, to be
12 governed by Section X of this Order.

13 3. Defendant Bhakta shall, within 20 days after the date of entry of
14 this Order, either (a) transfer to the FTC or its designated agent cash in the
15 amount of \$5,682 or (b) transfer to the Receiver title to the 2021 Toyota
16 Rav4 SUV disclosed on his financial statement, in which case Defendant
17 Bhakta shall cooperate fully with the Receiver and shall execute any
18 instrument or document presented by the Receiver, and do whatever else the
19 Receiver deems necessary or desirable to effect such transfer. Upon such
20 transfer, the real property shall be an asset of the receivership estate, to be
21 governed by Section X of this Order.

22 4. Defendant Bhakta shall, within 20 days after the date of entry of
23 this Order, either (a) transfer to the FTC or its designated agent cash in the
24 amount of \$7,850 or (b) transfer to the Receiver title to the 2015
25 Volkswagen Jetta disclosed on his financial statement, in which case
26 Defendant Bhakta shall cooperate fully with the Receiver and shall execute
27 any instrument or document presented by the Receiver, and do whatever else
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1 the Receiver deems necessary or desirable to effect such transfer. Upon such
2 transfer, the real property shall be an asset of the receivership estate, to be
3 governed by Section X of this Order.

4 5. In addition to the amounts set forth in Subsections VI.C.1-4,
5 any financial or brokerage institution, payment processor, escrow agent, title
6 company, commodity trading company, business entity, or person, whether
7 located within the United States or outside the United States, that holds,
8 controls, or maintains accounts or assets of, on behalf of, or for the benefit
9 of, any Receivership Entity, whether real or personal, whether located within
10 the United States or outside the United States, shall, within ten (10) business
11 days from receipt of a copy of this Order, turn over such accounts or assets
12 to the Receiver or his designated agent.

13 6. In addition to the amounts set forth in Subsections VI.C.1-5,
14 any financial or brokerage institution, escrow agent, title company,
15 commodity trading company, business entity, or person, whether located
16 within the United States or outside the United States, that holds, controls, or
17 maintains accounts or assets of, on behalf of, or for the benefit of, any
18 Settling Individual Defendant, whether real or personal, whether located
19 within the United States or outside the United States, shall, within ten (10)
20 business days from receipt of a copy of this order, liquidate and turn over
21 such account or asset to the FTC or its designated agent, including, but not
22 limited to:

- 23 i. Chase shall, within ten (10) days of receipt of a copy of
24 this Order, transfer to the FTC or its designated agent all
25 holdings in account number xxx8089 in the name of Brandon
26 Clores;

1 ii. Chase shall, within ten (10) days of receipt of a copy of
2 this Order, transfer to the FTC or its designated agent all
3 holdings in account number xxxx3957 in the name of Brandon
4 Clores;

5 iii. Chase shall, within ten (10) days of receipt of a copy of
6 this Order, transfer to the FTC or its designated agent all
7 holdings in account number xxx0392 in the name of Brandon
8 Clores and Palladion LLC;

9 iv. Chase shall, within ten (10) days of receipt of a copy of
10 this Order, transfer to the FTC or its designated agent all
11 holdings in account number xxxx7772 in the name of Kishan
12 Bhakta;

13 v. Chase shall, within ten (10) days of receipt of a copy of
14 this Order, transfer to the FTC or its designated agent all
15 holdings in account number xxxx2437 in the name of Kishan
16 Bhakta;

17 vi. Chase shall, within ten (10) days of receipt of a copy of
18 this Order, transfer to the FTC or its designated agent all
19 holdings in account number xxxx7772 in the name of Kishan
20 Bhakta;

21 vii. Bank of America, NA (“Bank of America”) shall, within
22 ten (10) days of receipt of a copy of this Order, transfer to the
23 FTC or its designated agent all holdings in account number
24 xxxx9144 in the name of Brandon Clores;

25 viii. Bank of America shall, within ten (10) days of receipt of
26 a copy of this Order, transfer to the FTC or its designated agent
27 all holdings in account number xxxx1992 in the name of
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Kishan Bhakta;

ix. Bank of America shall, within ten (10) days of receipt of a copy of this Order, transfer to the FTC or its designated agent all holdings in account number xxxx6655 in the name of Kishan Bhakta;

x. Navy Federal shall, within ten (10) days of receipt of a copy of this Order, transfer to the FTC or its designated agent all holdings in account number xxxx3187 in the name of Kishan Bhakta;

xi. Navy Federal shall, within ten (10) days of receipt of a copy of this Order, transfer to the FTC or its designated agent all holdings in account number xxxx4111 in the name of Brandon Clores;

xii. Navy Federal shall, within ten (10) days of receipt of a copy of this Order, transfer to the FTC or its designated agent all holdings in account number xxxx1642 in the name of Brandon Clores;

xiii. TD AmeriTrade shall, within ten (10) days of receipt of a copy of this Order, liquidate and transfer to the FTC or its designated agent all holdings in account number xxx6822 in the name of Brandon Clores;

xiv. TD AmeriTrade shall, within ten (10) days of receipt of a copy of this Order, liquidate and transfer to the FTC or its designated agent all holdings in account number xxxx9011 in the name of Kishan Bhakta;

xv. TD AmeriTrade shall, within ten (10) days of receipt of a copy of this Order, liquidate and transfer to the FTC or its

1 designated agent all holdings in account number xxxx1620 in
2 the name of Kishan Bhakta;

3 xvi. Webull shall, within 10 days of receipt of a copy of this
4 Order, liquidate and transfer to the FTC or its designated agent
5 all holdings in account number xxxx5717 in the name of
6 Kishan Bhakta; and

7 xvii. Webull shall, within 10 days of receipt of a copy of this
8 Order, liquidate and transfer to the FTC or its designated agent
9 all holdings in account number xxxx1247 in the name of
10 Brandon Clores.

11 D. Upon such payment and all other asset transfers, as set forth in
12 Sections VI.C and VII, the remainder of the judgment is suspended, subject to the
13 Subsections below.

14 E. The asset freeze is modified to permit the transfers and liquidations
15 identified in this Section. Upon completion of those transfers and liquidations, the
16 asset freeze as to Settling Defendants is dissolved.

17 F. The Commission's agreement to the suspension of part of the
18 judgment is expressly premised upon the truthfulness, accuracy, and completeness
19 of Settling Defendants' sworn financial statements and related documents
20 (collectively, "financial representations") submitted to the Commission, namely:

21 1. the Financial Statement of Individual Defendant Brandon
22 Clores signed on May 9, 2023, including the attachments;

23 2. the Financial Statement of Individual Defendant Kishan Bhakta
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1 signed on May 11, 2023, including the attachments;

2 3. the Financial Statement of Corporate Defendant BCO
3 Consulting Services, Inc. signed by Kishan Bhakta on July 24, 2023, including the
4 attachments;

5 4. The additional documentation submitted by email from Settling
6 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
7 dated May 11, 2023, and enclosing (1) the Addendum to Brandon Clores'
8 Disclosures signed May 11, 2023; and (2) account statements associated with
9 Chase accounts in the name of Brandon Clores;

10 5. The additional documentation submitted by email from Settling
11 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
12 dated May 26, 2023, regarding transactions in a Bank of America account ending
13 in xxxx7772 in the name of Kishan Bhakta;

14 6. The additional documentation submitted by email from Settling
15 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
16 dated June 4, 2023 and attaching (1) bank statements associated with a Bank of
17 America account in the name of Kishan Bhakta; and (2) account statements
18 associated with a Webull Financial account in the name of Kishan Bhakta;

19 7. The additional documentation submitted by email from Settling
20 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
21 dated June 11, 2023, and enclosing account statements associated with a TD
22 Ameritrade account in the name of Kishan Bhakta;

23 8. The additional documentation submitted by email from Settling
24 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
25 dated June 25, 2023, and enclosing (1) a supplemental financial disclosure form for
26 Brandon Clores bearing a date of May 9, 2023; (2) account statements associated
27 with Navy Federal Credit Union accounts in the name of Brandon Clores;

1 9. The additional documentation submitted by email from Settling
2 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
3 dated July 25, 2023 and enclosing a statement from Navy Federal Credit Union
4 associated with an account in the name of Brandon Clores; and

5 10. The additional documentation submitted by email from Settling
6 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
7 dated July 30, 2023 and enclosing statements from BMW Financial Services
8 associated with an account in the name of Kishan Bhakta.

9 G. The suspension of the judgment will be lifted as to any Settling
10 Defendant if, upon motion by the Commission, the Court finds that Settling
11 Defendant failed to disclose any material asset, materially misstated the value of
12 any asset, or made any other material misstatement or omission in the financial
13 representations identified above.

14 H. If the suspension of the judgment is lifted, the judgment becomes
15 immediately due as to that Settling Defendant in the amount specified in
16 Subsection VI.A above (which the parties stipulate, only for purposes of this
17 Section, represents the consumer injury alleged in the Complaint), less any
18 payment previously made pursuant to this Section, plus interest computed from the
19 date of entry of this Order.

20 **VII. ADDITIONAL MONETARY PROVISIONS**

21 IT IS FURTHER ORDERED that:

22 A. Settling Defendants relinquish dominion and all legal and equitable
23 right, title, and interest in all assets transferred pursuant to this Order and may not
24 seek the return of any assets.

25 B. The facts alleged in the Complaint will be taken as true, without
26 further proof, in any subsequent civil litigation by or on behalf of the Commission,
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1 including in a proceeding to enforce its rights to any payment or monetary
2 judgment pursuant to this Order, such as a nondischargeability complaint in any
3 bankruptcy case.

4 C. The facts alleged in the Complaint establish all elements necessary to
5 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the
6 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral
7 estoppel effect for such purposes.

8 D. Settling Defendants acknowledge that their Taxpayer Identification
9 Numbers (Social Security Numbers or Employer Identification Numbers), which
10 Settling Defendants previously submitted to the Commission, may be used for
11 collecting and reporting on any delinquent amount arising out of this Order, in
12 accordance with 31 U.S.C. §7701.

13 E. All money received by the Commission pursuant to this Order may be
14 deposited into a fund administered by the Commission or its designee to be used
15 for consumer relief, such as redress and any attendant expenses for the
16 administration of any redress fund. If a representative of the Commission decides
17 that direct redress to consumers is wholly or partially impracticable or money
18 remains after such redress is completed, the Commission may apply any remaining
19 money for such related relief (including consumer information remedies) as it
20 determines to be reasonably related to Settling Defendants' practices alleged in the
21 Complaint. Any money not used for relief is to be deposited to the U.S. Treasury.
22 Settling Defendants have no right to challenge any actions the Commission or its
23 representatives may take pursuant to this Subsection.

24 **VIII. CUSTOMER INFORMATION**

25 IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants'
26 officers, agents, employees, attorneys, and all other Persons in active concert or
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1 participation with any of them, who receive actual notice of this Order, are
2 permanently restrained and enjoined from directly or indirectly:

3 A. Failing to provide sufficient customer information to enable the
4 Commission to efficiently administer consumer redress. Settling Defendants
5 represent that they have provided this redress information to the Commission. If a
6 representative of the Commission requests in writing any information related to
7 redress, Settling Defendants must provide it, in the form prescribed by the
8 Commission, within 14 days.

9 B. Disclosing, using, or benefitting from customer information, including
10 the name, address, telephone number, email address, social security number, FSA
11 ID, other identifying information, or any data that enables access to a customer's
12 account (including a student loan account, credit card, bank account, or other
13 financial account) that any Settling Defendant obtained prior to entry of this Order
14 in connection with the marketing or sale of Secured or Unsecured Debt Relief
15 Products or Services; and

16 C. Failing to destroy such customer information in all forms in their
17 possession, custody, or control within 30 days after receipt of written direction to
18 do so from a representative of the Commission.

19 Provided, however, that customer information need not be disposed of, and
20 may be disclosed, to the extent requested by a government agency or required by
21 law, regulation, or court order.

22 IX. COOPERATION

23 IT IS FURTHER ORDERED that Settling Defendants must fully cooperate
24 with representatives of the Commission in this case and in any investigation related
25 to or associated with the transactions or the occurrences that are the subject of the
26 Complaint. Settling Defendants must provide truthful and complete information,
27 evidence, and testimony. Settling Individual Defendants must appear and Settling
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1 Corporate Defendants must cause Settling Defendants' officers, employees,
2 representatives, or agents to appear for interviews, discovery, hearings, trials, and
3 any other proceedings that a Commission representative may reasonably request
4 upon 5 days written notice, or other reasonable notice, at such places and times as a
5 Commission representative may designate, without the service of a subpoena.

6 **X. RECEIVERSHIP TERMINATION**

7 IT IS FURTHER ORDERED that Thomas McNamara, Esq., shall continue
8 as a permanent receiver over the Receivership Entities with full powers of a
9 permanent receiver, including but not limited to those powers set forth in the
10 Preliminary Injunction (ECF No. 55. The Receiver is directed to wind up the
11 Receivership Entities and liquidate all assets within 180 days after entry of this
12 Order. Any party or the Receiver may request that the Court extend the Receiver's
13 term for good cause. Upon termination of the receivership and final payment to
14 the Receiver of all approved fees, costs, and expenses, the Receiver shall turn over
15 to the FTC or its designated agent all remaining assets in the receivership estate.

16 **XI. ORDER ACKNOWLEDGMENTS**

17 IT IS FURTHER ORDERED that Settling Defendants obtain
18 acknowledgments of receipt of this Order:

19 A. Each Settling Defendant, within 7 days of entry of this Order, must
20 submit to the Commission an acknowledgment of receipt of this Order sworn
21 under penalty of perjury.

22 B. For 20 years after entry of this Order, each Settling Individual
23 Defendant for any business that such Settling Defendant, individually or
24 collectively with any other Defendants, is the majority owner or controls directly
25 or indirectly, and each Settling Corporate Defendant, must deliver a copy of this
26 Order to: (1) all principals, officers, directors, and LLC managers and members;

1 (2) all employees having managerial responsibilities for Secured or Unsecured
2 Debt Relief Products or Services, and all agents and representatives who
3 participate in the Secured or Unsecured Debt Relief Products or Services; and (3)
4 any business entity resulting from any change in structure as set forth in the
5 Section titled Compliance Reporting. Delivery must occur within 7 days of entry
6 of this Order for current personnel. For all others, delivery must occur before they
7 assume their responsibilities.

8 C. From each individual or entity to which a Settling Defendant
9 delivered a copy of this Order, that Settling Defendant must obtain, within 30 days,
10 a signed and dated acknowledgment of receipt of this Order.

11 **XII. COMPLIANCE REPORTING**

12 IT IS FURTHER ORDERED that Settling Defendants make timely
13 submissions to the Commission:

14 A. One year after entry of this Order, each Settling Defendant must
15 submit a compliance report, sworn under penalty of perjury:

16 1. Each Settling Defendant must: (a) identify the primary
17 physical, postal, and email address and telephone number, as designated points of
18 contact, which representatives of the Commission may use to communicate with
19 Settling Defendant; (b) identify all of that Settling Defendant's businesses by all of
20 their names, telephone numbers, and physical, postal, email, and Internet
21 addresses; (c) describe the activities of each business, including the goods and
22 services offered, the means of advertising, marketing, and sales, and the
23 involvement of any other Settling Defendant (which the Settling Individual
24 Defendants must describe if they know or should know due to their own
25 involvement); (d) describe in detail whether and how that Settling Defendant is in
26 compliance with each Section of this Order; and (e) provide a copy of each Order
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1 Acknowledgment obtained pursuant to this Order, unless previously submitted to
2 the Commission.

3 2. Additionally, each Settling Individual Defendant must: (a)
4 identify all telephone numbers and all physical, postal, email and Internet
5 addresses, including all residences; (b) identify all business activities, including
6 any business for which such Settling Defendant performs services whether as an
7 employee or otherwise and any entity in which such Settling Defendant has any
8 ownership interest; and (c) describe in detail such Settling Defendant's
9 involvement in each such business, including title, role, responsibilities,
10 participation, authority, control, and any ownership.

11 B. For 20 years after entry of this Order, each Settling Defendant must
12 submit a compliance notice, sworn under penalty of perjury, within 14 days of any
13 change in the following:

14 1. Each Settling Defendant must report any change in: (a) any
15 designated point of contact; or (b) the structure of any Settling Corporate
16 Defendant or any entity that any Settling Defendant has any ownership interest in
17 or controls directly or indirectly that may affect compliance obligations arising
18 under this Order, including: creation, merger, sale, or dissolution of the entity or
19 any subsidiary, parent, or affiliate that engages in any acts or practices subject to
20 this Order.

21 2. Additionally, each Settling Individual Defendant must report
22 any change in: (a) name, including aliases or fictitious name, or residence address;
23 or (b) title or role in any business activity, including any business for which such
24 Settling Defendant performs services whether as an employee or otherwise and any
25 entity in which such Settling Defendant has any ownership interest, and identify
26 the name, physical address, and any Internet address of the business or entity.

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1 C. Each Settling Defendant must submit to the Commission notice of the
2 filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by
3 or against such Settling Defendant within 14 days of its filing.

4 D. Any submission to the Commission required by this Order to be
5 sworn under penalty of perjury must be true and accurate and comply with 28
6 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under
7 the laws of the United States of America that the foregoing is true and correct.
8 Executed on: _____” and supplying the date, signatory’s full name, title (if
9 applicable), and signature.

10 E. Unless otherwise directed by a Commission representative in writing,
11 all submissions to the Commission pursuant to this Order must be emailed to
12 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
13 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
14 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
15 subject line must begin: FTC v. BCO Consulting Services, Inc., *et al.*, X230027.

16 **XIII. RECORDKEEPING**

17 IT IS FURTHER ORDERED that Settling Defendants must create certain
18 records for 20 years after entry of the Order, and retain each such record for 5
19 years. Specifically, each Settling Defendant for any business that such Settling
20 Defendant, individually or collectively with any other Settling Defendants, is a
21 majority owner or controls directly or indirectly, must create and retain the
22 following records:

23 A. accounting records showing the revenues from all goods or services
24 sold;

25 B. personnel records showing, for each Person providing services,
26 whether as an employee or otherwise, that Person’s: name; addresses; telephone
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1 numbers; job title or position; dates of service; and (if applicable) the reason for
2 termination;

3 C. records of all consumer complaints and refund requests, whether
4 received directly or indirectly, such as through a third party, and any response;

5 D. all records necessary to demonstrate full compliance with each
6 provision of this Order, including all submissions to the Commission; and

7 E. a copy of each unique advertisement or other marketing material.

8 **XIV. COMPLIANCE MONITORING**

9 IT IS FURTHER ORDERED that, for the purpose of monitoring Settling
10 Defendants' compliance with this Order, including the financial representations
11 upon which part of the judgment was suspended and any failure to transfer any
12 assets as required by this Order:

13 A. Within 14 days of receipt of a written request from a representative of
14 the Commission, each Settling Defendant must: submit additional compliance
15 reports or other requested information, which must be sworn under penalty of
16 perjury; appear for depositions; and produce documents for inspection and
17 copying. The Commission is also authorized to obtain discovery, without further
18 leave of court, using any of the procedures prescribed by Federal Rules of Civil
19 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

20 B. For matters concerning this Order, the Commission is authorized to
21 communicate directly with each Settling Defendant. Settling Defendant must
22 permit representatives of the Commission to interview any employee or other
23 Person affiliated with any Settling Defendant who has agreed to such an interview.
24 The Person interviewed may have counsel present.

25 C. The Commission may use all other lawful means, including posing,
26 through its representatives as consumers, suppliers, or other individuals or entities,
27
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1 to Settling Defendants or any individual or entity affiliated with Settling
2 Defendants, without the necessity of identification or prior notice. Nothing in this
3 Order limits the Commission’s lawful use of compulsory process, pursuant to
4 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

5 D. Upon written request from a representative of the Commission, any
6 consumer reporting agency must furnish consumer reports concerning Settling
7 Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act,
8 15 U.S.C. §1681b(a)(1).

9 **XV. RETENTION OF JURISDICTION**

10 IT IS FURTHER ORDERED that this Court retains jurisdiction of this
11 matter for purposes of construction, modification, and enforcement of this Order.

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13 So Stipulated.

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1 FOR SETTLING DEFENDANTS:

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4 _____ Date: _____
5 BRANDON CLORES, individually and as an
6 officer of BCO CONSULTING SERVICES, INC.



7

8 _____ Date: _____
9 KISHAN BHAKTA, individually and as an
10 officer of BCO CONSULTING SERVICES, INC.



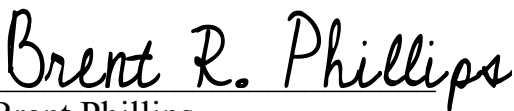
11

12 _____ Date: _____
13 BCO CONSULTING SERVICES, INC.

14

15 BY: _____

16

17 

18 Date: August 15, 2023

19

20 Brent Phillips
21 PHILLIPS LAW CORPORATION
22 801 Parkcenter Drive, Suite 105
23 Santa Ana, CA 92705
24 bphillips@phillipslawcorporation.com

25

26 *Counsel for Defendants Brandon Clores, Kishan Bhakta, and BCO Consulting*
27 *Services, Inc.*

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1 FOR SETTLING DEFENDANTS:

2

3



Date: 8-16-23

4

BRANDON CLORES, individually and as an
officer of BCO CONSULTING SERVICES, INC.

5

6

Date: _____

7

KISHAN BHAKTA, individually and as an
officer of BCO CONSULTING SERVICES, INC.

8

9

10



Date: 8-16-23

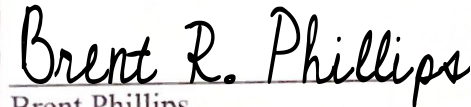
BCO CONSULTING SERVICES, INC.

11

BY: Brandon Clores

12

13



Date: August 17, 2023

14

Brent Phillips
PHILLIPS LAW CORPORATION
801 Parkcenter Drive, Suite 105
Santa Ana, CA 92705
bphillips@phillipslawcorporation.com

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*Counsel for Defendants Brandon Clores, Kishan Bhakta, and BCO Consulting
Services, Inc.*

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1 FOR THE FEDERAL TRADE COMMISSION:

2 *Katherine M. Aizpuru*

Date: 10/05/2023

3 KATHERINE M. AIZPURU (*pro hac vice*)

4 kaizpuru@ftc.gov

5 SAMUEL JACOBSON (*pro hac vice*)

6 sjacobson@ftc.gov

7 MARY WEAVER (*pro hac vice* application pending)

8 mweaver1@ftc.gov

9 FEDERAL TRADE COMMISSION

10 600 Pennsylvania Avenue, N.W.

11 Mail Stop: CC-10232

12 Washington, D.C. 20580

13 (202) 326-2870

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Counsel for Plaintiff Federal Trade Commission

Attachment A

lines broker or agent, insurance consultant, limited insurance representative, and any other individual or entity that sells, solicits, or negotiates policies of insurance or offers advice, counsel, opinions or services related to insurance.

(6) Insurer

The term “insurer” has the meaning as in section 313(e)(2)(B) of title 31.

(7) Principal place of business

The term “principal place of business” means the State in which an insurance producer maintains the headquarters of the insurance producer and, in the case of a business entity, where high-level officers of the entity direct, control, and coordinate the business activities of the business entity.

(8) Principal place of residence

The term “principal place of residence” means the State in which an insurance producer resides for the greatest number of days during a calendar year.

(9) State

The term “State” includes any State, the District of Columbia, any territory of the United States, and Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(10) State law

(A) In general

The term “State law” includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.

(B) Laws applicable in the District of Columbia

A law of the United States applicable only to or within the District of Columbia shall be treated as a State law rather than a law of the United States.

(Pub. L. 106–102, title III, §334, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 27.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6766 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6764, Pub. L. 106–102, title III, §334, Nov. 12, 1999, 113 Stat. 1433, related to coordination with other regulators, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6761 of this title.

A prior section 6765, Pub. L. 106–102, title III, §335, Nov. 12, 1999, 113 Stat. 1433, which related to judicial review, was omitted in the general amendment of this subchapter by Pub. L. 114–1. See section 6762 of this title.

A prior section 6766, Pub. L. 106–102, title III, §336, Nov. 12, 1999, 113 Stat. 1433, which related to definitions, was omitted in the general amendment of this subchapter by Pub. L. 114–1.

SUBCHAPTER IV—RENTAL CAR AGENCY INSURANCE ACTIVITIES

§ 6781. Standard of regulation for motor vehicle rentals

(a) Protection against retroactive application of regulatory and legal action

Except as provided in subsection (b), during the 3-year period beginning on November 12, 1999, it shall be a presumption that no State law imposes any licensing, appointment, or education requirements on any person who solicits the purchase of or sells insurance connected with, and incidental to, the lease or rental of a motor vehicle.

(b) Preeminence of State insurance law

No provision of this section shall be construed as altering the validity, interpretation, construction, or effect of—

- (1) any State statute;
- (2) the prospective application of any court judgment interpreting or applying any State statute; or
- (3) the prospective application of any final State regulation, order, bulletin, or other statutorily authorized interpretation or action,

which, by its specific terms, expressly regulates or exempts from regulation any person who solicits the purchase of or sells insurance connected with, and incidental to, the short-term lease or rental of a motor vehicle.

(c) Scope of application

This section shall apply with respect to—

- (1) the lease or rental of a motor vehicle for a total period of 90 consecutive days or less; and
- (2) insurance which is provided in connection with, and incidentally to, such lease or rental for a period of consecutive days not exceeding the lease or rental period.

(d) Motor vehicle defined

For purposes of this section, the term “motor vehicle” has the same meaning as in section 13102 of title 49.

(Pub. L. 106–102, title III, §341, Nov. 12, 1999, 113 Stat. 1434.)

CHAPTER 94—PRIVACY

SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

- Sec.
- 6801. Protection of nonpublic personal information.
- 6802. Obligations with respect to disclosures of personal information.
- 6803. Disclosure of institution privacy policy.
- 6804. Rulemaking.
- 6805. Enforcement.
- 6806. Relation to other provisions.
- 6807. Relation to State laws.
- 6808. Study of information sharing among financial affiliates.
- 6809. Definitions.

SUBCHAPTER II—FRAUDULENT ACCESS TO FINANCIAL INFORMATION

- 6821. Privacy protection for customer information of financial institutions.
- 6822. Administrative enforcement.

Sec.	
6823.	Criminal penalty.
6824.	Relation to State laws.
6825.	Agency guidance.
6826.	Reports.
6827.	Definitions.

SUBCHAPTER I—DISCLOSURE OF
NONPUBLIC PERSONAL INFORMATION

§ 6801. Protection of nonpublic personal information

(a) Privacy obligation policy

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial institutions safeguards

In furtherance of the policy in subsection (a), each agency or authority described in section 6805(a) of this title, other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

- (1) to insure the security and confidentiality of customer records and information;
- (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and
- (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(Pub. L. 106–102, title V, §501, Nov. 12, 1999, 113 Stat. 1436; Pub. L. 111–203, title X, §1093(1), July 21, 2010, 124 Stat. 2095.)

Editorial Notes

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 inserted “, other than the Bureau of Consumer Financial Protection,” after “section 6805(a) of this title” in introductory provisions.

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

Pub. L. 106–102, title V, §510, Nov. 12, 1999, 113 Stat. 1445, provided that: “This subtitle [subtitle A (§§501–510) of title V of Pub. L. 106–102, enacting this subchapter and amending section 1681s of this title] shall take effect 6 months after the date on which rules are required to be prescribed under section 504(a)(3) [15 U.S.C. 6804(a)(3)], except—

- “(1) to the extent that a later date is specified in the rules prescribed under section 504; and
- “(2) that sections 504 [15 U.S.C. 6804] and 506 [enacting section 6806 of this title and amending section 1681s of this title] shall be effective upon enactment [Nov. 12, 1999].”

§ 6802. Obligations with respect to disclosures of personal information

(a) Notice requirements

Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

(b) Opt out

(1) In general

A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that non-disclosure option.

(2) Exception

This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 6804 of this title, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) Limits on reuse of information

Except as otherwise provided in this subchapter, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) Limitations on the sharing of account number information for marketing purposes

A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other

marketing through electronic mail to the consumer.

(e) General exceptions

Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information—

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with—

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], to law enforcement agencies (including the Bureau of Consumer Financial Protection¹ a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal require-

ments; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

(Pub. L. 106-102, title V, §502, Nov. 12, 1999, 113 Stat. 1437; Pub. L. 111-203, title X, §1093(2), July 21, 2010, 124 Stat. 2095.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (c), was in the original "this subtitle", meaning subtitle A (§§501-510) of title V of Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Right to Financial Privacy Act of 1978, referred to in subsec. (e)(5), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

Chapter 2 of title I of Public Law 91-508, referred to in subsec. (e)(5), is chapter 2 (§§121-129) of title I of Pub. L. 91-508, Oct. 26, 1970, 84 Stat. 1116, which is classified generally to chapter 21 (§1951 et seq.) of Title 12, Banks and Banking. For complete classification of chapter 2 to the Code, see Tables.

The Fair Credit Reporting Act, referred to in subsec. (e)(6)(A), is title VI of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

AMENDMENTS

2010—Subsec. (e)(5). Pub. L. 111-203 inserted "the Bureau of Consumer Financial Protection" after "(including)".

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.

§ 6803. Disclosure of institution privacy policy

(a) Disclosure required

At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, of such financial institution's policies and practices with respect to—

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 6802 of this title, including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

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

(3) protecting the nonpublic personal information of consumers.

(b) Regulations

Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 6804 of this title.

(c) Information to be included

The disclosure required by subsection (a) shall include—

(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 6802 of this title, and including—

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 6802(e) of this title; and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 6801 of this title; and

(4) the disclosures required, if any, under section 1681a(d)(2)(A)(iii) of this title.

(d) Exemption for certified public accountants

(1) In general

The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is—

(A) a certified public accountant;

(B) certified or licensed for such purpose by a State; and

(C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

(2) Limitation

Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

(3) Definitions

For purposes of this subsection, the term “State” means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(e) Model forms

(1) In general

The agencies referred to in section 6804(a)(1) of this title shall jointly develop a model form

which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) Format

A model form developed under paragraph (1) shall—

(A) be comprehensible to consumers, with a clear format and design;

(B) provide for clear and conspicuous disclosures;

(C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

(D) be succinct, and use an easily readable type font.

(3) Timing

A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after October 13, 2006.

(4) Safe harbor

Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.

(f) Exception to annual notice requirement

A financial institution that—

(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 6802 of this title or regulations prescribed under section 6804(b) of this title, and

(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,

shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

(Pub. L. 106–102, title V, §503, Nov. 12, 1999, 113 Stat. 1439; Pub. L. 109–351, title VI, §609, title VII, §728, Oct. 13, 2006, 120 Stat. 1983, 2003; Pub. L. 114–94, div. G, title LXXV, §75001, Dec. 4, 2015, 129 Stat. 1787.)

Editorial Notes

AMENDMENTS

2015—Subsec. (f). Pub. L. 114–94 added subsec. (f).

2006—Pub. L. 109–351 designated concluding provisions of subsec. (a) as (b), inserted heading, substituted “Disclosures required by subsection (a)” for “Such disclosures”, redesignated former subsec. (b) as (c), and added subsecs. (d) and (e).

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 6804. Rulemaking**(a) Regulatory authority****(1) Rulemaking****(A) In general**

Except as provided in subparagraph (C), the Bureau of Consumer Financial Protection and the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to their respective jurisdiction under section 6805 of this title (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 6801 of this title.

(B) CFTC

The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 7b-2 of title 7.

(C) Federal Trade Commission authority

Notwithstanding the authority of the Bureau of Consumer Financial Protection under subparagraph (A), the Federal Trade Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to any financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)].

(D) Rule of construction

Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subchapter.

(2) Coordination, consistency, and comparability

Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, and with¹ representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

(3) Procedures and deadline

Such regulations shall be prescribed in accordance with applicable requirements of title 5.

¹So in original. Probably should be “and, as appropriate, with”.

(b) Authority to grant exceptions

The regulations prescribed under subsection (a) may include such additional exceptions to subsections (a) through (d) of section 6802 of this title as are deemed consistent with the purposes of this subchapter.

(Pub. L. 106–102, title V, §504, Nov. 12, 1999, 113 Stat. 1436; Pub. L. 111–203, title X, §1093(3), July 21, 2010, 124 Stat. 2095.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(1) and (b), was in the original “this subtitle”, meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Consumer Financial Protection Act of 2010, referred to in subsec. (a)(1)(A), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitle B (§§1021–1029A) of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitle B to the Code, see Tables.

AMENDMENTS

2010—Subsec. (a)(1), (2). Pub. L. 111–203, §1093(3)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which related, respectively, to rulemaking by the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission, and consultation and coordination among these agencies and authorities to assure consistency and comparability of regulations.

Subsec. (a)(3). Pub. L. 111–203, §1093(3)(B), struck out “and shall be issued in final form not later than 6 months after November 12, 1999” after “title 5”.

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.

§ 6805. Enforcement**(a) In general**

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:

(1) Under section 1818 of title 12, by the appropriate Federal banking agency, as defined in section 1813(q) of title 12, in the case of—

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agen-

cies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(2) Under the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Board of the National Credit Union Administration with respect to any federally insured credit union, and any subsidiaries of such an entity.

(3) Under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission with respect to any broker or dealer.

(4) Under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], by the Securities and Exchange Commission with respect to investment companies.

(5) Under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(6) Under State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 6701 of this title.

(7) Under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (6) of this subsection.

(8) Under subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau and any person subject to this subchapter, but not with respect to the standards under section 6801 of this title.

(b) Enforcement of section 6801

(1) In general

Except as provided in paragraph (2), the agencies and authorities described in subsection (a), other than the Bureau of Consumer Financial Protection, shall implement the standards prescribed under section 6801(b) of this title in the same manner, to the extent

practicable, as standards prescribed pursuant to section 1831p-1(a) of title 12 are implemented pursuant to such section.

(2) Exception

The agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) shall implement the standards prescribed under section 6801(b) of this title by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a).

(c) Absence of State action

If a State insurance authority fails to adopt regulations to carry out this subchapter, such State shall not be eligible to override, pursuant to section 1831x(g)(2)(B)(iii) of title 12, the insurance customer protection regulations prescribed by a Federal banking agency under section 1831x(a) of title 12.

(d) Definitions

The terms used in subsection (a)(1) that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the same meaning as given in section 3101 of title 12.

(Pub. L. 106-102, title V, §505, Nov. 12, 1999, 113 Stat. 1440; Pub. L. 111-203, title X, §1093(4), (5), July 21, 2010, 124 Stat. 2096, 2097.)

Editorial Notes

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (a), is title X of Pub. L. 111-203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021-1029A) and E (§§1051-1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitles B and E to the Code, see Tables.

This subchapter, referred to in subsecs. (a), (c), and (d), was in the original “this subtitle”, meaning subtitle A (§§501-510) of title V of Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (a)(1)(B), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(4), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (a)(5), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b-20 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (a)(7), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1093(4)(A), substituted “Subject to subtitle B of the Consumer Financial Protection Act of 2010, this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:” for “This subchapter and the regulations prescribed thereunder shall be enforced by the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:”.

Subsec. (a)(1). Pub. L. 111–203, §1093(4)(B)(i), inserted “by the appropriate Federal banking agency, as defined in section 1813(q) of title 12,” before “in the case of—”.

Subsec. (a)(1)(A). Pub. L. 111–203, §1093(4)(B)(ii), struck out “,” by the Office of the Comptroller of the Currency” before semicolon at end.

Subsec. (a)(1)(B). Pub. L. 111–203, §1093(4)(B)(iii), struck out “,” by the Board of Governors of the Federal Reserve System” before semicolon at end.

Subsec. (a)(1)(C). Pub. L. 111–203, §1093(4)(B)(iv), struck out “,” by the Board of Directors of the Federal Deposit Insurance Corporation” before “; and”.

Subsec. (a)(1)(D). Pub. L. 111–203, §1093(4)(B)(v), struck out “,” by the Director of the Office of Thrift Supervision” before period at end.

Subsec. (a)(8). Pub. L. 111–203, §1093(4)(C), added par. (8).

Subsec. (b)(1). Pub. L. 111–203, §1093(5), inserted “, other than the Bureau of Consumer Financial Protection,” before “shall implement the standards”.

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.

§ 6806. Relation to other provisions

Except for the amendments made by subsections (a) and (b), nothing in this chapter shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], and no inference shall be drawn on the basis of the provisions of this chapter regarding whether information is transaction or experience information under section 603 of such Act [15 U.S.C. 1681a].

(Pub. L. 106–102, title V, §506(c), Nov. 12, 1999, 113 Stat. 1442.)

Editorial Notes

REFERENCES IN TEXT

Amendments made by subsections (a) and (b), referred to in text, means amendments made by section 506(a) and (b) of Pub. L. 106–102, which amended section 1681s of this title.

This chapter, referred to in text, was in the original “this title”, meaning title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, as amended, which enacted this chapter and amended section 1681s of this title. For

complete classification of title V to the Code, see Tables.

The Fair Credit Reporting Act, referred to in text, is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, as amended, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

§ 6807. Relation to State laws

(a) In general

This subchapter and the amendments made by this subchapter shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

(b) Greater protection under State law

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter and the amendments made by this subchapter, as determined by the Bureau of Consumer Financial Protection, after consultation with the agency or authority with jurisdiction under section 6805(a) of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

(Pub. L. 106–102, title V, §507, Nov. 12, 1999, 113 Stat. 1442; Pub. L. 111–203, title X, §1093(6), July 21, 2010, 124 Stat. 2097.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted “Bureau of Consumer Financial Protection” for “Federal Trade Commission”.

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.

§ 6808. Study of information sharing among financial affiliates

(a) In general

The Secretary of the Treasury, in conjunction with the Federal functional regulators and the Federal Trade Commission, shall conduct a study of information sharing practices among financial institutions and their affiliates. Such study shall include—

(1) the purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties;

(2) the extent and adequacy of security protections for such information;

(3) the potential risks for customer privacy of such sharing of information;

(4) the potential benefits for financial institutions and affiliates of such sharing of information;

(5) the potential benefits for customers of such sharing of information;

(6) the adequacy of existing laws to protect customer privacy;

(7) the adequacy of financial institution privacy policy and privacy rights disclosure under existing law;

(8) the feasibility of different approaches, including opt-out and opt-in, to permit customers to direct that confidential information not be shared with affiliates and nonaffiliated third parties; and

(9) the feasibility of restricting sharing of information for specific uses or of permitting customers to direct the uses for which information may be shared.

(b) Consultation

The Secretary shall consult with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, and also with financial services industry, consumer organizations and privacy groups, and other representatives of the general public, in formulating and conducting the study required by subsection (a).

(c) Report

On or before January 1, 2002, the Secretary shall submit a report to the Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative action as may be appropriate.

(Pub. L. 106–102, title V, §508, Nov. 12, 1999, 113 Stat. 1442.)

§ 6809. Definitions

As used in this subchapter:

(1) Federal banking agency

The term “Federal banking agency” has the same meaning as given in section 1813 of title 12.

(2) Federal functional regulator

The term “Federal functional regulator” means—

(A) the Board of Governors of the Federal Reserve System;

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

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board; and

(F) the Securities and Exchange Commission.

(3) Financial institution

(A) In general

The term “financial institution” means any institution the business of which is en-

gaging in financial activities as described in section 1843(k) of title 12.

(B) Persons subject to CFTC regulation

Notwithstanding subparagraph (A), the term “financial institution” does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(C) Farm credit institutions

Notwithstanding subparagraph (A), the term “financial institution” does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

(D) Other secondary market institutions

Notwithstanding subparagraph (A), the term “financial institution” does not include institutions chartered by Congress specifically to engage in transactions described in section 6802(e)(1)(C) of this title, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(4) Nonpublic personal information

(A) The term “nonpublic personal information” means personally identifiable financial information—

(i) provided by a consumer to a financial institution;

(ii) resulting from any transaction with the consumer or any service performed for the consumer; or

(iii) otherwise obtained by the financial institution.

(B) Such term does not include publicly available information, as such term is defined by the regulations prescribed under section 6804 of this title.

(C) Notwithstanding subparagraph (B), such term—

(i) shall include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information; but

(ii) shall not include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.

(5) Nonaffiliated third party

The term “nonaffiliated third party” means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.

(6) Affiliate

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

(7) Necessary to effect, administer, or enforce

The term “as necessary to effect, administer, or enforce the transaction” means—

(A) the disclosure is required, or is a usual, appropriate, or acceptable method, to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes—

(i) providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product; and

(ii) the accrual or recognition of incentives or bonuses associated with the transaction that are provided by the financial institution or any other party;

(B) the disclosure is required, or is one of the lawful or appropriate methods, to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction, or providing the product or service;

(C) the disclosure is required, or is a usual, appropriate, or acceptable method, for insurance underwriting at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law; or

(D) the disclosure is required, or is a usual, appropriate or acceptable method, in connection with—

(i) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means;

(ii) the transfer of receivables, accounts or interests therein; or

(iii) the audit of debit, credit or other payment information.

(8) State insurance authority

The term “State insurance authority” means, in the case of any person engaged in providing insurance, the State insurance authority of the State in which the person is domiciled.

(9) Consumer

The term “consumer” means an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(10) Joint agreement

The term “joint agreement” means a formal written contract pursuant to which two or more financial institutions jointly offer, endorse, or sponsor a financial product or service, and as may be further defined in the regulations prescribed under section 6804 of this title.

(11) Customer relationship

The term “time of establishing a customer relationship” shall be defined by the regulations prescribed under section 6804 of this title, and shall, in the case of a financial institution engaged in extending credit directly to consumers to finance purchases of goods or services, mean the time of establishing the credit relationship with the consumer.

(Pub. L. 106–102, title V, §509, Nov. 12, 1999, 113 Stat. 1443.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Commodity Exchange Act, referred to in par. (3)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in par. (3)(C), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

SUBCHAPTER II—FRAUDULENT ACCESS TO FINANCIAL INFORMATION

§ 6821. Privacy protection for customer information of financial institutions

(a) Prohibition on obtaining customer information by false pretenses

It shall be a violation of this subchapter for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) Prohibition on solicitation of a person to obtain customer information from financial institution under false pretenses

It shall be a violation of this subchapter to request a person to obtain customer information

of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) Nonapplicability to law enforcement agencies

No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) Nonapplicability to financial institutions in certain cases

No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

- (1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;
- (2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or
- (3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) Nonapplicability to insurance institutions for investigation of insurance fraud

No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) Nonapplicability to certain types of customer information of financial institutions

No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 78c(a)(47) of this title).

(g) Nonapplicability to collection of child support judgments

No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.

(Pub. L. 106–102, title V, § 521, Nov. 12, 1999, 113 Stat. 1446.)

§ 6822. Administrative enforcement

(a) Enforcement by Federal Trade Commission

Except as provided in subsection (b), compliance with this subchapter shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act [15 U.S.C. 1692 et seq.] to enforce compliance with such Act.

(b) Enforcement by other agencies in certain cases

(1) In general

Compliance with this subchapter shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

(B) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(2) Violations of this subchapter treated as violations of other laws

For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this subchapter, any other authority conferred on such agency by law.

(Pub. L. 106–102, title V, § 522, Nov. 12, 1999, 113 Stat. 1447.)

Editorial Notes

REFERENCES IN TEXT

The Fair Debt Collection Practices Act, referred to in subsec. (a), is title VIII of Pub. L. 90–321, as added by

Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874, as amended, which is classified generally to subchapter V (§1692 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (b)(1)(A)(ii), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (b)(1)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

Statutory Notes and Related Subsidiaries

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

§ 6823. Criminal penalty

(a) In general

Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 6821 of this title shall be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(b) Enhanced penalty for aggravated cases

Whoever violates, or attempts to violate, section 6821 of this title while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, imprisoned for not more than 10 years, or both.

(Pub. L. 106–102, title V, §523, Nov. 12, 1999, 113 Stat. 1448.)

§ 6824. Relation to State laws

(a) In general

This subchapter shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

(b) Greater protection under State law

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 6822 of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

(Pub. L. 106–102, title V, §524, Nov. 12, 1999, 113 Stat. 1448.)

§ 6825. Agency guidance

In furtherance of the objectives of this subchapter, each Federal banking agency (as defined in section 1813(z) of title 12), the National Credit Union Administration, and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 6821 of this title.

(Pub. L. 106–102, title V, §525, Nov. 12, 1999, 113 Stat. 1448.)

§ 6826. Reports

(a) Report to the Congress

Before the end of the 18-month period beginning on November 12, 1999, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subchapter in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(b) Annual report by administering agencies

The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subchapter.

(Pub. L. 106–102, title V, §526, Nov. 12, 1999, 113 Stat. 1448.)

§ 6827. Definitions

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

(1) Customer

The term “customer” means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) Customer information of a financial institution

The term “customer information of a financial institution” means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) Document

The term “document” means any information in any form.

(4) Financial institution**(A) In general**

The term “financial institution” means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) Certain financial institutions specifically included

The term “financial institution” includes any depository institution (as defined in section 461(b)(1)(A) of title 12), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 1681a(p) of this title).

(C) Securities institutions

For purposes of subparagraph (B)—

(i) the terms “broker” and “dealer” have the same meanings as given in section 78c of this title;

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

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

(D) Certain persons and entities specifically excluded

The term “financial institution” does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.] and does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

(E) Further definition by regulation

The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subchapter.

(Pub. L. 106-102, title V, §527, Nov. 12, 1999, 113 Stat. 1449.)

Editorial Notes

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in par. (4)(D), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in par. (4)(D), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

CHAPTER 95—MICROENTERPRISE TECHNICAL ASSISTANCE AND CAPACITY BUILDING PROGRAM

Sec.	Definitions.
6901.	Establishment of program.
6902.	Uses of assistance.
6903.	Qualified organizations.
6904.	Allocation of assistance; subgrants.
6905.	Matching requirements.
6906.	Applications for assistance.
6907.	Recordkeeping.
6908.	Authorization.
6909.	Implementation.
6910.	

§ 6901. Definitions

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

(1) Administration

The term “Administration” means the Small Business Administration.

(2) Administrator

The term “Administrator” means the Administrator of the Small Business Administration.

(3) Capacity building services

The term “capacity building services” means services provided to an organization that is, or that is in the process of becoming, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs.

(4) Collaborative

The term “collaborative” means 2 or more nonprofit entities that agree to act jointly as a qualified organization under this chapter.

(5) Disadvantaged entrepreneur

The term “disadvantaged entrepreneur” means a microentrepreneur that is—

(A) a low-income person;

(B) a very low-income person; or

(C) an entrepreneur that lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator.

(6) Indian tribe

The term “Indian tribe” has the meaning given the term in section 4702 of title 12.

(7) Intermediary

The term “intermediary” means a private, nonprofit entity that seeks to serve microenterprise development organizations and programs as authorized under section 6904 of this title.

(8) Low-income person

The term “low-income person” has the meaning given the term in section 4702 of title 12.

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**UNITED STATES DISTRICT COURT
FOR CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

BCO CONSULTING SERVICES, INC., et
al.,

Defendants.

Case No. 8:23-CV-0699-JWH
(ADSx)

**[PROPOSED] STIPULATED
ORDER FOR PERMANENT
INJUNCTION, MONETARY
RELIEF, AND OTHER RELIEF
AS TO BRANDON CLORES,
KISHAN BHAKTA, AND BCO
CONSULTING SERVICES, INC.**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction, Monetary Relief, and Other Relief (“Complaint”) pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer

1 Fraud and Abuse Prevention Act (“Telemarketing Act”), and Section 522(a) of the
2 Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. § 6822(a). The Commission
3 and Defendants Brandon Clores, Kishan Bhakta, and BCO Consulting Services,
4 Inc. (collectively, “Settling Defendants”) stipulate to the entry of the concurrently
5 lodged [Proposed]Stipulated Order for Permanent Injunction, Monetary Relief, and
6 Other Relief (“Order”) to resolve all matters in dispute in this action between them.

7 THEREFORE, IT IS ORDERED as follows:

8 **FINDINGS**

9 This Court has jurisdiction over this matter.

10 The Complaint charges that Defendants participated in deceptive acts or
11 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the
12 Telemarketing Sales Rule (the “TSR”), 16 C.F.R. Part 310, and Section 521 of the
13 Gramm-Leach-Bliley Act (the “GLB Act”), 15 U.S.C. § 6821, in the deceptive
14 marketing and sale of student loan debt relief services.

15 Only for purposes of this action, Settling Defendants admit the facts
16 necessary to establish jurisdiction.

17 Defendants waive any claim that they may have under the Equal Access to
18 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through
19 the date of this Order, and agree to bear their own costs and attorney fees.

20 Settling Defendants waive all rights to appeal or otherwise challenge or
21 contest the validity of this Order.

22
23 **DEFINITIONS**

24 For the purpose of this Order, the following definitions apply:

25 A. “**Assisting Others**” includes:
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1 1. Performing customer service functions, including receiving or
2 responding to consumer complaints;

3 2. Formulating or providing, or arranging for the formulation or
4 provision of, any advertising or marketing material, including any telephone sales
5 script, direct mail solicitation, or the design, text, or use of images of any Internet
6 website, email, or other electronic communication;

7 3. Formulating or providing, or arranging for the formulation or
8 provision of, any marketing support material or service, including web or Internet
9 Protocol addresses or domain name registration for any Internet websites, affiliate
10 marketing services, or media placement services;

11 4. Providing names of, or assisting in the generation of, potential
12 customers;

13 5. Performing marketing, billing, payment processing, or payment
14 services of any kind; or

15 6. Acting or serving as an owner, officer, director, manager, or
16 principal of any entity.

17 B. **“Defendants”** means the Individual Defendants and the Corporate
18 Defendants, individually, collectively, or in any combination.

19 1. **“Corporate Defendant(s)”** means BCO Consulting Services,
20 Inc.(“BCO”) and SLA Consulting Services Inc. (“SLA”), and each of their
21 subsidiaries, affiliates, successors, and assigns.

22 2. **“Individual Defendant(s)”** means Gianni Olilang, Brandon
23 Clores, Kishan Bhakta, and Allan Radam, individually, collectively, or in any
24 combination.

25 3. **“Settling Defendants”** means Brandon Clores, Kishan Bhakta,
26 and BCO (along with its subsidiaries, affiliates, successors, and assigns),
27 individually, collectively, or in any combination.

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1 4. **“Settling Individual Defendant(s)”** means Brandon Clores and
2 Kishan Bhakta, individually, collectively, or in any combination.

3 5. **“Settling Corporate Defendant(s)”** means BCO and each of
4 its subsidiaries, affiliates, successors, and assigns.

5 C. **“Person”** means a natural person, organization, or other legal entity,
6 including a corporation, partnership, proprietorship, association, cooperative, or
7 any other group or combination acting as an entity.

8 D. **“Receiver”** means Thomas W. McNamara.

9 E. **“Receivership Entity(ies)”** means the Settling Corporate
10 Defendant(s), as well as any other entity that has conducted any business related to
11 Settling Defendants’ student loan debt relief services business, including receipt of
12 assets derived from any activity that is the subject of the Complaint in this matter,
13 and which the Receiver has reason to believe is owned or controlled in whole or in
14 part by any Settling Defendant.

15 F. **“Secured or Unsecured Debt Relief Product or Service”** means:

16 1. With respect to any mortgage, loan, debt, or obligation between
17 a person and one or more secured or unsecured creditors or debt collectors, any
18 product, service, plan, or program represented, expressly or by implication, to:

19 a. stop, prevent, or postpone any mortgage or deed of
20 foreclosure sale for a person’s dwelling, any other sale of collateral, any
21 repossession of a person’s dwelling or other collateral, or otherwise save a person’s
22 dwelling or other collateral from foreclosure or repossession;

23 b. negotiate, obtain, or arrange a modification, or
24 renegotiate, settle, reduce, or in any way alter any terms of the mortgage, loan,
25 debt, or obligation, including a reduction in the amount of interest, principal
26 balance, monthly payments, or fees owed by a person to a secured or unsecured
27 creditor or debt collector;

1 c. obtain any forbearance or modification in the timing of
2 payments from any secured or unsecured holder or servicer of any mortgage, loan,
3 debt, or obligation;

4 d. negotiate, obtain, or arrange any extension of the period
5 of time within which a person may (i) cure his or her default on the mortgage, loan,
6 debt, or obligation, (ii) reinstate his or her mortgage, loan, debt, or obligation, (iii)
7 redeem a dwelling or other collateral, or (iv) exercise any right to reinstate the
8 mortgage, loan, debt, or obligation or redeem a dwelling or other collateral;

9 e. obtain any waiver of an acceleration clause or balloon
10 payment contained in any promissory note or contract secured by any dwelling or
11 other collateral; or

12 f. negotiate, obtain, or arrange (i) a short sale of a dwelling
13 or other collateral, (ii) a deed-in-lieu of foreclosure, or (iii) any other disposition of
14 a mortgage, loan, debt, or obligation other than a sale to a third party that is not the
15 secured or unsecured loan holder.

16 The foregoing shall include any manner of claimed assistance, including auditing
17 or examining a person's application for the mortgage, loan, debt, or obligation.

18 2. With respect to any loan, debt, or obligation between a person
19 and one or more unsecured creditors or debt collectors, any product, service, plan,
20 or program represented, expressly or by implication, to:

21 a. repay one or more unsecured loans, debts, or obligations;

22 or

23 b. combine unsecured loans, debts, or obligations into one
24 or more new loans, debts, or obligations.

25 G. **“Telemarketing”** means any plan, program, or campaign which is
26 conducted to induce the purchase of goods or services or a charitable contribution,
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1 by use of one or more telephones, and which involves more than one interstate
2 telephone call.

3 **ORDER**

4 **I. BAN ON SECURED AND UNSECURED**
5 **DEBT RELIEF PRODUCTS AND SERVICES**

6 IT IS ORDERED that Settling Defendants are permanently restrained and
7 enjoined from advertising, marketing, promoting, offering for sale, selling, or
8 Assisting Others in the advertising, marketing, promoting, offering for sale, or
9 selling, of any Secured or Unsecured Debt Relief Product or Service.

10 **II. BAN ON TELEMARKETING**

11 IT IS FURTHER ORDERED that Settling Defendants are permanently
12 restrained and enjoined from participating in Telemarketing, whether directly or
13 through an intermediary, and including by consulting, brokering, planning,
14 investing, or advising others regarding Telemarketing.

15 **III. PROHIBITION AGAINST**
16 **MISREPRESENTATIONS RELATING TO ANY**
17 **PRODUCTS OR SERVICES**

18 IT IS FURTHER ORDERED that Settling Defendants and Settling
19 Defendants' officers, agents, employees, and attorneys, and all other Persons in
20 active concert or participation with any of them, who receive actual notice of this
21 Order, whether acting directly or indirectly, in connection with the advertising,
22 marketing, promoting, offering for sale, or selling of any product, service, plan, or
23 program are permanently restrained and enjoined from misrepresenting, or
24 Assisting Others in misrepresenting, expressly or by implication:

25 A. Any material aspect of the nature or terms of any refund, cancellation,
26 exchange, or repurchase policy, including the likelihood of a consumer obtaining a
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1 full or partial refund, or the circumstances in which a full or partial refund will be
2 granted to the consumer;

3 B. That any Person is affiliated with, endorsed or approved by, or
4 otherwise connected to any other Person; government entity; public, non-profit, or
5 other non-commercial program; or any other program;

6 C. The nature, expertise, position, or job title of any Person who provides
7 any product, service, plan, or program;

8 D. That the ability to improve or otherwise affect a consumer's credit
9 record, credit history, credit rating, or ability to obtain credit, including that a
10 consumer's credit record, credit history, credit rating, or ability to obtain credit can
11 be improved by permanently removing negative information from the consumer's
12 credit record or history, even where such information is accurate and not obsolete;

13 E. That a consumer will save money; or

14 F. Any other fact material to consumers concerning any good or service,
15 such as: the total costs; any restrictions, limitations, or conditions; or any aspect of
16 its performance, efficacy, nature, or central characteristics.

17 **IV. PROHIBITION AGAINST**
18 **UNSUBSTANTIATED CLAIMS**

19 IT IS FURTHER ORDERED that Settling Defendants and Settling
20 Defendants' officers, agents, employees, and attorneys, and all other Persons in
21 active concert or participation with any of them, who receive actual notice of this
22 Order, whether acting directly or indirectly, in connection with the advertising,
23 marketing, promoting, offering for sale, or selling of any product, service, plan, or
24 program are permanently restrained and enjoined from making any representation
25 or Assisting Others in making any misrepresentation, expressly or by implication,
26 about the benefits, performance, or efficacy of any product or service, unless the
27 representation is non-misleading, and, at the time such representation is made, that
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1 Settling Defendant possesses and relies upon competent and reliable evidence that
2 is sufficient in quality and quantity based on standards generally accepted in
3 relevant fields, when considered in light of the entire body of relevant and reliable
4 evidence, to substantiate that the representation is true.

5 **V. PROHIBITION AGAINST OBTAINING**
6 **CUSTOMER INFORMATION BY FALSE**
7 **PRETENSES**

8 IT IS FURTHER ORDERED that Settling Defendants and Settling
9 Defendants' officers, agents, employees, and attorneys, and all other Persons in
10 active concert or participation with any of them, who receive actual notice of this
11 Order, whether acting directly or indirectly are permanently restrained and
12 enjoined from:

13 A. Obtaining, or attempting to obtain customer information of a
14 financial institution (including bank account routing number, account number, or
15 log-in credentials) from a consumer by making false, fictitious, or fraudulent
16 representations to any consumer or financial institution; or

17 B. Violating the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809, §§
18 6821-6827, a copy of which is attached as **ATTACHMENT A**.

19 **VI. MONETARY JUDGMENT AND PARTIAL**
20 **SUSPENSION**

21 IT IS FURTHER ORDERED that:

22 A. Judgment in the amount of five million, eight hundred eighty-two
23 thousand, seventy-two Dollars and four cents (\$5,882,072.04) is entered in favor of
24 the Commission against Settling Defendants, jointly and severally, as monetary
25 relief. The liability of Settling Defendants for the judgment shall be joint and
26 several with judgment against any other Defendants by separate order.

27 B. The monetary judgment set out in Section VI.A is enforceable against
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1 any asset, real or personal, whether located within the United States or outside the
2 United States, owned jointly or singly by, on behalf of, for the benefit of, in trust
3 by or for, or as a deposit for future goods or services to be provided to, any Settling
4 Defendant, whether held as tenants in common, joint tenants with or without the
5 right of survivorship, tenants by the entirety, and/or community property.

6 C. In partial satisfaction of the judgment against Settling Defendants:

7 1. Defendant Clores shall, within 20 days after the date of entry of
8 this Order, either (a) transfer to the FTC or its designated agent cash in the
9 amount of \$51,508 or (b) transfer to the Receiver title to the real property
10 located at [REDACTED], in which case
11 Defendant Clores shall cooperate fully with the Receiver and shall execute
12 any instrument or document presented by the Receiver, and do whatever else
13 the Receiver deems necessary or desirable to effect such transfer. Upon such
14 transfer, the real property shall be an asset of the receivership estate, to be
15 governed by Section X of this Order.

16 2. Defendant Clores shall, within 20 days after the date of entry of
17 this Order, either (a) transfer to the FTC or its designated agent cash in the
18 amount of \$7,238 or (b) transfer to the Receiver title to the 2006 Porsche
19 Cayman S disclosed on his financial statement, in which case Defendant
20 Clores shall cooperate fully with the Receiver and shall execute any
21 instrument or document presented by the Receiver, and do whatever else the
22 Receiver deems necessary or desirable to effect such transfer. Upon such
23 transfer, the real property shall be an asset of the receivership estate, to be
24 governed by Section X of this Order.

25 3. Defendant Bhakta shall, within 20 days after the date of entry of
26 this Order, either (a) transfer to the FTC or its designated agent cash in the
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1 amount of \$5,682 or (b) transfer to the Receiver title to the 2021 Toyota
2 Rav4 SUV disclosed on his financial statement, in which case Defendant
3 Bhakta shall cooperate fully with the Receiver and shall execute any
4 instrument or document presented by the Receiver, and do whatever else the
5 Receiver deems necessary or desirable to effect such transfer. Upon such
6 transfer, the real property shall be an asset of the receivership estate, to be
7 governed by Section X of this Order.

8 4. Defendant Bhakta shall, within 20 days after the date of entry of
9 this Order, either (a) transfer to the FTC or its designated agent cash in the
10 amount of \$7,850 or (b) transfer to the Receiver title to the 2015
11 Volkswagen Jetta disclosed on his financial statement, in which case
12 Defendant Bhakta shall cooperate fully with the Receiver and shall execute
13 any instrument or document presented by the Receiver, and do whatever else
14 the Receiver deems necessary or desirable to effect such transfer. Upon such
15 transfer, the real property shall be an asset of the receivership estate, to be
16 governed by Section X of this Order.

17 5. In addition to the amounts set forth in Subsections VI.C.1-4,
18 any financial or brokerage institution, payment processor, escrow agent, title
19 company, commodity trading company, business entity, or person, whether
20 located within the United States or outside the United States, that holds,
21 controls, or maintains accounts or assets of, on behalf of, or for the benefit
22 of, any Receivership Entity, whether real or personal, whether located within
23 the United States or outside the United States, shall, within ten (10) business
24 days from receipt of a copy of this Order, turn over such accounts or assets
25 to the Receiver or his designated agent.

26 6. In addition to the amounts set forth in Subsections VI.C.1-5,
27 any financial or brokerage institution, escrow agent, title company,
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1 commodity trading company, business entity, or person, whether located
2 within the United States or outside the United States, that holds, controls, or
3 maintains accounts or assets of, on behalf of, or for the benefit of, any
4 Settling Individual Defendant, whether real or personal, whether located
5 within the United States or outside the United States, shall, within ten (10)
6 business days from receipt of a copy of this order, liquidate and turn over
7 such account or asset to the FTC or its designated agent, including, but not
8 limited to:

9 i. Chase shall, within ten (10) days of receipt of a copy of
10 this Order, transfer to the FTC or its designated agent all
11 holdings in account number xxx8089 in the name of Brandon
12 Clores;

13 ii. Chase shall, within ten (10) days of receipt of a copy of
14 this Order, transfer to the FTC or its designated agent all
15 holdings in account number xxxx3957 in the name of Brandon
16 Clores;

17 iii. Chase shall, within ten (10) days of receipt of a copy of
18 this Order, transfer to the FTC or its designated agent all
19 holdings in account number xxx0392 in the name of Brandon
20 Clores and Palladion LLC;

21 iv. Chase shall, within ten (10) days of receipt of a copy of
22 this Order, transfer to the FTC or its designated agent all
23 holdings in account number xxxx7772 in the name of Kishan
24 Bhakta;

25 v. Chase shall, within ten (10) days of receipt of a copy of
26 this Order, transfer to the FTC or its designated agent all
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holdings in account number xxxx2437 in the name of Kishan Bhakta;

vi. Chase shall, within ten (10) days of receipt of a copy of this Order, transfer to the FTC or its designated agent all holdings in account number xxxx7772 in the name of Kishan Bhakta;

vii. Bank of America, NA (“Bank of America”) shall, within ten (10) days of receipt of a copy of this Order, transfer to the FTC or its designated agent all holdings in account number xxxx9144 in the name of Brandon Clores;

viii. Bank of America shall, within ten (10) days of receipt of a copy of this Order, transfer to the FTC or its designated agent all holdings in account number xxxx1992 in the name of Kishan Bhakta;

ix. Bank of America shall, within ten (10) days of receipt of a copy of this Order, transfer to the FTC or its designated agent all holdings in account number xxxx6655 in the name of Kishan Bhakta;

x. Navy Federal shall, within ten (10) days of receipt of a copy of this Order, transfer to the FTC or its designated agent all holdings in account number xxxx3187 in the name of Kishan Bhakta;

xi. Navy Federal shall, within ten (10) days of receipt of a copy of this Order, transfer to the FTC or its designated agent all holdings in account number xxxx4111 in the name of Brandon Clores;

xii. Navy Federal shall, within ten (10) days of receipt of a

1 copy of this Order, transfer to the FTC or its designated agent
2 all holdings in account number xxxx1642 in the name of
3 Brandon Clores;

4 xiii. TD AmeriTrade shall, within ten (10) days of receipt of a
5 copy of this Order, liquidate and transfer to the FTC or its
6 designated agent all holdings in account number xxx6822 in the
7 name of Brandon Clores;

8 xiv. TD AmeriTrade shall, within ten (10) days of receipt of a
9 copy of this Order, liquidate and transfer to the FTC or its
10 designated agent all holdings in account number xxxx9011 in
11 the name of Kishan Bhakta;

12 xv. TD AmeriTrade shall, within ten (10) days of receipt of a
13 copy of this Order, liquidate and transfer to the FTC or its
14 designated agent all holdings in account number xxxx1620 in
15 the name of Kishan Bhakta;

16 xvi. Webull shall, within 10 days of receipt of a copy of this
17 Order, liquidate and transfer to the FTC or its designated agent
18 all holdings in account number xxxx5717 in the name of
19 Kishan Bhakta; and

20 xvii. Webull shall, within 10 days of receipt of a copy of this
21 Order, liquidate and transfer to the FTC or its designated agent
22 all holdings in account number xxxx1247 in the name of
23 Brandon Clores.

24 D. Upon such payment and all other asset transfers, as set forth in
25 Sections VI.C and VII, the remainder of the judgment is suspended, subject to the
26 Subsections below.

1 E. The asset freeze is modified to permit the transfers and liquidations
2 identified in this Section. Upon completion of those transfers and liquidations, the
3 asset freeze as to Settling Defendants is dissolved.
4

5 F. The Commission's agreement to the suspension of part of the
6 judgment is expressly premised upon the truthfulness, accuracy, and completeness
7 of Settling Defendants' sworn financial statements and related documents
8 (collectively, "financial representations") submitted to the Commission, namely:

9 1. the Financial Statement of Individual Defendant Brandon
10 Clores signed on May 9, 2023, including the attachments;

11 2. the Financial Statement of Individual Defendant Kishan Bhakta
12 signed on May 11, 2023, including the attachments;

13 3. the Financial Statement of Corporate Defendant BCO
14 Consulting Services, Inc. signed by Kishan Bhakta on July 24, 2023, including the
15 attachments;

16 4. The additional documentation submitted by email from Settling
17 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
18 dated May 11, 2023, and enclosing (1) the Addendum to Brandon Clores'
19 Disclosures signed May 11, 2023; and (2) account statements associated with
20 Chase accounts in the name of Brandon Clores;

21 5. The additional documentation submitted by email from Settling
22 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
23 dated May 26, 2023, regarding transactions in a Bank of America account ending
24 in xxxx7772 in the name of Kishan Bhakta;

25 6. The additional documentation submitted by email from Settling
26 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
27 dated June 4, 2023 and attaching (1) bank statements associated with a Bank of
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1 America account in the name of Kishan Bhakta; and (2) account statements
2 associated with a Webull Financial account in the name of Kishan Bhakta;

3 7. The additional documentation submitted by email from Settling
4 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
5 dated June 11, 2023, and enclosing account statements associated with a TD
6 Ameritrade account in the name of Kishan Bhakta;

7 8. The additional documentation submitted by email from Settling
8 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
9 dated June 25, 2023, and enclosing (1) a supplemental financial disclosure form for
10 Brandon Clores bearing a date of May 9, 2023; (2) account statements associated
11 with Navy Federal Credit Union accounts in the name of Brandon Clores;

12 9. The additional documentation submitted by email from Settling
13 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
14 dated July 25, 2023 and enclosing a statement from Navy Federal Credit Union
15 associated with an account in the name of Brandon Clores; and

16 10. The additional documentation submitted by email from Settling
17 Defendants' counsel Brent Phillips to Commission counsel Katherine Aizpuru
18 dated July 30, 2023 and enclosing statements from BMW Financial Services
19 associated with an account in the name of Kishan Bhakta.

20 G. The suspension of the judgment will be lifted as to any Settling
21 Defendant if, upon motion by the Commission, the Court finds that Settling
22 Defendant failed to disclose any material asset, materially misstated the value of
23 any asset, or made any other material misstatement or omission in the financial
24 representations identified above.

25 H. If the suspension of the judgment is lifted, the judgment becomes
26 immediately due as to that Settling Defendant in the amount specified in
27 Subsection VI.A above (which the parties stipulate, only for purposes of this
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1 Section, represents the consumer injury alleged in the Complaint), less any
2 payment previously made pursuant to this Section, plus interest computed from the
3 date of entry of this Order.

4 **VII. ADDITIONAL MONETARY PROVISIONS**

5 IT IS FURTHER ORDERED that:

6 A. Settling Defendants relinquish dominion and all legal and equitable
7 right, title, and interest in all assets transferred pursuant to this Order and may not
8 seek the return of any assets.

9 B. The facts alleged in the Complaint will be taken as true, without
10 further proof, in any subsequent civil litigation by or on behalf of the Commission,
11 including in a proceeding to enforce its rights to any payment or monetary
12 judgment pursuant to this Order, such as a nondischargeability complaint in any
13 bankruptcy case.

14 C. The facts alleged in the Complaint establish all elements necessary to
15 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the
16 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral
17 estoppel effect for such purposes.

18 D. Settling Defendants acknowledge that their Taxpayer Identification
19 Numbers (Social Security Numbers or Employer Identification Numbers), which
20 Settling Defendants previously submitted to the Commission, may be used for
21 collecting and reporting on any delinquent amount arising out of this Order, in
22 accordance with 31 U.S.C. §7701.

23 E. All money received by the Commission pursuant to this Order may be
24 deposited into a fund administered by the Commission or its designee to be used
25 for consumer relief, such as redress and any attendant expenses for the
26 administration of any redress fund. If a representative of the Commission decides
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1 that direct redress to consumers is wholly or partially impracticable or money
2 remains after such redress is completed, the Commission may apply any remaining
3 money for such related relief (including consumer information remedies) as it
4 determines to be reasonably related to Settling Defendants' practices alleged in the
5 Complaint. Any money not used for relief is to be deposited to the U.S. Treasury.
6 Settling Defendants have no right to challenge any actions the Commission or its
7 representatives may take pursuant to this Subsection.

8 **VIII. CUSTOMER INFORMATION**

9 IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants'
10 officers, agents, employees, attorneys, and all other Persons in active concert or
11 participation with any of them, who receive actual notice of this Order, are
12 permanently restrained and enjoined from directly or indirectly:

13 A. Failing to provide sufficient customer information to enable the
14 Commission to efficiently administer consumer redress. Settling Defendants
15 represent that they have provided this redress information to the Commission. If a
16 representative of the Commission requests in writing any information related to
17 redress, Settling Defendants must provide it, in the form prescribed by the
18 Commission, within 14 days.

19 B. Disclosing, using, or benefitting from customer information, including
20 the name, address, telephone number, email address, social security number, FSA
21 ID, other identifying information, or any data that enables access to a customer's
22 account (including a student loan account, credit card, bank account, or other
23 financial account) that any Settling Defendant obtained prior to entry of this Order
24 in connection with the marketing or sale of Secured or Unsecured Debt Relief
25 Products or Services; and
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1 C. Failing to destroy such customer information in all forms in their
2 possession, custody, or control within 30 days after receipt of written direction to
3 do so from a representative of the Commission.

4 Provided, however, that customer information need not be disposed of, and
5 may be disclosed, to the extent requested by a government agency or required by
6 law, regulation, or court order.

7 **IX. COOPERATION**

8 IT IS FURTHER ORDERED that Settling Defendants must fully cooperate
9 with representatives of the Commission in this case and in any investigation related
10 to or associated with the transactions or the occurrences that are the subject of the
11 Complaint. Settling Defendants must provide truthful and complete information,
12 evidence, and testimony. Settling Individual Defendants must appear and Settling
13 Corporate Defendants must cause Settling Defendants' officers, employees,
14 representatives, or agents to appear for interviews, discovery, hearings, trials, and
15 any other proceedings that a Commission representative may reasonably request
16 upon 5 days written notice, or other reasonable notice, at such places and times as a
17 Commission representative may designate, without the service of a subpoena.

18 **X. RECEIVERSHIP TERMINATION**

19 IT IS FURTHER ORDERED that Thomas McNamara, Esq., shall continue
20 as a permanent receiver over the Receivership Entities with full powers of a
21 permanent receiver, including but not limited to those powers set forth in the
22 Preliminary Injunction (ECF No. 55). The Receiver is directed to wind up the
23 Receivership Entities and liquidate all assets within 180 days after entry of this
24 Order. Any party or the Receiver may request that the Court extend the Receiver's
25 term for good cause. Upon termination of the receivership and final payment to
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1 the Receiver of all approved fees, costs, and expenses, the Receiver shall turn over
2 to the FTC or its designated agent all remaining assets in the receivership estate.

3 **XI. ORDER ACKNOWLEDGMENTS**

4 IT IS FURTHER ORDERED that Settling Defendants obtain
5 acknowledgments of receipt of this Order:

6 A. Each Settling Defendant, within 7 days of entry of this Order, must
7 submit to the Commission an acknowledgment of receipt of this Order sworn
8 under penalty of perjury.

9 B. For 20 years after entry of this Order, each Settling Individual
10 Defendant for any business that such Settling Defendant, individually or
11 collectively with any other Defendants, is the majority owner or controls directly
12 or indirectly, and each Settling Corporate Defendant, must deliver a copy of this
13 Order to: (1) all principals, officers, directors, and LLC managers and members;
14 (2) all employees having managerial responsibilities for Secured or Unsecured
15 Debt Relief Products or Services, and all agents and representatives who
16 participate in the Secured or Unsecured Debt Relief Products or Services; and (3)
17 any business entity resulting from any change in structure as set forth in the
18 Section titled Compliance Reporting. Delivery must occur within 7 days of entry
19 of this Order for current personnel. For all others, delivery must occur before they
20 assume their responsibilities.

21 C. From each individual or entity to which a Settling Defendant
22 delivered a copy of this Order, that Settling Defendant must obtain, within 30 days,
23 a signed and dated acknowledgment of receipt of this Order.

24 **XII. COMPLIANCE REPORTING**

25 IT IS FURTHER ORDERED that Settling Defendants make timely
26 submissions to the Commission:

1 A. One year after entry of this Order, each Settling Defendant must
2 submit a compliance report, sworn under penalty of perjury:

3 1. Each Settling Defendant must: (a) identify the primary
4 physical, postal, and email address and telephone number, as designated points of
5 contact, which representatives of the Commission may use to communicate with
6 Settling Defendant; (b) identify all of that Settling Defendant's businesses by all of
7 their names, telephone numbers, and physical, postal, email, and Internet
8 addresses; (c) describe the activities of each business, including the goods and
9 services offered, the means of advertising, marketing, and sales, and the
10 involvement of any other Settling Defendant (which the Settling Individual
11 Defendants must describe if they know or should know due to their own
12 involvement); (d) describe in detail whether and how that Settling Defendant is in
13 compliance with each Section of this Order; and (e) provide a copy of each Order
14 Acknowledgment obtained pursuant to this Order, unless previously submitted to
15 the Commission.

16 2. Additionally, each Settling Individual Defendant must: (a)
17 identify all telephone numbers and all physical, postal, email and Internet
18 addresses, including all residences; (b) identify all business activities, including
19 any business for which such Settling Defendant performs services whether as an
20 employee or otherwise and any entity in which such Settling Defendant has any
21 ownership interest; and (c) describe in detail such Settling Defendant's
22 involvement in each such business, including title, role, responsibilities,
23 participation, authority, control, and any ownership.

24 B. For 20 years after entry of this Order, each Settling Defendant must
25 submit a compliance notice, sworn under penalty of perjury, within 14 days of any
26 change in the following:
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1 1. Each Settling Defendant must report any change in: (a) any
2 designated point of contact; or (b) the structure of any Settling Corporate
3 Defendant or any entity that any Settling Defendant has any ownership interest in
4 or controls directly or indirectly that may affect compliance obligations arising
5 under this Order, including: creation, merger, sale, or dissolution of the entity or
6 any subsidiary, parent, or affiliate that engages in any acts or practices subject to
7 this Order.

8 2. Additionally, each Settling Individual Defendant must report
9 any change in: (a) name, including aliases or fictitious name, or residence address;
10 or (b) title or role in any business activity, including any business for which such
11 Settling Defendant performs services whether as an employee or otherwise and any
12 entity in which such Settling Defendant has any ownership interest, and identify
13 the name, physical address, and any Internet address of the business or entity.

14 C. Each Settling Defendant must submit to the Commission notice of the
15 filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by
16 or against such Settling Defendant within 14 days of its filing.

17 D. Any submission to the Commission required by this Order to be
18 sworn under penalty of perjury must be true and accurate and comply with 28
19 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under
20 the laws of the United States of America that the foregoing is true and correct.
21 Executed on: _____” and supplying the date, signatory’s full name, title (if
22 applicable), and signature.

23 E. Unless otherwise directed by a Commission representative in writing,
24 all submissions to the Commission pursuant to this Order must be emailed to
25 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
26 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
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1 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
2 subject line must begin: FTC v. BCO Consulting Services, Inc., *et al.*, X230027.

3 **XIII. RECORDKEEPING**

4 IT IS FURTHER ORDERED that Settling Defendants must create certain
5 records for 20 years after entry of the Order, and retain each such record for 5
6 years. Specifically, each Settling Defendant for any business that such Settling
7 Defendant, individually or collectively with any other Settling Defendants, is a
8 majority owner or controls directly or indirectly, must create and retain the
9 following records:

10 A. accounting records showing the revenues from all goods or services
11 sold;

12 B. personnel records showing, for each Person providing services,
13 whether as an employee or otherwise, that Person's: name; addresses; telephone
14 numbers; job title or position; dates of service; and (if applicable) the reason for
15 termination;

16 C. records of all consumer complaints and refund requests, whether
17 received directly or indirectly, such as through a third party, and any response;

18 D. all records necessary to demonstrate full compliance with each
19 provision of this Order, including all submissions to the Commission; and

20 E. a copy of each unique advertisement or other marketing material.

21 **XIV. COMPLIANCE MONITORING**

22 IT IS FURTHER ORDERED that, for the purpose of monitoring Settling
23 Defendants' compliance with this Order, including the financial representations
24 upon which part of the judgment was suspended and any failure to transfer any
25 assets as required by this Order:

1 **IT IS SO ORDERED.**

2 Dated: _____

3 John W. Holcomb

4 UNITED STATES DISTRICT JUDGE

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Attachment A

lines broker or agent, insurance consultant, limited insurance representative, and any other individual or entity that sells, solicits, or negotiates policies of insurance or offers advice, counsel, opinions or services related to insurance.

(6) Insurer

The term “insurer” has the meaning as in section 313(e)(2)(B) of title 31.

(7) Principal place of business

The term “principal place of business” means the State in which an insurance producer maintains the headquarters of the insurance producer and, in the case of a business entity, where high-level officers of the entity direct, control, and coordinate the business activities of the business entity.

(8) Principal place of residence

The term “principal place of residence” means the State in which an insurance producer resides for the greatest number of days during a calendar year.

(9) State

The term “State” includes any State, the District of Columbia, any territory of the United States, and Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(10) State law

(A) In general

The term “State law” includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.

(B) Laws applicable in the District of Columbia

A law of the United States applicable only to or within the District of Columbia shall be treated as a State law rather than a law of the United States.

(Pub. L. 106–102, title III, §334, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 27.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6766 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6764, Pub. L. 106–102, title III, §334, Nov. 12, 1999, 113 Stat. 1433, related to coordination with other regulators, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6761 of this title.

A prior section 6765, Pub. L. 106–102, title III, §335, Nov. 12, 1999, 113 Stat. 1433, which related to judicial review, was omitted in the general amendment of this subchapter by Pub. L. 114–1. See section 6762 of this title.

A prior section 6766, Pub. L. 106–102, title III, §336, Nov. 12, 1999, 113 Stat. 1433, which related to definitions, was omitted in the general amendment of this subchapter by Pub. L. 114–1.

SUBCHAPTER IV—RENTAL CAR AGENCY INSURANCE ACTIVITIES

§ 6781. Standard of regulation for motor vehicle rentals

(a) Protection against retroactive application of regulatory and legal action

Except as provided in subsection (b), during the 3-year period beginning on November 12, 1999, it shall be a presumption that no State law imposes any licensing, appointment, or education requirements on any person who solicits the purchase of or sells insurance connected with, and incidental to, the lease or rental of a motor vehicle.

(b) Preeminence of State insurance law

No provision of this section shall be construed as altering the validity, interpretation, construction, or effect of—

- (1) any State statute;
- (2) the prospective application of any court judgment interpreting or applying any State statute; or
- (3) the prospective application of any final State regulation, order, bulletin, or other statutorily authorized interpretation or action,

which, by its specific terms, expressly regulates or exempts from regulation any person who solicits the purchase of or sells insurance connected with, and incidental to, the short-term lease or rental of a motor vehicle.

(c) Scope of application

This section shall apply with respect to—

- (1) the lease or rental of a motor vehicle for a total period of 90 consecutive days or less; and
- (2) insurance which is provided in connection with, and incidentally to, such lease or rental for a period of consecutive days not exceeding the lease or rental period.

(d) Motor vehicle defined

For purposes of this section, the term “motor vehicle” has the same meaning as in section 13102 of title 49.

(Pub. L. 106–102, title III, §341, Nov. 12, 1999, 113 Stat. 1434.)

CHAPTER 94—PRIVACY

SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

- | | |
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| Sec. | |
| 6801. | Protection of nonpublic personal information. |
| 6802. | Obligations with respect to disclosures of personal information. |
| 6803. | Disclosure of institution privacy policy. |
| 6804. | Rulemaking. |
| 6805. | Enforcement. |
| 6806. | Relation to other provisions. |
| 6807. | Relation to State laws. |
| 6808. | Study of information sharing among financial affiliates. |
| 6809. | Definitions. |

SUBCHAPTER II—FRAUDULENT ACCESS TO FINANCIAL INFORMATION

- | | |
|-------|--|
| 6821. | Privacy protection for customer information of financial institutions. |
| 6822. | Administrative enforcement. |

Sec.	
6823.	Criminal penalty.
6824.	Relation to State laws.
6825.	Agency guidance.
6826.	Reports.
6827.	Definitions.

SUBCHAPTER I—DISCLOSURE OF
NONPUBLIC PERSONAL INFORMATION

§ 6801. Protection of nonpublic personal information

(a) Privacy obligation policy

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial institutions safeguards

In furtherance of the policy in subsection (a), each agency or authority described in section 6805(a) of this title, other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

- (1) to insure the security and confidentiality of customer records and information;
- (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and
- (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(Pub. L. 106–102, title V, §501, Nov. 12, 1999, 113 Stat. 1436; Pub. L. 111–203, title X, §1093(1), July 21, 2010, 124 Stat. 2095.)

Editorial Notes

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 inserted “, other than the Bureau of Consumer Financial Protection,” after “section 6805(a) of this title” in introductory provisions.

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

Pub. L. 106–102, title V, §510, Nov. 12, 1999, 113 Stat. 1445, provided that: “This subtitle [subtitle A (§§501–510) of title V of Pub. L. 106–102, enacting this subchapter and amending section 1681s of this title] shall take effect 6 months after the date on which rules are required to be prescribed under section 504(a)(3) [15 U.S.C. 6804(a)(3)], except—

- “(1) to the extent that a later date is specified in the rules prescribed under section 504; and
- “(2) that sections 504 [15 U.S.C. 6804] and 506 [enacting section 6806 of this title and amending section 1681s of this title] shall be effective upon enactment [Nov. 12, 1999].”

§ 6802. Obligations with respect to disclosures of personal information

(a) Notice requirements

Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

(b) Opt out

(1) In general

A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that non-disclosure option.

(2) Exception

This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 6804 of this title, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) Limits on reuse of information

Except as otherwise provided in this subchapter, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) Limitations on the sharing of account number information for marketing purposes

A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other

marketing through electronic mail to the consumer.

(e) General exceptions

Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information—

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with—

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], to law enforcement agencies (including the Bureau of Consumer Financial Protection¹ a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal require-

ments; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

(Pub. L. 106-102, title V, §502, Nov. 12, 1999, 113 Stat. 1437; Pub. L. 111-203, title X, §1093(2), July 21, 2010, 124 Stat. 2095.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (c), was in the original "this subtitle", meaning subtitle A (§§501-510) of title V of Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Right to Financial Privacy Act of 1978, referred to in subsec. (e)(5), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

Chapter 2 of title I of Public Law 91-508, referred to in subsec. (e)(5), is chapter 2 (§§121-129) of title I of Pub. L. 91-508, Oct. 26, 1970, 84 Stat. 1116, which is classified generally to chapter 21 (§1951 et seq.) of Title 12, Banks and Banking. For complete classification of chapter 2 to the Code, see Tables.

The Fair Credit Reporting Act, referred to in subsec. (e)(6)(A), is title VI of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

AMENDMENTS

2010—Subsec. (e)(5). Pub. L. 111-203 inserted "the Bureau of Consumer Financial Protection" after "(including)".

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.

§ 6803. Disclosure of institution privacy policy

(a) Disclosure required

At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, of such financial institution's policies and practices with respect to—

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 6802 of this title, including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

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

(3) protecting the nonpublic personal information of consumers.

(b) Regulations

Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 6804 of this title.

(c) Information to be included

The disclosure required by subsection (a) shall include—

(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 6802 of this title, and including—

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 6802(e) of this title; and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 6801 of this title; and

(4) the disclosures required, if any, under section 1681a(d)(2)(A)(iii) of this title.

(d) Exemption for certified public accountants

(1) In general

The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is—

(A) a certified public accountant;

(B) certified or licensed for such purpose by a State; and

(C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

(2) Limitation

Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

(3) Definitions

For purposes of this subsection, the term “State” means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(e) Model forms

(1) In general

The agencies referred to in section 6804(a)(1) of this title shall jointly develop a model form

which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) Format

A model form developed under paragraph (1) shall—

(A) be comprehensible to consumers, with a clear format and design;

(B) provide for clear and conspicuous disclosures;

(C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

(D) be succinct, and use an easily readable type font.

(3) Timing

A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after October 13, 2006.

(4) Safe harbor

Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.

(f) Exception to annual notice requirement

A financial institution that—

(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 6802 of this title or regulations prescribed under section 6804(b) of this title, and

(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,

shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

(Pub. L. 106–102, title V, §503, Nov. 12, 1999, 113 Stat. 1439; Pub. L. 109–351, title VI, §609, title VII, §728, Oct. 13, 2006, 120 Stat. 1983, 2003; Pub. L. 114–94, div. G, title LXXV, §75001, Dec. 4, 2015, 129 Stat. 1787.)

Editorial Notes

AMENDMENTS

2015—Subsec. (f). Pub. L. 114–94 added subsec. (f).

2006—Pub. L. 109–351 designated concluding provisions of subsec. (a) as (b), inserted heading, substituted “Disclosures required by subsection (a)” for “Such disclosures”, redesignated former subsec. (b) as (c), and added subsecs. (d) and (e).

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 6804. Rulemaking**(a) Regulatory authority****(1) Rulemaking****(A) In general**

Except as provided in subparagraph (C), the Bureau of Consumer Financial Protection and the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to their respective jurisdiction under section 6805 of this title (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 6801 of this title.

(B) CFTC

The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 7b-2 of title 7.

(C) Federal Trade Commission authority

Notwithstanding the authority of the Bureau of Consumer Financial Protection under subparagraph (A), the Federal Trade Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to any financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)].

(D) Rule of construction

Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subchapter.

(2) Coordination, consistency, and comparability

Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, and with¹ representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

(3) Procedures and deadline

Such regulations shall be prescribed in accordance with applicable requirements of title 5.

¹So in original. Probably should be “and, as appropriate, with”.

(b) Authority to grant exceptions

The regulations prescribed under subsection (a) may include such additional exceptions to subsections (a) through (d) of section 6802 of this title as are deemed consistent with the purposes of this subchapter.

(Pub. L. 106–102, title V, § 504, Nov. 12, 1999, 113 Stat. 1436; Pub. L. 111–203, title X, § 1093(3), July 21, 2010, 124 Stat. 2095.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(1) and (b), was in the original “this subtitle”, meaning subtitle A (§§ 501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Consumer Financial Protection Act of 2010, referred to in subsec. (a)(1)(A), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitle B (§§ 1021–1029A) of the Act is classified generally to part B (§ 5511 et seq.) of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitle B to the Code, see Tables.

AMENDMENTS

2010—Subsec. (a)(1), (2). Pub. L. 111–203, § 1093(3)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which related, respectively, to rulemaking by the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission, and consultation and coordination among these agencies and authorities to assure consistency and comparability of regulations.

Subsec. (a)(3). Pub. L. 111–203, § 1093(3)(B), struck out “and shall be issued in final form not later than 6 months after November 12, 1999” after “title 5”.

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.

§ 6805. Enforcement**(a) In general**

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:

(1) Under section 1818 of title 12, by the appropriate Federal banking agency, as defined in section 1813(q) of title 12, in the case of—

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agen-

cies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(2) Under the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Board of the National Credit Union Administration with respect to any federally insured credit union, and any subsidiaries of such an entity.

(3) Under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission with respect to any broker or dealer.

(4) Under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], by the Securities and Exchange Commission with respect to investment companies.

(5) Under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(6) Under State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 6701 of this title.

(7) Under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (6) of this subsection.

(8) Under subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau and any person subject to this subchapter, but not with respect to the standards under section 6801 of this title.

(b) Enforcement of section 6801

(1) In general

Except as provided in paragraph (2), the agencies and authorities described in subsection (a), other than the Bureau of Consumer Financial Protection, shall implement the standards prescribed under section 6801(b) of this title in the same manner, to the extent

practicable, as standards prescribed pursuant to section 1831p-1(a) of title 12 are implemented pursuant to such section.

(2) Exception

The agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) shall implement the standards prescribed under section 6801(b) of this title by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a).

(c) Absence of State action

If a State insurance authority fails to adopt regulations to carry out this subchapter, such State shall not be eligible to override, pursuant to section 1831x(g)(2)(B)(iii) of title 12, the insurance customer protection regulations prescribed by a Federal banking agency under section 1831x(a) of title 12.

(d) Definitions

The terms used in subsection (a)(1) that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the same meaning as given in section 3101 of title 12.

(Pub. L. 106-102, title V, §505, Nov. 12, 1999, 113 Stat. 1440; Pub. L. 111-203, title X, §1093(4), (5), July 21, 2010, 124 Stat. 2096, 2097.)

Editorial Notes

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (a), is title X of Pub. L. 111-203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021-1029A) and E (§§1051-1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitles B and E to the Code, see Tables.

This subchapter, referred to in subsecs. (a), (c), and (d), was in the original "this subtitle", meaning subtitle A (§§501-510) of title V of Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (a)(1)(B), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(4), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (a)(5), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b-20 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (a)(7), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1093(4)(A), substituted “Subject to subtitle B of the Consumer Financial Protection Act of 2010, this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:” for “This subchapter and the regulations prescribed thereunder shall be enforced by the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:”.

Subsec. (a)(1). Pub. L. 111–203, §1093(4)(B)(i), inserted “by the appropriate Federal banking agency, as defined in section 1813(q) of title 12,” before “in the case of—”.

Subsec. (a)(1)(A). Pub. L. 111–203, §1093(4)(B)(ii), struck out “,” by the Office of the Comptroller of the Currency” before semicolon at end.

Subsec. (a)(1)(B). Pub. L. 111–203, §1093(4)(B)(iii), struck out “,” by the Board of Governors of the Federal Reserve System” before semicolon at end.

Subsec. (a)(1)(C). Pub. L. 111–203, §1093(4)(B)(iv), struck out “,” by the Board of Directors of the Federal Deposit Insurance Corporation” before “; and”.

Subsec. (a)(1)(D). Pub. L. 111–203, §1093(4)(B)(v), struck out “,” by the Director of the Office of Thrift Supervision” before period at end.

Subsec. (a)(8). Pub. L. 111–203, §1093(4)(C), added par. (8).

Subsec. (b)(1). Pub. L. 111–203, §1093(5), inserted “, other than the Bureau of Consumer Financial Protection,” before “shall implement the standards”.

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.

§ 6806. Relation to other provisions

Except for the amendments made by subsections (a) and (b), nothing in this chapter shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], and no inference shall be drawn on the basis of the provisions of this chapter regarding whether information is transaction or experience information under section 603 of such Act [15 U.S.C. 1681a].

(Pub. L. 106–102, title V, §506(c), Nov. 12, 1999, 113 Stat. 1442.)

Editorial Notes

REFERENCES IN TEXT

Amendments made by subsections (a) and (b), referred to in text, means amendments made by section 506(a) and (b) of Pub. L. 106–102, which amended section 1681s of this title.

This chapter, referred to in text, was in the original “this title”, meaning title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, as amended, which enacted this chapter and amended section 1681s of this title. For

complete classification of title V to the Code, see Tables.

The Fair Credit Reporting Act, referred to in text, is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, as amended, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

§ 6807. Relation to State laws

(a) In general

This subchapter and the amendments made by this subchapter shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

(b) Greater protection under State law

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter and the amendments made by this subchapter, as determined by the Bureau of Consumer Financial Protection, after consultation with the agency or authority with jurisdiction under section 6805(a) of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

(Pub. L. 106–102, title V, §507, Nov. 12, 1999, 113 Stat. 1442; Pub. L. 111–203, title X, §1093(6), July 21, 2010, 124 Stat. 2097.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted “Bureau of Consumer Financial Protection” for “Federal Trade Commission”.

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.

§ 6808. Study of information sharing among financial affiliates

(a) In general

The Secretary of the Treasury, in conjunction with the Federal functional regulators and the Federal Trade Commission, shall conduct a study of information sharing practices among financial institutions and their affiliates. Such study shall include—

(1) the purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties;

(2) the extent and adequacy of security protections for such information;

(3) the potential risks for customer privacy of such sharing of information;

(4) the potential benefits for financial institutions and affiliates of such sharing of information;

(5) the potential benefits for customers of such sharing of information;

(6) the adequacy of existing laws to protect customer privacy;

(7) the adequacy of financial institution privacy policy and privacy rights disclosure under existing law;

(8) the feasibility of different approaches, including opt-out and opt-in, to permit customers to direct that confidential information not be shared with affiliates and nonaffiliated third parties; and

(9) the feasibility of restricting sharing of information for specific uses or of permitting customers to direct the uses for which information may be shared.

(b) Consultation

The Secretary shall consult with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, and also with financial services industry, consumer organizations and privacy groups, and other representatives of the general public, in formulating and conducting the study required by subsection (a).

(c) Report

On or before January 1, 2002, the Secretary shall submit a report to the Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative action as may be appropriate.

(Pub. L. 106–102, title V, §508, Nov. 12, 1999, 113 Stat. 1442.)

§ 6809. Definitions

As used in this subchapter:

(1) Federal banking agency

The term “Federal banking agency” has the same meaning as given in section 1813 of title 12.

(2) Federal functional regulator

The term “Federal functional regulator” means—

(A) the Board of Governors of the Federal Reserve System;

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

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board; and

(F) the Securities and Exchange Commission.

(3) Financial institution

(A) In general

The term “financial institution” means any institution the business of which is en-

gaging in financial activities as described in section 1843(k) of title 12.

(B) Persons subject to CFTC regulation

Notwithstanding subparagraph (A), the term “financial institution” does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(C) Farm credit institutions

Notwithstanding subparagraph (A), the term “financial institution” does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

(D) Other secondary market institutions

Notwithstanding subparagraph (A), the term “financial institution” does not include institutions chartered by Congress specifically to engage in transactions described in section 6802(e)(1)(C) of this title, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(4) Nonpublic personal information

(A) The term “nonpublic personal information” means personally identifiable financial information—

(i) provided by a consumer to a financial institution;

(ii) resulting from any transaction with the consumer or any service performed for the consumer; or

(iii) otherwise obtained by the financial institution.

(B) Such term does not include publicly available information, as such term is defined by the regulations prescribed under section 6804 of this title.

(C) Notwithstanding subparagraph (B), such term—

(i) shall include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information; but

(ii) shall not include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.

(5) Nonaffiliated third party

The term “nonaffiliated third party” means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.

(6) Affiliate

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

(7) Necessary to effect, administer, or enforce

The term “as necessary to effect, administer, or enforce the transaction” means—

(A) the disclosure is required, or is a usual, appropriate, or acceptable method, to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes—

(i) providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product; and

(ii) the accrual or recognition of incentives or bonuses associated with the transaction that are provided by the financial institution or any other party;

(B) the disclosure is required, or is one of the lawful or appropriate methods, to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction, or providing the product or service;

(C) the disclosure is required, or is a usual, appropriate, or acceptable method, for insurance underwriting at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law; or

(D) the disclosure is required, or is a usual, appropriate or acceptable method, in connection with—

(i) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means;

(ii) the transfer of receivables, accounts or interests therein; or

(iii) the audit of debit, credit or other payment information.

(8) State insurance authority

The term “State insurance authority” means, in the case of any person engaged in providing insurance, the State insurance authority of the State in which the person is domiciled.

(9) Consumer

The term “consumer” means an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(10) Joint agreement

The term “joint agreement” means a formal written contract pursuant to which two or more financial institutions jointly offer, endorse, or sponsor a financial product or service, and as may be further defined in the regulations prescribed under section 6804 of this title.

(11) Customer relationship

The term “time of establishing a customer relationship” shall be defined by the regulations prescribed under section 6804 of this title, and shall, in the case of a financial institution engaged in extending credit directly to consumers to finance purchases of goods or services, mean the time of establishing the credit relationship with the consumer.

(Pub. L. 106–102, title V, §509, Nov. 12, 1999, 113 Stat. 1443.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Commodity Exchange Act, referred to in par. (3)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in par. (3)(C), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

SUBCHAPTER II—FRAUDULENT ACCESS TO FINANCIAL INFORMATION

§ 6821. Privacy protection for customer information of financial institutions

(a) Prohibition on obtaining customer information by false pretenses

It shall be a violation of this subchapter for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) Prohibition on solicitation of a person to obtain customer information from financial institution under false pretenses

It shall be a violation of this subchapter to request a person to obtain customer information

of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) Nonapplicability to law enforcement agencies

No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) Nonapplicability to financial institutions in certain cases

No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

- (1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;
- (2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or
- (3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) Nonapplicability to insurance institutions for investigation of insurance fraud

No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) Nonapplicability to certain types of customer information of financial institutions

No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 78c(a)(47) of this title).

(g) Nonapplicability to collection of child support judgments

No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.

(Pub. L. 106–102, title V, § 521, Nov. 12, 1999, 113 Stat. 1446.)

§ 6822. Administrative enforcement

(a) Enforcement by Federal Trade Commission

Except as provided in subsection (b), compliance with this subchapter shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act [15 U.S.C. 1692 et seq.] to enforce compliance with such Act.

(b) Enforcement by other agencies in certain cases

(1) In general

Compliance with this subchapter shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

(B) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(2) Violations of this subchapter treated as violations of other laws

For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this subchapter, any other authority conferred on such agency by law.

(Pub. L. 106–102, title V, § 522, Nov. 12, 1999, 113 Stat. 1447.)

Editorial Notes

REFERENCES IN TEXT

The Fair Debt Collection Practices Act, referred to in subsec. (a), is title VIII of Pub. L. 90–321, as added by

Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874, as amended, which is classified generally to subchapter V (§1692 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (b)(1)(A)(ii), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (b)(1)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

Statutory Notes and Related Subsidiaries

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

§ 6823. Criminal penalty

(a) In general

Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 6821 of this title shall be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(b) Enhanced penalty for aggravated cases

Whoever violates, or attempts to violate, section 6821 of this title while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, imprisoned for not more than 10 years, or both.

(Pub. L. 106–102, title V, §523, Nov. 12, 1999, 113 Stat. 1448.)

§ 6824. Relation to State laws

(a) In general

This subchapter shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

(b) Greater protection under State law

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 6822 of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

(Pub. L. 106–102, title V, §524, Nov. 12, 1999, 113 Stat. 1448.)

§ 6825. Agency guidance

In furtherance of the objectives of this subchapter, each Federal banking agency (as defined in section 1813(z) of title 12), the National Credit Union Administration, and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 6821 of this title.

(Pub. L. 106–102, title V, §525, Nov. 12, 1999, 113 Stat. 1448.)

§ 6826. Reports

(a) Report to the Congress

Before the end of the 18-month period beginning on November 12, 1999, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subchapter in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(b) Annual report by administering agencies

The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subchapter.

(Pub. L. 106–102, title V, §526, Nov. 12, 1999, 113 Stat. 1448.)

§ 6827. Definitions

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

(1) Customer

The term “customer” means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) Customer information of a financial institution

The term “customer information of a financial institution” means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) Document

The term “document” means any information in any form.

(4) Financial institution

(A) In general

The term “financial institution” means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) Certain financial institutions specifically included

The term “financial institution” includes any depository institution (as defined in section 461(b)(1)(A) of title 12), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 1681a(p) of this title).

(C) Securities institutions

For purposes of subparagraph (B)—

(i) the terms “broker” and “dealer” have the same meanings as given in section 78c of this title;

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

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

(D) Certain persons and entities specifically excluded

The term “financial institution” does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.] and does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

(E) Further definition by regulation

The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subchapter.

(Pub. L. 106-102, title V, §527, Nov. 12, 1999, 113 Stat. 1449.)

Editorial Notes

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in par. (4)(D), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in par. (4)(D), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

CHAPTER 95—MICROENTERPRISE TECHNICAL ASSISTANCE AND CAPACITY BUILDING PROGRAM

Sec.	Definitions.
6901.	Establishment of program.
6902.	Uses of assistance.
6903.	Qualified organizations.
6904.	Allocation of assistance; subgrants.
6905.	Matching requirements.
6906.	Applications for assistance.
6907.	Recordkeeping.
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§ 6901. Definitions

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

(1) Administration

The term “Administration” means the Small Business Administration.

(2) Administrator

The term “Administrator” means the Administrator of the Small Business Administration.

(3) Capacity building services

The term “capacity building services” means services provided to an organization that is, or that is in the process of becoming, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs.

(4) Collaborative

The term “collaborative” means 2 or more nonprofit entities that agree to act jointly as a qualified organization under this chapter.

(5) Disadvantaged entrepreneur

The term “disadvantaged entrepreneur” means a microentrepreneur that is—

- (A) a low-income person;
- (B) a very low-income person; or
- (C) an entrepreneur that lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator.

(6) Indian tribe

The term “Indian tribe” has the meaning given the term in section 4702 of title 12.

(7) Intermediary

The term “intermediary” means a private, nonprofit entity that seeks to serve microenterprise development organizations and programs as authorized under section 6904 of this title.

(8) Low-income person

The term “low-income person” has the meaning given the term in section 4702 of title 12.