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114TH CONGRESS
2D SESSION

H. R. 5453

To amend the Consumer Financial Protection Act of 2010 to establish an advisory opinion process for the Bureau of Consumer Financial Protection, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 2016

Mr. POSEY (for himself and Mr. HECK of Washington) introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To amend the Consumer Financial Protection Act of 2010 to establish an advisory opinion process for the Bureau of Consumer Financial Protection, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bureau Advisory Opinion Act of 2016''.

SEC. 2. ADVISORY OPINIONS.

Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)) is amended by adding at the end the following:

"(5) ADVISORY OPINIONS.—

"(A) ESTABLISHING PROCEDURES.—

"(i) IN GENERAL.—The Director shall establish a procedure and, as necessary, promulgate rules to provide written opinions in response to inquiries concerning the conformance of specific conduct with Federal consumer financial law. In establishing the procedure the Director shall consult with the prudential regulators and such other Federal departments and agencies as the Director determines appropriate, and obtain the views of all interested persons through a public notice and comment period.

"(ii) SCOPE OF REQUEST.—A request for an opinion under this paragraph must relate to specific proposed or prospective conduct by a covered person contemplating the proposed or prospective conduct.

"(iii) SUBMISSION.—A request for an opinion under this paragraph may be submitted to the Director either by or on behalf of a covered person.

"(iv) RIGHT TO WITHDRAW INQUIRY.—Any inquiry under this paragraph may be withdrawn at any time prior to the Director issuing an opinion in response to such inquiry, and any opinion based on an inquiry that has been withdrawn shall have no force or effect.

"(B) ISSUANCE OF OPINIONS.—

"(i) IN GENERAL.—The Director shall, within 90 days of receiving the request for an opinion under this paragraph, either—

"(I) issue an opinion stating whether the described conduct would violate Federal consumer financial law;

"(II) if permissible under clause (iii), deny the request; or

"(III) explain why it is not feasible to issue an opinion.

"(ii) EXTENSION.—Notwithstanding clause (i), if the Director determines that the Bureau requires additional time to issue an opinion, the Director may make a single extension of the deadline of 90 days or less.

"(iii) DENIAL OF REQUESTS.—The Director shall not issue an opinion, and shall so inform the requestor, if the request for an opinion—

"(I) asks a general question of interpretation;

"(II) asks about a hypothetical situation;

"(III) asks about the conduct of someone other than the covered person on whose behalf the request is made;

"(IV) asks about past conduct that the covered person on whose behalf the request is made does not plan to continue in the future; or

"(V) fails to provide necessary supporting information requested by the Bureau within a reasonable time established by the Bureau.

"(iv) AMENDMENT AND REVOCATION.—An advisory opinion issued under this paragraph may be amended or revoked at any time.

"(v) PUBLIC DISCLOSURE.—An opinion rendered pursuant to this paragraph shall be placed in the Bureau's public record 90 days after the requesting party has received the advice, subject to any limitations on public disclosure arising from statutory restrictions, Bureau regulations, or the public interest. The Bureau shall redact any personal, confidential, or identifying information about the covered person or any other persons mentioned in the advisory opinion, unless the covered person consents to such disclosure.

"(vi) REPORT TO CONGRESS.—The Bureau shall, concurrent with the semi-annual report required under section 1016(b), submit information regarding the number of requests for an advisory opinion received, the subject of each request, the number of requests denied pursuant to clause (iii), and the time needed to respond to each request.

"(C) RELIANCE ON OPINION.—Any person may rely on an opinion issued by the Director pursuant to this paragraph that has not been amended or withdrawn. No liability under Federal consumer financial law shall attach to conduct consistent with an advisory opinion that had not been amended or withdrawn at the time the conduct was undertaken.

"(D) CONFIDENTIALITY.—Any document or other material that is received by the Bureau or any other Federal department or agency in connection with an inquiry under this paragraph shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the 'Freedom of Information Act') and may not, except with the consent of the covered person making such inquiry, be made publicly available, regardless of whether the Director responds to such inquiry or the covered person withdraws such inquiry before receiving an opinion.

"(E) ASSISTANCE FOR SMALL BUSINESSES.—

"(i) IN GENERAL.—The Bureau shall assist, to the maximum extent practicable, small businesses in preparing inquiries under this paragraph.

"(ii) SMALL BUSINESS DEFINED.—For purposes of this subparagraph, the term 'small business' has the meaning given the term 'small business concern' under section 3 of the Small Business Act (15 U.S.C. 632).

"(F) INQUIRY FEE.—

"(i) IN GENERAL.—The Director shall develop a system to charge a fee for each inquiry made under this paragraph in an amount sufficient, in the aggregate, to pay for the cost of carrying out this paragraph.

"(ii) NOTICE AND COMMENT.—Not later than 45 days after the date of the enactment of this paragraph, the Director shall publish a description of the fee system described in clause (i) in the Federal Register and shall solicit comments from the public for a period of 60 days after publication.

"(iii) FINALIZATION.—The Director shall publish a final description of the fee system and implement such fee system not later than 30 days after the end of the public comment period described in clause (ii).''.

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