

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 6009. Enforcement**(a) Jurisdiction**

The district courts of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating, this chapter or any plan or regulation issued under this chapter.

(b) Referral to Attorney General

A civil action to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this chapter or any plan or regulation issued under this chapter if the Secretary believes that the administration and enforcement of this chapter would be adequately served by administrative action under subsection (c) of this section or by providing a suitable written notice or warning to any person committing the violation.

(c) Civil penalties and orders**(1) Civil penalties****(A) In general**

A person who willfully violates any provision of this chapter or any plan or regulation issued under this chapter, or who fails to pay, collect, or remit any assessment or fee required of the person under this chapter or any plan or regulation issued under this chapter, may be assessed by the Secretary a civil penalty of not less than \$1,000 nor more than \$10,000 for each such violation.

(B) Separate offense

Each violation described in subparagraph (A) shall be a separate offense.

(2) Cease and desist orders

In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(3) Notice and hearing

No penalty shall be assessed or cease and desist order issued by the Secretary under this subsection unless the Secretary gives the person against whom the order is issued notice and opportunity for a hearing on the record with respect to such violation.

(4) Finality

The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the person against whom the order is issued files an appeal from the Secretary's order in accordance with subsection (d) of this section.

(d) Review by district court**(1) Commencement of action**

A person against whom a civil penalty is assessed or a cease and desist order is issued under subsection (c) of this section may obtain review of such penalty or order in the district

court of the United States for the district in which such person resides or does business, or in the United States District Court for the District of Columbia, by—

(A) filing, within the 30-day period beginning on the date such penalty is assessed or order issued, a notice of appeal in such court; and

(B) simultaneously sending a copy of the notice by certified mail to the Secretary.

(2) Record

The Secretary shall promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) Standard of review

A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) Failure to obey orders

Any person who fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing on the record and for judicial review under the procedures specified in subsections (c) and (d) of this section, of not more than \$1,000 for each offense. Each day during which the failure continues shall be considered a separate violation of such order.

(f) Failure to pay penalty

If a person fails to pay a civil penalty after it has become a final and unappealable order issued by the Secretary, or after the appropriate district court has entered a final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States in any district in which the person resides or conducts business. In such action, the validity and appropriateness of such order imposing such civil penalty shall not be subject to review.

(Pub. L. 101-624, title XIX, §1914, Nov. 28, 1990, 104 Stat. 3851.)

§ 6010. Investigations and power to subpoena**(a) In general**

The Secretary may make such investigations as the Secretary determines necessary—

(1) for the effective administration of this chapter; or

(2) to determine whether a person has engaged or is engaging in any act or practice that constitutes a violation of any provision of this chapter, or of any plan, rule, or regulation issued under this chapter.

(b) Power to subpoena**(1) Investigations**

For the purpose of an investigation made under subsection (a) of this section, the Secretary is authorized to administer oaths and affirmations and to issue a subpoena to require the production of any records that are