

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4662

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.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2014

Mr. POSEY 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.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Bureau Advisory Opin-  
5       ion Act”.

1 **SEC. 2. ADVISORY OPINIONS.**

2 Section 1022(b) of the Consumer Financial Protec-  
3 tion Act of 2010 (12 U.S.C. 5512(b)) is amended by add-  
4 ing at the end the following:

5 “(5) ADVISORY OPINIONS.—

6 “(A) ESTABLISHING PROCEDURES.—

7 “(i) IN GENERAL.—The Director shall  
8 establish a procedure to provide responses  
9 to specific inquiries by a covered person  
10 concerning conformance of prospective con-  
11 duct with the Federal consumer financial  
12 law. In establishing the procedures the Di-  
13 rector shall consult with the prudential  
14 regulators and such other Federal depart-  
15 ments and agencies as the Director deter-  
16 mines appropriate, and obtain the views of  
17 all interested persons through a public no-  
18 tice and comment period.

19 “(ii) HYPOTHETICAL INQUIRIES PRO-  
20 HIBITED.—An inquiry may only be made  
21 by a covered person under this paragraph  
22 with respect to conduct that the person in-  
23 tends to engage in.

24 “(iii) RIGHT TO WITHDRAW IN-  
25 QUIRY.—Any covered person making an in-  
26 quiry under this paragraph may withdraw

1 such inquiry at any time prior to the Di-  
2 rector issuing an opinion in response to  
3 such inquiry, and any opinion based on an  
4 inquiry that has been withdrawn shall have  
5 no force or effect.

6 “(B) ISSUANCE OF OPINIONS.—

7 “(i) IN GENERAL.—The Director  
8 shall, within 90 days after receiving an in-  
9 quiry under this paragraph, issue an opin-  
10 ion in response to that inquiry. Such opin-  
11 ion shall state whether or not the specified  
12 prospective conduct would, for purposes of  
13 Bureau’s present enforcement policy, vio-  
14 late Federal consumer financial law.

15 “(ii) EXTENSION PERMITTED.—If the  
16 Director determines that the Bureau re-  
17 quires additional time to issue an opinion  
18 on an inquiry, the Director may make a  
19 single extension of the deadline described  
20 under clause (i) of 45 days or less.

21 “(C) REBUTTABLE PRESUMPTION.—In any  
22 action brought under the Federal consumer fi-  
23 nancial law, there shall be a rebuttable pre-  
24 sumption that any conduct for which the Direc-  
25 tor has issued an opinion that such conduct is

1 in conformity with the Bureau's interpretation  
2 of Federal consumer financial law, is in compli-  
3 ance with Federal consumer financial law. Such  
4 a presumption may be rebutted by a preponder-  
5 ance of the evidence. In considering such pre-  
6 sumption, a court shall weigh all relevant fac-  
7 tors, including whether the information sub-  
8 mitted to the Director was accurate and com-  
9 plete and whether the conduct at issue in the  
10 action was within the scope of the conduct ad-  
11 dressed in the opinion of the Director.

12 “(D) CONFIDENTIALITY.—Any document  
13 or other material that is received by or pre-  
14 pared by the Bureau or any other Federal de-  
15 partment or agency in connection with an in-  
16 quiry under this paragraph, including any opin-  
17 ion issued by the Director under this para-  
18 graph, shall be exempt from disclosure under  
19 section 552 of title 5, United States Code (com-  
20 monly referred to as the Freedom of Informa-  
21 tion Act) and may not, except with the consent  
22 of the covered person making such inquiry, be  
23 made publicly available, regardless of whether  
24 the Director responds to such inquiry or the

1 covered person withdraws such inquiry before  
2 receiving an opinion.

3 “(E) ASSISTANCE FOR SMALL BUSI-  
4 NESSES.—

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

9 “(ii) SMALL BUSINESS DEFINED.—  
10 For purposes of this clause, the term  
11 ‘small business’ has the meaning given the  
12 term ‘small business concern’ under section  
13 3 of the Small Business Act (15 U.S.C.  
14 632).”.

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