

115TH CONGRESS  
2D SESSION

# S. 3443

To amend the Consumer Financial Protection Act of 2010 to provide procedures for guidance issued by the Bureau of Consumer Financial Protection, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2018

Mr. HATCH (for himself and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Consumer Financial Protection Act of 2010 to provide procedures for guidance issued by 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 “Give Useful Informa-  
5 tion to Define Effective Compliance Act” or the “GUIDE  
6 Compliance Act”.

1 **SEC. 2. PROCEDURES FOR BUREAU GUIDANCE.**

2 Section 1022(b) of the Consumer Financial Protec-  
 3 tion Act of 2010 is amended by adding at the end the  
 4 following:

5 “(5) PROCEDURES FOR BUREAU GUIDANCE.—

6 “(A) DEFINITIONS.—In this paragraph—

7 “(i) the term ‘Bureau’ means—

8 “(I) the Director of the Bureau;

9 “(II) the Deputy Director of the  
 10 Bureau; and

11 “(III) any employee of the Bu-  
 12 reau described in section  
 13 1013(a)(1)(B); and

14 “(ii) the term ‘guidance’—

15 “(I) means—

16 “(aa) an agency statement  
 17 of general applicability and fu-  
 18 ture effect, other than a regu-  
 19 latory action, that sets forth a  
 20 policy on a statutory, regulatory,  
 21 or technical issue or an interpre-  
 22 tation of a statutory or regu-  
 23 latory issue; and

24 “(bb) any written interpre-  
 25 tive rule, bulletin, statement of  
 26 policy, letter, examination man-

1 ual, frequently asked question,  
2 notice, directive, news release,  
3 blog post, small entity compliance  
4 guide, or other authoritative doc-  
5 ument issued by the Bureau re-  
6 garding compliance with a Fed-  
7 eral consumer financial law; and  
8 “(II) does not include—

9 “(aa) a purely internal Bu-  
10 reau policy;

11 “(bb) a law enforcement  
12 communication such as a com-  
13 plaint, consent order, judgment,  
14 legal opinion, warning letter, in-  
15 vestigatory letter, notice of hear-  
16 ing, civil investigative demand,  
17 subpoena, no-action letter, advi-  
18 sory opinion, or any request in  
19 lieu of the foregoing;

20 “(cc) an individualized su-  
21 pervisory communication such as  
22 a supervisory letter, report of ex-  
23 amination, memorandum of un-  
24 derstanding, board resolution,  
25 matter requiring attention, or in-

1 individualized communication or  
2 agreement pursuant to the super-  
3 visory authority of the Bureau;  
4 or

5 “(dd) a decision issued  
6 under subtitle E.

7 “(B) GUIDANCE REQUIREMENTS.—The Di-  
8 rector shall issue guidance that is necessary or  
9 appropriate to enable the Bureau to carry out  
10 Federal consumer financial law, including facili-  
11 tating compliance with such law.

12 “(C) RULEMAKING.—

13 “(i) PROPOSED RULE.—Not later  
14 than 18 months after the date of enact-  
15 ment of this paragraph, the Bureau shall  
16 publish in the Federal Register and on the  
17 website of the Bureau a proposed rule de-  
18 fining—

19 “(I) each type of guidance the  
20 Bureau shall provide;

21 “(II) the criteria the Bureau  
22 shall use for selecting each type of  
23 guidance;

24 “(III) the process and timelines  
25 for requests for guidance;

1                   “(IV) the time periods for the re-  
2                   sponse of the Bureau to a request for  
3                   each type of guidance; and

4                   “(V) a process for amending or  
5                   revoking guidance issued under the  
6                   rule, including a process for public  
7                   input on any proposal to amend or re-  
8                   voke guidance, unless the Bureau de-  
9                   termines public input is not required  
10                  due to public exigency.

11                  “(ii) FINAL RULE.—Not later than 1  
12                  year after the date on which the proposed  
13                  rule described in clause (i) is published,  
14                  the Bureau shall publish a final rule based  
15                  on the proposed rule.

16                  “(D) RELIANCE ON BUREAU GUIDANCE.—  
17                  No person shall be held liable for any act done  
18                  or omitted in good faith in conformity with any  
19                  applicable guidance from the Bureau or any  
20                  predecessor agency that was in effect at the  
21                  time of the act or omission, even if the guidance  
22                  is later revoked, amended, or rendered incon-  
23                  sistent by guidance or action by the Bureau or  
24                  a determination by a court of competent juris-  
25                  diction.

1                   “(E) DEVELOPMENT OF A PENALTY MA-  
2                   TRIX.—

3                   “(i) PROPOSED RULE.—Not later  
4                   than 18 months after the date of the en-  
5                   actment of this subparagraph, the Bureau  
6                   shall publish in the Federal Register and  
7                   on the website of the Bureau a proposed  
8                   rule establishing guidelines for determining  
9                   the size of any civil monetary penalties  
10                  issued by the Bureau based on the severity  
11                  of the actionable conduct in violation of a  
12                  Federal consumer financial law and the  
13                  level of culpability. The regulations pre-  
14                  scribed under this paragraph shall, to the  
15                  extent possible, align with any chart, ma-  
16                  trix, rule, or guideline published by the Of-  
17                  fice of the Comptroller of the Currency,  
18                  the Corporation, or the Board of Gov-  
19                  ernors.

20                  “(ii) FINAL RULE.—Not later than 1  
21                  year after the date on which the proposed  
22                  rule described in clause (i) is published,  
23                  the Bureau shall publish a final rule based  
24                  on the proposed rule.”.

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