

118TH CONGRESS
2D SESSION

H. R. 8338

To regulate small-dollar, short-term credit products, to protect the privacy of lenders, and to improve the unfair, deceptive, or abusive acts or practices authority of the Bureau of Consumer Financial Protection, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 10, 2024

Mrs. KIM of California introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To regulate small-dollar, short-term credit products, to protect the privacy of lenders, and to improve the unfair, deceptive, or abusive acts or practices authority of 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Clarity in Lending Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SMALL-DOLLAR CREDIT PRODUCTS

Sec. 101. Safe harbor for small-dollar credit products.

TITLE II—RECTIFYING UNDEFINED DESCRIPTIONS OF ABUSIVE ACTS AND PRACTICES

Sec. 201. Mitigating factors in assessing civil penalties.

Sec. 202. Rulemaking relating to unfair, deceptive or abusive acts or practices.

Sec. 203. Authority to declare an act unlawful based on discrimination or service as government contractor.

Sec. 204. Clarifying the abusive standard for the Bureau of Consumer Financial Protection.

Sec. 205. Notice and opportunity to cure.

Sec. 206. Abusive, unfair, or deceptive acts or practices enforcement actions.

Sec. 207. Look-back provisions for the Bureau of Consumer Financial Protection.

TITLE III—SMALL LENDERS EXEMPT FROM NEW DATA AND EXCESSIVE REPORTING

Sec. 301. Small business loan data collection.

TITLE IV—BANK LOAN PRIVACY

Sec. 401. Rulemaking requirement.

1 **TITLE I—SMALL-DOLLAR**
 2 **CREDIT PRODUCTS**
 3 **SEC. 101. SAFE HARBOR FOR SMALL-DOLLAR CREDIT**
 4 **PRODUCTS.**

5 (a) IN GENERAL.—The Truth in Lending Act (15
 6 U.S.C. 1601 et seq.) is amended by inserting after section
 7 109 the following:

8 **“§ 110. Safe harbor for small-dollar credit products**

9 “(a) IN GENERAL.—If a covered entity complies with
 10 the requirements set forth in subsections (b), (c), and (e)
 11 with respect to the offering of a small-dollar product to
 12 a consumer, such covered entity shall not be liable in con-
 13 nection with such offering of a small-dollar product, for—

1 “(1) any civil money penalties from any en-
2 forcement action brought by the Bureau, the appro-
3 priate Federal banking agency, or the National
4 Credit Union Administration for a violation of this
5 title; or

6 “(2) any damages or other monetary relief
7 through a private right of action brought under this
8 title.

9 “(b) PRODUCT STRUCTURE REQUIREMENTS.—

10 “(1) IN THE CASE OF AN INSTALLMENT
11 LOAN.—If a small-dollar credit product is structured
12 by a covered entity as an installment loan—

13 “(A) the repayment term shall be more
14 than 45 days;

15 “(B) payments shall be fully amortized
16 across more than one payment;

17 “(C) rollovers into new small-dollar credit
18 products shall be prohibited; and

19 “(D) the covered entity may not issue any
20 small-dollar credit product to a consumer if
21 such consumer has a small-dollar credit product
22 open with such covered entity at the time such
23 consumer applies for a small-dollar credit prod-
24 uct.

1 “(2) IN THE CASE OF A LINE OF CREDIT.—If
2 a small-dollar credit product is structured by a cov-
3 ered entity as a line of credit—

4 “(A) the repayment term for each draw
5 shall be more than 45 days unless a single pay-
6 ment is used and the draw is not more than 10
7 percent of the lesser of \$3,500 or 20 percent of
8 the total amount of a consumer’s average
9 monthly direct deposits during the preceding six
10 months; and

11 “(B) payments for each draw shall be fully
12 amortized across more than one payment, ex-
13 cept in the case of any single-payment loans.

14 “(3) RULES OF CONSTRUCTION.—

15 “(A) IN GENERAL.—Nothing in this sub-
16 section may be construed to prohibit the Bu-
17 reau, a Federal banking agency, or the National
18 Credit Union Administration from issuing a
19 cease-and-desist order or restitution order
20 under this title against a covered entity.

21 “(B) ENFORCEMENT OF OTHER STAT-
22 UTES.—Nothing in this subsection may be con-
23 strued to prohibit the Bureau, a Federal bank-
24 ing agency, or the National Credit Union Ad-
25 ministration from enforcing any provision of

1 law not contained within this title against a
2 covered entity.

3 “(c) UNDERWRITING REQUIREMENTS.—When con-
4 sidering whether to offer a small-dollar credit product to
5 a specific consumer, a covered entity—

6 “(1) shall use sound underwriting processes;
7 and

8 “(2) may analyze internal or external data
9 sources, including consumer deposit account activity,
10 to assess the creditworthiness of a consumer.

11 “(d) RULE OF CONSTRUCTION.—Nothing in this title
12 may be construed to prohibit a covered entity from offer-
13 ing a small-dollar product that does not comply with the
14 safe harbor requirements set forth under this section.

15 “(e) ADDITIONAL LIMITATIONS AND REQUIRE-
16 MENTS.—

17 “(1) BALLOON PAYMENTS.—No payment re-
18 quired in association with a small-dollar credit prod-
19 uct offered by a covered entity may be greater than
20 double the amount of any other payment required in
21 association with such product.

22 “(2) DISCLOSURES.—Each covered entity that
23 offers a small-dollar credit product shall comply with
24 all disclosure requirements set forth by this title.

1 “(3) PENALTIES AND FEES.—A covered entity
2 may not impose any prepayment penalty, overdraft
3 fee, or nonsufficient funds fee in connection with a
4 small-dollar credit product.

5 “(4) TRANSFER OF AMOUNTS.—Amounts made
6 available to a consumer through a small-dollar credit
7 product offered by a covered entity shall be dis-
8 bursed to the account of such consumer by such cov-
9 ered entity not later than 5 days after the approval
10 of the consumer for the small-dollar credit product.

11 “(f) DEFINITIONS.—In this section:

12 “(1) COVERED ENTITY.—The term ‘covered en-
13 tity’ means—

14 “(A) an insured depository institution;

15 “(B) an insured credit union;

16 “(C) a third-party with whom an insured
17 depository institution has contracted for prod-
18 ucts or services related to origination, servicing,
19 or administrative management of a small-dollar
20 credit product; or

21 “(D) a third-party with whom an insured
22 credit union has contracted for products or
23 services related to origination, servicing, or ad-
24 ministrative management of a small-dollar cred-
25 it product.

1 “(2) FEDERAL BANKING AGENCY DEFINI-
2 TIONS.—The terms ‘appropriate Federal banking
3 agency’ and ‘Federal banking agency’ have the
4 meaning given those terms, respectively, in section 3
5 of the Federal Deposit Insurance Act.

6 “(3) INSURED CREDIT UNION.—The term ‘in-
7 sured credit union’ has the meaning given the term
8 in section 101 of the Federal Credit Union Act.

9 “(4) INSURED DEPOSITORY INSTITUTION.—The
10 term ‘insured depository institution’ has the mean-
11 ing given the term in section 3 of the Federal De-
12 posit Insurance Act.

13 “(5) SMALL-DOLLAR CREDIT PRODUCT.—The
14 term ‘small-dollar product’ means a loan or line of
15 credit with a value of \$3,500 or less.”.

16 (b) CLERICAL AMENDMENT.—The table of contents
17 for chapter 1 of the Truth in Lending Act is amended
18 by striking the item relating to section 110 and inserting
19 the following:

“110. Safe harbor for Small-dollar credit products.”.

1 **TITLE II—RECTIFYING UNDE-**
 2 **FINED DESCRIPTIONS OF**
 3 **ABUSIVE ACTS AND PRAC-**
 4 **TICES**

5 **SEC. 201. MITIGATING FACTORS IN ASSESSING CIVIL PEN-**
 6 **ALTIES.**

7 Section 1055(c) of the Consumer Financial Protec-
 8 tion Act of 2010 (12 U.S.C. 5565(c)) is amended by add-
 9 ing at the end the following:

10 “(6) RULEMAKING.—The Bureau shall, not
 11 later than 180 days after the date of the enactment
 12 of this paragraph, issue a rule that establishes poli-
 13 cies and procedures relating to the imposition of civil
 14 monetary penalties sought under this subsection, in-
 15 cluding the application of the mitigating factors de-
 16 scribed in paragraph (3).”.

17 **SEC. 202. RULEMAKING RELATING TO UNFAIR, DECEPTIVE**
 18 **OR ABUSIVE ACTS OR PRACTICES.**

19 (a) IN GENERAL.—Section 1031 of the Consumer Fi-
 20 nancial Protection Act of 2010 (12 U.S.C. 5531) is
 21 amended by striking subsection (b) and inserting the fol-
 22 lowing:

23 “(b) RULEMAKING.—

24 “(1) IN GENERAL.—The Bureau may prescribe
 25 rules applicable to a covered person or service pro-

1 vider identifying as unlawful unfair, deceptive, or
2 abusive acts or practices in connection with any
3 transaction with a consumer for a consumer finan-
4 cial product or service, or the offering of a consumer
5 financial product or service. Rules under this section
6 may include requirements for the purpose of pre-
7 venting such acts or practices.

8 “(2) COST-BENEFIT ANALYSIS REQUIRED.—
9 Any final rule issued by the Bureau relating to abu-
10 sive, unfair, or deceptive acts or practices shall in-
11 clude a cost-benefit analysis.

12 “(3) DEFINITION OF ABUSIVE ACT OR PRAC-
13 TICE.—The Bureau shall, not later than 180 days
14 after the date of the enactment of this subsection,
15 issue a rule that defines the term ‘abusive act or
16 practice’ for the purposes of this section.”.

17 (b) OPPORTUNITY FOR COMMENT.—The Bureau of
18 Consumer Financial Protection shall, not later than 180
19 days after the date of the enactment of this subsection,
20 allow the public to submit comments with respect to any
21 confusion about how the Bureau of Consumer Financial
22 Protection uses its authority with respect to unfair, decep-
23 tive, or abusive acts or practices.

1 **SEC. 203. AUTHORITY TO DECLARE AN ACT UNLAWFUL**
2 **BASED ON DISCRIMINATION OR SERVICE AS**
3 **GOVERNMENT CONTRACTOR.**

4 Section 1031 of the Consumer Financial Protection
5 Act of 2010 (12 U.S.C. 5531) is amended by adding at
6 the end the following:

7 “(h) **AUTHORITY TO DECLARE AN ACT UNLAWFUL**
8 **BASED ON DISCRIMINATION OR SERVICE AS GOVERN-**
9 **MENT CONTRACTOR.**—The Bureau may not interpret the
10 authority of the Bureau relating to unfair, deceptive, or
11 abusive acts and practices to include—

12 “(1) discriminatory practices; or

13 “(2) acts or practices by a covered person per-
14 forming the acts or practices pursuant to and in
15 compliance with a contract with a Federal agency
16 (as defined under section 701(b) of title 5, United
17 States Code).”.

18 **SEC. 204. CLARIFYING THE ABUSIVE STANDARD FOR THE**
19 **BUREAU OF CONSUMER FINANCIAL PROTEC-**
20 **TION.**

21 Section 1031 of the Consumer Financial Protection
22 Act of 2010 (12 U.S.C. 5531) is amended—

23 (1) by redesignating subsections (e) and (f) as
24 subsections (f) and (g); and

25 (2) by striking subsection (d) and inserting the
26 following:

1 “(d) ABUSIVE.—

2 “(1) IN GENERAL.—The Bureau shall have no
3 authority to declare an act or practice of a covered
4 person abusive in connection with the provision of a
5 consumer financial product or service, unless the act
6 or practice—

7 “(A) intentionally and materially interferes
8 with the ability of a consumer to understand a
9 term or condition of a consumer financial prod-
10 uct or service; or

11 “(B) takes unreasonable advantage of—

12 “(i) a lack of understanding by the
13 consumer with respect to the possible im-
14 pact, material risks, costs, or conditions of
15 the product or service, or the likelihood of
16 the risks, costs, or conditions of the prod-
17 uct or service negatively affecting the con-
18 sumer; and

19 “(ii) the reasonable reliance the con-
20 sumer places on an affirmative action or
21 representation of such covered person to
22 induce such consumer to rely on such ac-
23 tion or representation.

1 “(2) ABUSIVE ACTIONS.—An act or practice
2 shall not be considered abusive if the act or prac-
3 tice—

4 “(A) is also unfair or deceptive; or

5 “(B) is otherwise prohibited by Federal
6 consumer financial law.

7 “(e) GOOD-FAITH EFFORT TO COMPLY.—

8 “(1) IN GENERAL.—The Bureau may not seek
9 monetary relief from a covered person under this
10 section unless the covered person has not established
11 by a preponderance of the evidence that they made
12 a good-faith effort to comply.

13 “(2) AUTHORITY TO SEEK LEGAL OR EQUI-
14 TABLE REMEDIES.—The limitation described in
15 paragraph (1) shall not restrict the authority of the
16 Bureau to seek legal or equitable remedies, such as
17 damages and restitution, to redress an identifiable
18 consumer injury caused by the abusive acts or prac-
19 tices of such covered person.”.

20 **SEC. 205. NOTICE AND OPPORTUNITY TO CURE.**

21 Section 1031 of the Consumer Financial Protection
22 Act of 2010 (12 U.S.C. 5531), as amended by section 403,
23 is further amended by adding at the end the following:

24 “(i) NOTICE AND OPPORTUNITY TO CURE.—

1 “(1) IN GENERAL.—If a covered person self-
2 identifies a potential unfair, deceptive, or abusive act
3 or practice carried out by such covered person, the
4 Bureau shall, not later than 90 days after such self-
5 identification, provide a written notice in the form of
6 a potential action and request for response letter or
7 a notice and opportunity to respond and advise let-
8 ter of the potential unfair, deceptive, or abusive act
9 or practice to such covered person and inform the
10 covered person that such person has 180 days after
11 the date the covered person receives such notice to
12 cure such potential unfair, deceptive, or abusive act
13 before the Bureau may pursue other legal action.

14 “(2) TOLLING OF STATUTE OF LIMITATIONS.—
15 Any applicable statute of limitations that applies to
16 conduct under which the Bureau has given notice
17 and an opportunity to cure shall not toll until—

18 “(A) the covered person cures the potential
19 unfair, deceptive, or abusive act or practice and
20 notifies the Bureau that such act or practice
21 has been cured;

22 “(B) the covered person notifies the Bu-
23 reau that such covered person will not cure the
24 act or practice; or

25 “(C) the 180-day period to cure ends.”.

1 **SEC. 206. ABUSIVE, UNFAIR, OR DECEPTIVE ACTS OR PRAC-**
2 **TICES ENFORCEMENT ACTIONS.**

3 (a) ACTIONS UNDER SECTION 1031.—Section 1031
4 of the Consumer Financial Protection Act of 2010 (12
5 U.S.C. 5531), as amended by section 405, is further
6 amended by adding at the end the following:

7 “(j) UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR
8 PRACTICES ENFORCEMENT ACTIONS.—Enforcement ac-
9 tions brought by the Bureau under this section shall be
10 brought in—

11 “(1) the United States district court located
12 where the covered person has its headquarters loca-
13 tion; or

14 “(2) the United States District Court for the
15 District of Columbia.

16 “(k) ENFORCEMENT ACTIONS.—

17 “(1) IN GENERAL.—If the Bureau brings an
18 enforcement action under this section, the Bureau
19 shall state with particularity the circumstances that
20 the Bureau alleges constitute a violation of this sec-
21 tion.

22 “(2) ALTERNATIVE CLAIMS.—If the Bureau
23 brings an enforcement action under this section—

24 “(A) claiming that an activity is unfair or
25 deceptive, the Bureau may not claim in the al-
26 ternative that the activity is abusive; and

1 “(B) claiming that an activity is abusive,
2 the Bureau may not claim in the alternative
3 that the activity is unfair or deceptive.”.

4 (b) CLERICAL AMENDMENT.—The table of contents
5 in section 1(b) of the Dodd-Frank Wall Street Reform and
6 Consumer Protection Act is amended by inserting after
7 the item relating to section 1058 the following:

“Sec. 1059. Unfair, deceptive, or abusive acts or practices enforcement ac-
tions.”.

8 **SEC. 207. LOOK-BACK PROVISIONS FOR THE BUREAU OF**
9 **CONSUMER FINANCIAL PROTECTION.**

10 (a) IN GENERAL.—Subtitle B of title X of the Con-
11 sumer Financial Protection Act of 2010 (12 U.S.C. 5511
12 et seq.) is amended by adding at the end the following
13 new section:

14 **“SEC. 1029B. EXAMINATION PERIOD LIMITATIONS.**

15 “(a) IN GENERAL.—When enforcing Federal con-
16 sumer financial laws, the Bureau may not seek a civil
17 money penalty for any violation that occurred prior to the
18 most recent assignment of a consumer compliance rating
19 that had not been identified in writing as a material find-
20 ing or supervisory concern at the time the rating was as-
21 signed.

22 “(b) EXCEPTION IN CASES OF FRAUD OR A MATE-
23 RIAL MISREPRESENTATION.—Subsection (a) shall not

1 apply to a violation that involved fraud or a material mis-
2 representation.

3 “(c) **RULE OF CONSTRUCTION.**—The limitation de-
4 scribed in subsection (a) may not be construed to restrict
5 the ability of the Bureau to seek other forms of legal or
6 equitable relief available under subparagraphs (A) through
7 (G) of section 1055(a)(2).”.

8 (b) **CLERICAL AMENDMENT.**—The table of contents
9 in section 1(b) of the Dodd-Frank Wall Street Reform and
10 Consumer Protection Act is amended by inserting after
11 the item relating to section 1029 the following:

“Sec. 1029B. Examination period limitations.”.

12 **TITLE III—SMALL LENDERS EX-**
13 **EMPT FROM NEW DATA AND**
14 **EXCESSIVE REPORTING**

15 **SEC. 301. SMALL BUSINESS LOAN DATA COLLECTION.**

16 Section 704B of the Equal Credit Opportunity Act
17 (15 U.S.C. 1691c–2) is amended—

18 (1) in subsection (g), by adding at the end the
19 following:

20 “(4) **COMPLIANCE.**—

21 “(A) **IN GENERAL.**—With respect to any
22 rules or guidance issued under this subsection
23 on or after the date of the enactment of this
24 paragraph, the Bureau shall provide a financial
25 institution a 3-year period to comply with such

1 rule or guidance, regardless of the date on
2 which such financial institution began its oper-
3 ations.

4 “(B) SAFE HARBOR.—With respect to any
5 rules or guidance issued under this subsection
6 on or after the date of the enactment of this
7 paragraph, beginning on the date after the last
8 day of the 3-year period described in subpara-
9 graph (A), the Bureau shall provide a 2-year
10 safe harbor to financial institutions during
11 which each such financial institution is required
12 to comply with the rule or guidance but not
13 subject to any penalties for failure to comply.”;
14 and

15 (2) in subsection (h)—

16 (A) by striking paragraph (1) and insert-
17 ing the following:

18 “(1) FINANCIAL INSTITUTION.—The term ‘fi-
19 nancial institution’ means—

20 “(A) any partnership, company, corpora-
21 tion, association (incorporated or unincor-
22 porated), trust, estate, cooperative organization,
23 or other entity that engages in any financial ac-
24 tivity; and

1 “(B) in each of the two calendar years pre-
 2 ceding the first day of the safe harbor period
 3 described in subsection (g)(4)(B), originated
 4 not less than 500 credit transactions for small
 5 businesses.”; and

6 (B) by striking paragraph (2) and insert-
 7 ing the following:

8 “(2) SMALL BUSINESS.—The term ‘small busi-
 9 ness’ means any entity with gross annual revenues
 10 of \$1,000,000 or less in the most recently completed
 11 fiscal year preceding the first day of the safe harbor
 12 period described in subsection (g)(4)(B).”.

13 **TITLE IV—BANK LOAN PRIVACY**

14 **SEC. 401. RULEMAKING REQUIREMENT.**

15 Section 704B(e)(4) of the Equal Credit Opportunity
 16 Act (15 U.S.C. 1691c-2(e)(4)) is amended—

17 (1) by striking “The Bureau may,” and insert-
 18 ing:

19 “(A) IN GENERAL.—The Bureau may,”;
 20 and

21 (2) by adding at the end the following:

22 “(B) RULEMAKING REQUIREMENT.—The
 23 Bureau shall, before deleting or modifying data
 24 under this paragraph issue, through advance
 25 notice and comment, a rule that includes a de-

1 description of what modifications and deletions
2 the Bureau intends to make to the data and
3 how such modifications and deletions will ad-
4 vance a privacy interest.”.

○