IB

Union Calendar No. 652

118TH CONGRESS
2D SESSION

H. R. 8338

[Report No. 118–789]

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

DECEMBER 3, 2024

Additional sponsor: Mr. FLOOD

DECEMBER 3, 2024

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 10, 2024]

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.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Clarity in Lending Act".

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

TITLE I—SMALL-DOLLAR CREDIT PRODUCTS

SEC. 101. SAFE HARBOR FOR SMALL-DOLLAR CREDIT PRODUCTS.

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

"§ 110. Safe harbor for small-dollar credit products

"(a) IN GENERAL.—If a covered entity complies with the requirements set forth in subsections (b), (c), and (e) with respect to the offering of a small-dollar product to a consumer, such covered entity shall not be liable in connection with such offering of a small-dollar product, for—

"(1) any civil money penalties from any enforcement action brought by the Bureau, the appropriate Federal banking agency, or the National Credit Union Administration for a violation of this title; or

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

"(b) PRODUCT STRUCTURE REQUIREMENTS.—

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

"(A) the repayment term shall be more than 45 days;

"(B) payments shall be fully amortized across more than one payment;

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

"(D) the covered entity may not issue any small-dollar credit product to a consumer if such consumer has a small-dollar credit product open

with such covered entity at the time such consumer applies for a small-dollar credit product.

"(2) IN THE CASE OF A LINE OF CREDIT.—If a small-dollar credit product is structured by a covered entity as a line of credit—

"(A) the repayment term for each draw shall be more than 45 days unless a single payment is used and the draw is not more than 10 percent of the lesser of $3,500 or 20 percent of the total amount of a consumer's average monthly direct deposits during the preceding six months; and

"(B) payments for each draw shall be fully amortized across more than one payment, except in the case of any single-payment loans.

"(3) RULES OF CONSTRUCTION.—

"(A) IN GENERAL.—Nothing in this subsection may be construed to prohibit the Bureau, a Federal banking agency, or the National Credit Union Administration from issuing a cease-and-desist order or restitution order under this title against a covered entity.

"(B) ENFORCEMENT OF OTHER STATUTES.—Nothing in this subsection may be construed to prohibit the Bureau, a Federal banking

agency, or the National Credit Union Administration from enforcing any provision of law not contained within this title against a covered entity.

"(c) UNDERWRITING REQUIREMENTS.—When considering whether to offer a small-dollar credit product to a specific consumer, a covered entity—

"(1) shall use sound underwriting processes; and

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

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

"(e) ADDITIONAL LIMITATIONS AND REQUIREMENTS.—

"(1) BALLOON PAYMENTS.—No payment required in association with a small-dollar credit product offered by a covered entity may be greater than double the amount of any other payment required in association with such product.

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

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

"(4) TRANSFER OF AMOUNTS.—Amounts made available to a consumer through a small-dollar credit product offered by a covered entity shall be disbursed to the account of such consumer by such covered entity not later than 5 days after the approval of the consumer for the small-dollar credit product.

"(f) DEFINITIONS.—In this section:

"(1) COVERED ENTITY.—The term 'covered entity' means—

"(A) an insured depository institution;

"(B) an insured credit union;

"(C) a third-party with whom an insured depository institution has contracted for products or services related to origination, servicing, or administrative management of a small-dollar credit product; or

"(D) a third-party with whom an insured credit union has contracted for products or services related to origination, servicing, or administrative management of a small-dollar credit product.

"(2) FEDERAL BANKING AGENCY DEFINITIONS.—The terms 'appropriate Federal banking agency' and 'Federal banking agency' have the meaning given those terms, respectively, in section 3 of the Federal Deposit Insurance Act.

"(3) INSURED CREDIT UNION.—The term 'insured credit union' has the meaning given the term in section 101 of the Federal Credit Union Act.

"(4) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given the term in section 3 of the Federal Deposit Insurance Act.

"(5) SMALL-DOLLAR CREDIT PRODUCT.—The term 'small-dollar product' means a loan or line of credit with a value of $3,500 or less.".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 1 of the Truth in Lending Act is amended by inserting after the item for section 109 the following:

"110. 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.

Section 1055(c) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5565(c)) is amended by adding at the end the following:

"(6) RULEMAKING.—The Bureau shall, not later than 180 days after the date of the enactment of this paragraph, issue a rule that establishes policies and procedures relating to the imposition of civil monetary penalties sought under this subsection, including the application of the mitigating factors described in paragraph (3).".

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

(a) IN GENERAL.—Section 1031 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5531) is amended by striking subsection (b) and inserting the following:

"(b) RULEMAKING.—

"(1) IN GENERAL.—The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or

abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

"(2) COST-BENEFIT ANALYSIS REQUIRED.—Any final rule issued by the Bureau relating to abusive, unfair, or deceptive acts or practices shall include a cost-benefit analysis.

"(3) DEFINITION OF ABUSIVE ACT OR PRACTICE.—The Bureau shall, not later than 180 days after the date of the enactment of this subsection, issue a rule that defines the term 'abusive act or practice' for the purposes of this section.".

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

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

Section 1031 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5531), as amended by section 204, is further amended by adding at the end the following:

"(h) AUTHORITY TO DECLARE AN ACT UNLAWFUL BASED ON DISCRIMINATION OR SERVICE AS GOVERNMENT CONTRACTOR.—The Bureau may not interpret the authority of the Bureau relating to unfair, deceptive, or abusive acts and practices to include—

"(1) discriminatory practices; or

"(2) acts or practices by a covered person performing the acts or practices pursuant to a contract with a Federal agency (as defined under section 701(b) of title 5, United States Code).".

SEC. 204. CLARIFYING THE ABUSIVE STANDARD FOR THE BUREAU OF CONSUMER FINANCIAL PROTECTION.

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

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

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

"(d) ABUSIVE.—

"(1) IN GENERAL.—The Bureau shall have no authority under this section to declare an act or practice of a covered person abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

"(A) intentionally and materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

"(B) takes unreasonable advantage of—

"(i) a lack of understanding by the consumer with respect to the possible impact, material risks, costs, or conditions of the product or service, or the likelihood of the risks, costs, or conditions of the product or service negatively affecting the consumer; and

"(ii) the reasonable reliance the consumer places on an affirmative action or representation of such covered person to induce such consumer to rely on such action or representation.

"(2) ABUSIVE ACTIONS.—An act or practice shall not be considered abusive if the act or practice—

"(A) is also unfair or deceptive; or

"(B) is otherwise prohibited by Federal consumer financial law.

"(e) GOOD-FAITH EFFORT TO COMPLY.—

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

"(2) AUTHORITY TO SEEK LEGAL OR EQUITABLE REMEDIES.—The limitation described in paragraph (1) shall not restrict the authority of the Bureau to seek legal or equitable remedies, such as damages and restitution, to redress an identifiable consumer injury caused by the abusive acts or practices of such covered person.".

SEC. 205. NOTICE AND OPPORTUNITY TO CURE.

Section 1031 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5531), as amended by section 203, is further amended by adding at the end the following:

"(i) NOTICE AND OPPORTUNITY TO CURE.—

"(1) IN GENERAL.—If a covered person self-identifies a potential unfair, deceptive, or abusive act or practice carried out by such covered person, the Bureau shall, not later than 90 days after such self-identification, provide a written notice in the form of a

potential action and request for response letter or a notice and opportunity to respond and advise letter of the potential unfair, deceptive, or abusive act or practice to such covered person and inform the covered person that such person has 180 days after the date the covered person receives such notice to cure such potential unfair, deceptive, or abusive act before the Bureau may pursue other legal action.

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

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

"(B) the covered person notifies the Bureau that such covered person will not cure the act or practice; or

"(C) the 180-day period to cure ends.".

SEC. 206. ABUSIVE, UNFAIR, OR DECEPTIVE ACTS OR PRACTICES ENFORCEMENT ACTIONS.

Section 1031 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5531), as amended by section 205, is further amended by adding at the end the following:

"(j) UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES ENFORCEMENT ACTIONS.—Enforcement actions brought by the Bureau under this section shall be brought in—

"(1) the United States district court located where the covered person has its headquarters location; or

"(2) the United States District Court for the District of Columbia.

"(k) ENFORCEMENT ACTIONS.—

"(1) IN GENERAL.—If the Bureau brings an enforcement action under this section, the Bureau shall state with particularity the circumstances that the Bureau alleges constitute a violation of this section.

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

"(A) claiming that an activity is unfair or deceptive, the Bureau may not claim in the alternative that the activity is abusive; and

"(B) claiming that an activity is abusive, the Bureau may not claim in the alternative that the activity is unfair or deceptive.".

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

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

"SEC. 1029B. EXAMINATION PERIOD LIMITATIONS.

"(a) IN GENERAL.—When enforcing Federal consumer financial laws, the Bureau may not seek a civil money penalty for any violation that occurred prior to the most recent assignment of a consumer compliance rating that had not been identified in writing as a material finding or supervisory concern at the time the rating was assigned.

"(b) EXCEPTION IN CASES OF FRAUD OR A MATERIAL MISREPRESENTATION.—Subsection (a) shall not apply to a violation that involved fraud or a material misrepresentation.

"(c) RULE OF CONSTRUCTION.—The limitation described in subsection (a) may not be construed to restrict the ability of the Bureau to seek other forms of legal or equitable relief available under subparagraphs (A) through (G) of section 1055(a)(2).".

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Dodd-Frank Wall Street Reform and

Consumer Protection Act is amended by inserting after the item relating to section 1029A the following:

"Sec. 1029B. Examination period limitations,".

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

SEC. 301. SMALL BUSINESS LOAN DATA COLLECTION.

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

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

"(4) COMPLIANCE WITH COVERED RULE.—

"(A) IN GENERAL.—With respect to the covered rule, the Bureau shall provide a financial institution a 3-year period beginning on the date the covered rule was issued to comply with the rule.

"(B) SAFE HARBOR.—After the end of the 3-year period described under subparagraph (A), the Bureau shall provide a 2-year safe harbor to a financial institution during which the financial institution is required to comply with the covered rule but is not subject to any penalties for failure to comply with the covered rule.

"(C) COVERED RULE DEFINED.—In this paragraph, the term 'covered rule' means the

final rule of the Bureau titled 'Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)' (88 Fed. Reg. 35150, published May 31, 2023).''; and

(2) in subsection (h)—

(A) by striking paragraph (1) and inserting the following:

''(1) FINANCIAL INSTITUTION.—The term 'financial institution' means—

''(A) any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity; and

''(B) in each of the previous 2 calendar years originated not less than 500 credit transactions for small businesses.''; and

(B) by striking paragraph (2) and inserting the following:

''(2) SMALL BUSINESS.—The term 'small business' means any entity with gross annual revenues of $1,000,000 or less in the most recently completed fiscal year.''.

TITLE IV—BANK LOAN PRIVACY

SEC. 401. RULEMAKING REQUIREMENT.

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

(1) by striking “The Bureau may,” and inserting:

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

(2) by adding at the end the following:

“(B) RULEMAKING REQUIREMENT.—The Bureau shall, before deleting or modifying data under this paragraph, issue, through advance notice and comment, a rule that includes a description of what modifications and deletions the Bureau intends to make to the data and how such modifications and deletions will advance a privacy interest.”.

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