



Americans for Financial Reform Education Fund

May 15, 2024

Hon. Patrick McHenry, Chair
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Hon. Maxine Waters, Ranking Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Re: May 16th Mark Up, H.R. 8338, the Clarity in Lending Act – Oppose

Dear Chairman McHenry and Ranking Member Waters:

As consumer protection and civil rights organizations, we write to express our strong opposition to H.R. 8338 – the Clarity in Lending Act. This legislative package includes several proposals that would exempt lenders from penalties for violating fair lending and other laws, jeopardize the financial wellbeing of Americans, and hamper the effectiveness of the Consumer Financial Protection Bureau (CFPB). We urge Committee Members to oppose these bills for the reasons set forth below.

H.R. 8356, a bill to amend the Truth in Lending Act to allow covered entities to offer small-dollar credit products, and for other purposes

Under the guise of adopting safeguards for small-dollar credit, this bill would exempt any bank or other creditor that offers specified small-dollar loans from any civil penalties or damages for violations of numerous longstanding consumer financial protection laws and regulations in Title 15 of the United States Code in connection with the loan product. Title 15 has 122 chapters, including Chapter 41, which includes the Truth in Lending Act, the Restrictions on Garnishment of Social Security and other federal benefits, the Credit Repair Organizations Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act, and the Electronic Fund Transfer Act, as well as the antitrust provisions of Chapter 1 and many other laws. Were this provision to pass, lenders would be able to violate these laws with impunity, causing grave harm to individuals and families without any accountability for their illegal conduct.

H.R. 6789, the Rectifying UDAAP Act

This bill seeks to undermine and weaken the CFPB's ability to address abusive conduct under the Consumer Financial Protection Act. Defining and including the ability to prosecute abusive conduct is a core reason that the CFPB was created, and members of Congress explicitly acknowledged in 2009 that unfairness and deception were not sufficient tools to prevent or address the financial misconduct that wreaked havoc on our country. It is imperative that the CFPB's abusiveness authority not be weakened in the ways proposed by this legislation. Should this legislation pass, the CFPB would be stripped of its tools to prevent the predatory practices that were the root cause of our economic collapse.

The bill would also prevent the CFPB from prosecuting discriminatory practices as unfair conduct, despite the fact that this statutory tool has been an effective measure to fill gaps in existing law and protect our nation's most vulnerable consumers from inherently unfair financial discrimination. The bill could leave no remedy for discrimination in banking or other financial services not covered by fair lending laws.

This bill also includes numerous measures to obstruct the CFPB's ability to effectively prosecute violations of unfair, deceptive and abusive conduct, including providing entities that self-report violations with special notification rights, extending delays between the identification of an illegal practice and an enforcement action, introducing new hurdles to providing monetary relief, and extending permissible venues to the defendant's headquarters. It would also require the CFPB to conduct unnecessary rulemaking to establish policies and procedures for issuing penalties and inject a cost-benefit analysis into any such rulemaking. This analysis could have the perverse result of calculating profits derived from illegal conduct as a *benefit* to be weighed against consumer harms.

H.R. 1806, the Small LENDER Act

The bill would reduce transparency of the small business lending marketplace by reducing the application of Section 1071 of Dodd-Frank's reporting requirements to cover loans to small businesses with annual revenues of \$1 million, instead of \$5 million as is required by CFPB's final rule.

The bill would also provide expansive waivers of compliance and enforcement requirements for five years after a modification of the Section 1071 regulation or the issuance of guidance about compliance. The bill states that no financial institution would be required to submit any small business data for three years, and even with a requirement to submit data in the subsequent two years, they would not face any penalties for non-compliance. This bill would return the marketplace to an opaque state where discriminatory practices were hidden in the shadows, rather than preserving the CFPB's ability to identify and address such illegal practices.

H.R. 1810, the Bank Loan Privacy Act

This bill requires the CFPB to conduct a public rulemaking before it can exercise its authority to protect the privacy of small business lending data that would be otherwise public. This bill undermines the CFPB's ability to act quickly when it believes a privacy interest is at risk and, ironically, could significantly amplify the very harms the Bureau seeks to protect by subjecting this information to a public notice and comment process.

We strongly oppose this measure.

20/20 Vision

Americans for Financial Reform

Center for Digital Democracy

Center for Responsible Lending

Consumer Action

Consumer Federation of America

Consumer Reports

Indiana Community Action Poverty Institute

Maine People's Alliance

National Consumer Law Center (on behalf of its low-income clients)

New Economy Project

New Jersey Citizen Action

Oregon Consumer Justice

Public Good Law Center

SC Appleseed Legal Justice Center

Texas Appleseed

Unidos US

U.S. PIRG

Woodstock Institute