

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 8338  
OFFERED BY MRS. KIM OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 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—

14                   “(1) any civil money penalties from any en-  
15 forcement action brought by the Bureau, the appro-  
16 priate Federal banking agency, or the National  
17 Credit Union Administration for a violation of this  
18 title; or

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

22 **“(b) PRODUCT STRUCTURE REQUIREMENTS.—**

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

1           “(A) the repayment term shall be more  
2 than 45 days;

3           “(B) payments shall be fully amortized  
4 across more than one payment;

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

7           “(D) the covered entity may not issue any  
8 small-dollar credit product to a consumer if  
9 such consumer has a small-dollar credit product  
10 open with such covered entity at the time such  
11 consumer applies for a small-dollar credit prod-  
12 uct.

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

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

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

1 “(3) RULES OF CONSTRUCTION.—

2 “(A) IN GENERAL.—Nothing in this sub-  
3 section may be construed to prohibit the Bu-  
4 reau, a Federal banking agency, or the National  
5 Credit Union Administration from issuing a  
6 cease-and-desist order or restitution order  
7 under this title against a covered entity.

8 “(B) ENFORCEMENT OF OTHER STAT-  
9 UTES.—Nothing in this subsection may be con-  
10 strued to prohibit the Bureau, a Federal bank-  
11 ing agency, or the National Credit Union Ad-  
12 ministration from enforcing any provision of  
13 law not contained within this title against a  
14 covered entity.

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

18 “(1) shall use sound underwriting processes;  
19 and

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

23 “(d) RULE OF CONSTRUCTION.—Nothing in this title  
24 may be construed to prohibit a covered entity from offer-

1 ing a small-dollar product that does not comply with the  
2 safe harbor requirements set forth under this section.

3 “(e) ADDITIONAL LIMITATIONS AND REQUIRE-  
4 MENTS.—

5 “(1) BALLOON PAYMENTS.—No payment re-  
6 quired in association with a small-dollar credit prod-  
7 uct offered by a covered entity may be greater than  
8 double the amount of any other payment required in  
9 association with such product.

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

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

17 “(4) TRANSFER OF AMOUNTS.—Amounts made  
18 available to a consumer through a small-dollar credit  
19 product offered by a covered entity shall be dis-  
20 bursed to the account of such consumer by such cov-  
21 ered entity not later than 5 days after the approval  
22 of the consumer for the small-dollar credit product.

23 “(f) DEFINITIONS.—In this section:

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

1 “(A) an insured depository institution;

2 “(B) an insured credit union;

3 “(C) a third-party with whom an insured  
4 depository institution has contracted for prod-  
5 ucts or services related to origination, servicing,  
6 or administrative management of a small-dollar  
7 credit product; or

8 “(D) a third-party with whom an insured  
9 credit union has contracted for products or  
10 services related to origination, servicing, or ad-  
11 ministrative management of a small-dollar cred-  
12 it product.

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

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

21 “(4) INSURED DEPOSITORY INSTITUTION.—The  
22 term ‘insured depository institution’ has the mean-  
23 ing given the term in section 3 of the Federal De-  
24 posit Insurance Act.

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

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

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

8           **TITLE II—RECTIFYING UNDE-**  
9           **FINED DESCRIPTIONS OF**  
10           **ABUSIVE ACTS AND PRAC-**  
11           **TICES**

12           **SEC. 201. MITIGATING FACTORS IN ASSESSING CIVIL PEN-**  
13           **ALTIES.**

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

17           “(6) RULEMAKING.—The Bureau shall, not  
18           later than 180 days after the date of the enactment  
19           of this paragraph, issue a rule that establishes poli-  
20           cies and procedures relating to the imposition of civil  
21           monetary penalties sought under this subsection, in-  
22           cluding the application of the mitigating factors de-  
23           scribed in paragraph (3).”.

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

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

7 “(b) RULEMAKING.—

8 “(1) IN GENERAL.—The Bureau may prescribe  
9 rules applicable to a covered person or service pro-  
10 vider identifying as unlawful unfair, deceptive, or  
11 abusive acts or practices in connection with any  
12 transaction with a consumer for a consumer finan-  
13 cial product or service, or the offering of a consumer  
14 financial product or service. Rules under this section  
15 may include requirements for the purpose of pre-  
16 venting such acts or practices.

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

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



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

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

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

14 “(h) AUTHORITY TO DECLARE AN ACT UNLAWFUL  
15 BASED ON DISCRIMINATION OR SERVICE AS GOVERN-  
16 MENT CONTRACTOR.—The Bureau may not interpret the  
17 authority of the Bureau relating to unfair, deceptive, or  
18 abusive acts and practices to include—

19 “(1) discriminatory practices; or

20 “(2) acts or practices by a covered person per-  
21 forming the acts or practices pursuant to a contract  
22 with a Federal agency (as defined under section  
23 701(b) of title 5, United States Code).”.

1 **SEC. 204. CLARIFYING THE ABUSIVE STANDARD FOR THE**  
2 **BUREAU OF CONSUMER FINANCIAL PROTEC-**  
3 **TION.**

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

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

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

10 “(d) ABUSIVE.—

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

16 “(A) intentionally and materially interferes  
17 with the ability of a consumer to understand a  
18 term or condition of a consumer financial prod-  
19 uct or service; or

20 “(B) takes unreasonable advantage of—

21 “(i) a lack of understanding by the  
22 consumer with respect to the possible im-  
23 pact, material risks, costs, or conditions of  
24 the product or service, or the likelihood of  
25 the risks, costs, or conditions of the prod-

1           uct or service negatively affecting the con-  
2           sumer; and

3                   “(ii) the reasonable reliance the con-  
4           sumer places on an affirmative action or  
5           representation of such covered person to  
6           induce such consumer to rely on such ac-  
7           tion or representation.

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

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

12                   “(B) is otherwise prohibited by Federal  
13          consumer financial law.

14          “(e) GOOD-FAITH EFFORT TO COMPLY.—

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

20                   “(2) AUTHORITY TO SEEK LEGAL OR EQUI-  
21          TABLE REMEDIES.—The limitation described in  
22          paragraph (1) shall not restrict the authority of the  
23          Bureau to seek legal or equitable remedies, such as  
24          damages and restitution, to redress an identifiable

1 consumer injury caused by the abusive acts or prac-  
2 tices of such covered person.”.

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

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

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

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

21 “(2) TOLLING OF STATUTE OF LIMITATIONS.—

22 Any applicable statute of limitations that applies to  
23 conduct under which the Bureau has given notice  
24 and an opportunity to cure shall not toll until—

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

5           “(B) the covered person notifies the Bu-  
6           reau that such covered person will not cure the  
7           act or practice; or

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

9   **SEC. 206. ABUSIVE, UNFAIR, OR DECEPTIVE ACTS OR PRAC-**  
10                           **TICES ENFORCEMENT ACTIONS.**

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

15       “(j) UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR  
16       PRACTICES ENFORCEMENT ACTIONS.—Enforcement ac-  
17       tions brought by the Bureau under this section shall be  
18       brought in—

19           “(1) the United States district court located  
20           where the covered person has its headquarters loca-  
21           tion; or

22           “(2) the United States District Court for the  
23           District of Columbia.

24       “(k) ENFORCEMENT ACTIONS.—



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

2 “(a) IN GENERAL.—When enforcing Federal con-  
3 sumer financial laws, the Bureau may not seek a civil  
4 money penalty for any violation that occurred prior to the  
5 most recent assignment of a consumer compliance rating  
6 that had not been identified in writing as a material find-  
7 ing or supervisory concern at the time the rating was as-  
8 signed.

9 “(b) EXCEPTION IN CASES OF FRAUD OR A MATE-  
10 RIAL MISREPRESENTATION.—Subsection (a) shall not  
11 apply to a violation that involved fraud or a material mis-  
12 representation.

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

18 (b) CLERICAL AMENDMENT.—The table of contents  
19 in section 1(b) of the Dodd-Frank Wall Street Reform and  
20 Consumer Protection Act is amended by inserting after  
21 the item relating to section 1029A the following:

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

1 **TITLE III—SMALL LENDERS EX-**  
2 **EMPT FROM NEW DATA AND**  
3 **EXCESSIVE REPORTING**

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

5 Section 704B of the Equal Credit Opportunity Act  
6 (15 U.S.C. 1691c–2) is amended—

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

9 “(4) COMPLIANCE WITH COVERED RULE.—

10 “(A) IN GENERAL.—With respect to the  
11 covered rule, the Bureau shall provide a finan-  
12 cial institution a 3-year period beginning on the  
13 date the covered rule was issued to comply with  
14 the rule.

15 “(B) SAFE HARBOR.—After the end of the  
16 3-year period described under subparagraph  
17 (A), the Bureau shall provide a 2-year safe har-  
18 bor to a financial institution during which the  
19 financial institution is required to comply with  
20 the covered rule but is not subject to any pen-  
21 alties for failure to comply with the covered  
22 rule.

23 “(C) COVERED RULE DEFINED.—In this  
24 paragraph, the term ‘covered rule’ means the  
25 final rule of the Bureau titled ‘Small Business



1 Lending Under the Equal Credit Opportunity  
2 Act (Regulation B)’ (88 Fed. Reg. 35150, pub-  
3 lished May 31, 2023).”; and

4 (2) in subsection (h)—

5 (A) by striking paragraph (1) and insert-  
6 ing the following:

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

9 “(A) any partnership, company, corpora-  
10 tion, association (incorporated or unincor-  
11 porated), trust, estate, cooperative organization,  
12 or other entity that engages in any financial ac-  
13 tivity; and

14 “(B) in each of the previous 2 calendar  
15 years originated not less than 500 credit trans-  
16 actions for small businesses.”; and

17 (B) by striking paragraph (2) and insert-  
18 ing the following:

19 “(2) SMALL BUSINESS.—The term ‘small busi-  
20 ness’ means any entity with gross annual revenues  
21 of \$1,000,000 or less in the most recently completed  
22 fiscal year.”.

1 **TITLE IV—BANK LOAN PRIVACY**

2 **SEC. 401. RULEMAKING REQUIREMENT.**

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

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

7 “(A) IN GENERAL.—The Bureau may,”;

8 and

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

10 “(B) RULEMAKING REQUIREMENT.—The  
11 Bureau shall, before deleting or modifying data  
12 under this paragraph issue, through advance  
13 notice and comment, a rule that includes a de-  
14 scription of what modifications and deletions  
15 the Bureau intends to make to the data and  
16 how such modifications and deletions will ad-  
17 vance a privacy interest.”.

