

118TH CONGRESS
1ST SESSION

H. R. 6789

To amend the Consumer Financial Protection Act of 2010 to clarify standards for UDAAP enforcement actions brought by the Bureau of Consumer Financial Protection, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 14, 2023

Mr. BARR (for himself, Mr. LUETKEMEYER, Mr. POSEY, Mr. MEUSER, Mr. STEIL, Mr. SESSIONS, Ms. DE LA CRUZ, Mr. FITZGERALD, Mr. TIMMONS, Mr. ROSE, Mr. MOONEY, Mr. LOUDERMILK, Mr. NORMAN, Mrs. KIM of California, and Mr. WILLIAMS of Texas) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Consumer Financial Protection Act of 2010 to clarify standards for UDAAP enforcement actions brought 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 “Rectifying Undefined
5 Descriptions of Abusive Acts and Practices Act” or the
6 “Rectifying UDAAP Act”.

1 **SEC. 2. MITIGATING FACTORS IN ASSESSING CIVIL PEN-**
2 **ALTIES.**

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

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

13 **SEC. 3. RULEMAKING RELATING TO UNFAIR, DECEPTIVE**
14 **OR ABUSIVE ACTS OR PRACTICES.**

15 (a) IN GENERAL.—Section 1031(b) of the Consumer
16 Financial Protection Act of 2010 (12 U.S.C. 5531) is
17 amended by striking subsection (b) and inserting the fol-
18 lowing:

19 (b) RULEMAKING.—

20 “(1) IN GENERAL.—The Bureau may prescribe
21 rules applicable to a covered person or service pro-
22 vider identifying as unlawful unfair, deceptive, or
23 abusive acts or practices in connection with any
24 transaction with a consumer for a consumer
25 financial product or service, or the offering of a con-
26 sumer financial product or service. Rules under this

1 section may include requirements for the purpose of
2 preventing such acts or practices.

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

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

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

19 **SEC. 4. AUTHORITY TO DECLARE AN ACT UNLAWFUL**
20 **BASED ON DISCRIMINATION.**

21 The Bureau of Consumer Financial Protection may
22 not interpret the authority of the Bureau of Consumer Fi-
23 nancial Protection relating to unfair, deceptive, or abusive
24 acts and practices, as such term is used in section 1031

1 of the Consumer Financial Protection Act of 2010, to in-
2 clude discriminatory practices.

3 **SEC. 5. CLARIFYING THE ABUSIVE STANDARD FOR THE BU-**
4 **REAU OF CONSUMER FINANCIAL PROTEC-**
5 **TION.**

6 Section 1031 of the Consumer Financial Protection
7 Act of 2010 (12 U.S.C. 5531) is amended by striking sub-
8 section (d) and inserting the following:

9 “(d) ABUSIVE.—

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

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

19 “(B) takes unreasonable advantage of—

20 “(i) a lack of understanding by the
21 consumer with respect to the possible im-
22 pact, material risks, costs, or conditions of
23 the product or service, or the likelihood of
24 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.—Conduct of a covered
9 person shall be considered abusive if—

10 “(A) the act or practice causes or is likely
11 to cause substantial injury to consumers which
12 is not reasonably avoidable by consumers;

13 “(B) such substantial injury is not out-
14 weighed by countervailing benefits to consumers
15 or to competition; or

16 “(C) the conduct is otherwise prohibited by
17 Federal consumer financial law.

18 “(e) GOOD-FAITH EFFORT TO COMPLY.—

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

24 “(2) AUTHORITY TO SEEK LEGAL OR EQUI-
25 TABLE REMEDIES.—The limitation described in sub-

1 paragraph (A) shall not restrict the authority of the
2 Bureau to seek legal or equitable remedies, such as
3 damages and restitution, to redress an identifiable
4 consumer injury caused by the abusive acts or prac-
5 tices of such covered person.”.

6 **SEC. 6. NOTICE AND OPPORTUNITY TO CURE.**

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

10 “(g) NOTICE AND OPPORTUNITY TO CURE.—

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

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

25 Any applicable statute of limitations that applies to

1 conduct under which the Bureau has given notice
2 and an opportunity to cure shall not toll until—

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

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

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

11 **SEC. 7. ABUSIVE, UNFAIR, OR DECEPTIVE ACTS OR PRAC-**
12 **TICES ENFORCEMENT ACTIONS.**

13 (a) IN GENERAL.—Subtitle E of title X of the Con-
14 sumer Financial Protection Act of 2010 (12 U.S.C. 5561
15 et seq.) is amended by adding at the end the following
16 new section:

17 **“SEC. 1059. UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR**
18 **PRACTICES ENFORCEMENT ACTIONS.**

19 “Enforcement actions brought by the Bureau under
20 section 1031 under this title shall be brought in—

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

24 “(2) the United States District Court for the
25 District of Columbia.”.

1 (b) ACTIONS UNDER SECTION 1031.—Section 1031
2 of the Consumer Financial Protection Act of 2010 is
3 amended by adding at the end the following:

4 “(g) ENFORCEMENT ACTIONS.—

5 “(1) IN GENERAL.—If the Bureau brings an
6 enforcement action under this section, the Bureau
7 shall state with particularity the circumstances that
8 the Bureau alleges constitute violation of this sec-
9 tion.

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

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

15 “(B) claiming that an activity is abusive,
16 the Bureau may not claim in the alternative
17 that the activity is unfair or deceptive.”.

18 **SEC. 8. LOOK-BACK PROVISIONS FOR THE CONSUMER FI-**
19 **NANCIAL PROTECTION BUREAU.**

20 Subtitle B of title X of the Consumer Financial Pro-
21 tection Act of 2010 (12 U.S.C. 5511 et seq.) is amended
22 by adding at the end the following new section:

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

24 “(a) IN GENERAL.—When enforcing Federal con-
25 sumer financial laws, the Bureau may not seek a civil

1 money penalty for any violating conduct that occurred
2 prior to the most recent assignment of a consumer compli-
3 ance rating.

4 “(b) RULE OF CONSTRUCTION.—This limitation de-
5 scribed in subsection (a) may not be construed to restrict
6 the ability of the Bureau to seek other forms of legal or
7 equitable relief available under subparagraphs (A) through
8 (G) of section 1055(a)(2) for any violating conduct that
9 occurred prior to the most recent assignment of a con-
10 sumer compliance rating.”.

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