

116TH CONGRESS
1ST SESSION

S. 1205

To amend the Equal Credit Opportunity Act to require creditors to request demographic information from applicants for certain types of credit in order to prevent discriminatory lending practices with respect to those applicants, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2019

Mrs. GILLIBRAND (for herself, Ms. KLOBUCHAR, Mr. WYDEN, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Equal Credit Opportunity Act to require creditors to request demographic information from applicants for certain types of credit in order to prevent discriminatory lending practices with respect to those applicants, 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 “Protections in Con-
5 sumer Lending Act”.

1 **SEC. 2. COLLECTION OF DEMOGRAPHIC INFORMATION.**

2 (a) IN GENERAL.—The Equal Credit Opportunity
3 Act (15 U.S.C. 1691 et seq.) is amended by inserting after
4 section 704B (15 U.S.C. 1691c–2) the following:

5 **“SEC. 704C. COLLECTION OF DEMOGRAPHIC INFORMATION.**

6 “(a) DEFINITIONS.—In this section—

7 “(1) the terms ‘annual percentage rate’ and ‘in-
8 terest’ have the meanings given those terms in sec-
9 tion 987(i) of title 10, United States Code;

10 “(2) the term ‘covered transaction’ means—

11 “(A) the extension of credit with respect to
12 the purchase of a motor vehicle;

13 “(B) the extension of credit with respect to
14 which the annual percentage rate of interest im-
15 posed is greater than 36 percent;

16 “(C) the extension of credit—

17 “(i) in an amount that is less than
18 \$15,000; or

19 “(ii) with respect to which the period
20 of repayment is less than 3 years; and

21 “(D) the opening of a credit card account;

22 and

23 “(3) the term ‘covered year’ means a year in
24 which a creditor engages in a covered transaction.

25 “(b) PURPOSE; SENSE OF CONGRESS.—

1 “(1) PURPOSE.—The purpose of this section is
2 to provide the Bureau and the public with data that
3 can be used to—

4 “(A) help determine whether creditors are
5 serving the credit-lending needs of the commu-
6 nities in which the creditors are located; and

7 “(B) assist in—

8 “(i) identifying possible discriminatory
9 lending patterns; and

10 “(ii) enforcing antidiscrimination stat-
11 utes, including this title.

12 “(2) SENSE OF CONGRESS.—It is the sense of
13 Congress that nothing in this section is intended to
14 encourage unsound lending practices or the alloca-
15 tion of credit.

16 “(c) COLLECTION OF INFORMATION.—

17 “(1) IN GENERAL.—Subject to the other provi-
18 sions of this section, after a creditor decides whether
19 to approve an application submitted by an applicant
20 with respect to a covered transaction, the creditor—

21 “(A) shall—

22 “(i) request from the applicant the in-
23 formation described in paragraph (2) with
24 respect to the applicant;

1 “(ii) when collecting information
2 under clause (i), provide a disclaimer to
3 the applicant regarding—

4 “(I) the purposes of the collec-
5 tion of the information; and

6 “(II) the right of the applicant
7 under paragraph (3);

8 “(iii) itemize the information with re-
9 spect to the application, including any in-
10 formation collected under clause (i), in
11 order to clearly and conspicuously dis-
12 close—

13 “(I) the number of the applica-
14 tion and the date on which the appli-
15 cation was received;

16 “(II) the type and purpose of the
17 covered transaction;

18 “(III) the amount of the credit or
19 credit limit applied for with respect to
20 the covered transaction;

21 “(IV) if applicable, the amount of
22 the credit or credit limit approved for
23 the applicant with respect to the cov-
24 ered transaction;

1 “(V) the type of action taken
2 with respect to the application, the
3 date on which that action is taken,
4 and, if the action taken is to reject
5 the application, the reason for that re-
6 jection;

7 “(VI) the originator of the cov-
8 ered transaction;

9 “(VII) the credit score and debt
10 to income ratio of the applicant;

11 “(VIII) if the covered transaction
12 is a loan, whether or not the loan is
13 amortizing; and

14 “(IX) any additional data that
15 the Bureau determines would aid in
16 fulfilling the purposes of this section;
17 and

18 “(iv) in accordance with subsection
19 (e), submit any information collected under
20 clause (i) and the information itemized
21 under clause (iii) to the Bureau, which
22 shall—

23 “(I) store and maintain that in-
24 formation;

1 “(II) make the information avail-
 2 able online in accordance with sub-
 3 section (e)(5); and

4 “(III) take the action described
 5 in subsection (f) with respect to the
 6 information; and

7 “(B) in carrying out subparagraph (A),
 8 may not include in any record the name, spe-
 9 cific address, telephone number, electronic mail
 10 address, or any other personally identifiable in-
 11 formation of the applicant.

12 “(2) INFORMATION DESCRIBED.—The informa-
 13 tion described in this paragraph shall include, with
 14 respect to an applicant who submits an application
 15 to a creditor in connection with a covered trans-
 16 action—

17 “(A) the age of the applicant;

18 “(B) the race of the applicant;

19 “(C) the color of the applicant;

20 “(D) the sex of the applicant;

21 “(E) the marital status of the applicant;

22 “(F) the sexual orientation of the appli-
 23 cant; and

24 “(G) the gender identity of the applicant.

1 “(3) RIGHT TO REFUSE.—An applicant with re-
2 spect to a covered transaction may refuse to provide
3 any information requested under paragraph (1) with
4 respect to the covered transaction.

5 “(d) NO ACCESS BY UNDERWRITERS.—

6 “(1) LIMITATION.—Where feasible, and subject
7 to paragraph (2), no loan underwriter or other offi-
8 cer or employee of a creditor, or any affiliate of a
9 creditor, involved in making any determination con-
10 cerning an application with respect to a covered
11 transaction may have access to any information pro-
12 vided by the applicant with respect to that covered
13 transaction pursuant to a request for information
14 under subsection (c)(1)(A)(i) in connection with that
15 application.

16 “(2) LIMITED ACCESS.—If a creditor deter-
17 mines that a loan underwriter or other officer or em-
18 ployee of the creditor, or any affiliate of the creditor,
19 involved in making any determination concerning an
20 application with respect to a covered transaction
21 should have access to any information provided by
22 the applicant with respect to that covered trans-
23 action pursuant to a request for information under
24 subsection (c)(1)(A)(i) in connection with that appli-

1 cation, the creditor shall provide notice to the appli-
 2 cant—

3 “(A) regarding the access of the under-
 4 writer to that information; and

5 “(B) that the creditor may not discrimi-
 6 nate on the basis of that information.

7 “(e) DISCLOSURE OF INFORMATION TO BUREAU.—

8 “(1) IN GENERAL.—Not later than March 1 of
 9 the year after a covered year for a creditor, the cred-
 10 itor shall submit to the Bureau all of the informa-
 11 tion that the creditor collected under clause (i) of
 12 subsection (c)(1)(A) and itemized under clause (iii)
 13 of that subsection during that covered year.

14 “(2) INFORMATION RETAINED.—Each creditor
 15 that submits information to the Bureau under para-
 16 graph (1) shall retain a copy of that information in
 17 the records of the creditor for not less than 3 years
 18 after the date on which the creditor submits the in-
 19 formation.

20 “(3) PROHIBITION.—A creditor that collects in-
 21 formation under subsection (c)(1)(A) may not—

22 “(A) share, exchange, transfer, sell, dis-
 23 close, or otherwise permit access to that infor-
 24 mation except as provided in this subsection; or

1 “(B) use that information for any purpose,
2 including for a purpose relating to marketing,
3 except as provided in this subsection.

4 “(4) DISCLOSURE STATEMENT.—The Bureau
5 shall make available a disclosure statement based on
6 the information that each creditor submits for a cov-
7 ered year under paragraph (1), which—

8 “(A) shall include—

9 “(i) the number of applications for
10 covered transactions that the creditor re-
11 ceived and approved during that covered
12 year; and

13 “(ii) the zip code and State of resi-
14 dence for each applicant with respect to an
15 application for a covered transaction re-
16 ceived by the creditor during that covered
17 year; and

18 “(B) may not include any information de-
19 scribed in subsection (c)(1)(B).

20 “(5) ONLINE DISCLOSURE.—The Bureau
21 shall—

22 “(A) post a general notice regarding the
23 availability of the information received by the
24 Bureau under paragraph (1);

1 “(B) in the notice posted under subpara-
2 graph (A), clearly convey that the information
3 described in that subparagraph is available on
4 the website of the Bureau; and

5 “(C) when making the information received
6 under paragraph (1) available on the website of
7 the Bureau, ensure that—

8 “(i) the information is easy for mem-
9 bers of the public to access and under-
10 stand; and

11 “(ii) accessing and reading the infor-
12 mation does not require the use of any ad-
13 vanced computer program or software.

14 “(f) BUREAU ACTION.—

15 “(1) ENSURING NO DISCRIMINATION.—

16 “(A) IN GENERAL.—The Bureau shall ex-
17 amine the information submitted to the Bureau
18 under subsection (e) or subparagraph (B), as
19 applicable, to ensure that—

20 “(i) each creditor makes a decision re-
21 garding whether to approve an application
22 for a covered transaction based on the in-
23 ternal requirements and policies of the
24 creditor with respect to the extension of
25 credit; and

1 “(ii) no creditor with respect to a cov-
2 ered transaction discriminates against an
3 applicant with respect to that covered
4 transaction on the basis of any char-
5 acteristic of the applicant described in sub-
6 section (c)(2).

7 “(B) INFORMATION FROM OTHER GOVERN-
8 MENT ENTITIES.—For the purposes of subpara-
9 graph (A), the Bureau may rely on information
10 that is collected by another Federal, State, or
11 local government agency and submitted to the
12 Bureau if the Director of the Bureau deter-
13 mines that—

14 “(i) relying on that information pro-
15 motes transparency; and

16 “(ii) the information collected by that
17 other agency is substantially similar to the
18 information that is submitted to the Bu-
19 reau under subsection (e).

20 “(2) ENFORCEMENT.—

21 “(A) IN GENERAL.—The Bureau may take
22 such action as the Bureau determines to be
23 necessary or appropriate to carry out paragraph
24 (1)(A), including by—

1 “(i) imposing a civil penalty in an
 2 amount described in section 706(b) against
 3 a creditor that violates that paragraph;
 4 and

5 “(ii) as appropriate, referring a mat-
 6 ter to the Attorney General.

7 “(B) RULES OF CONSTRUCTION REGARD-
 8 ING BONA FIDE ERRORS.—

9 “(i) UNINTENTIONAL ERRORS.—An
 10 error by a creditor in compiling or record-
 11 ing information, including an incorrect
 12 entry for a census tract number, may not
 13 be construed as a violation of this section
 14 if the error is unintentional and occurs de-
 15 spite the maintenance of procedures by the
 16 creditor that are reasonably adapted to
 17 avoid those errors.

18 “(ii) INACCURATE OR INCOMPLETE
 19 INFORMATION.—If a creditor, not later
 20 than 30 days after the end of each cal-
 21 endar quarter, makes a good faith effort to
 22 record all information required to be col-
 23 lected under clause (i) of subsection
 24 (c)(1)(A) and itemized under clause (iii) of
 25 that subsection during that quarter and

1 some of that information is nevertheless in-
2 accurate or incomplete, the error or omis-
3 sion, as applicable, may not be construed
4 to violate this section if the creditor cor-
5 rects or completes the information before
6 submitting the information to the Bureau
7 under subsection (e).

8 “(g) REPORTING REQUIREMENT.—Not later than 1
9 year after the date of enactment of this section, and annu-
10 ally thereafter, the Bureau shall submit to Congress a re-
11 port regarding the efforts of the Bureau in carrying out
12 this section.”.

13 (b) TECHNICAL AND CONFORMING AMENDMENT.—
14 The table of contents for the Equal Credit Opportunity
15 Act (15 U.S.C. 1691 et seq.) is amended by inserting after
16 the item relating to section 704B (15 U.S.C. 1691c–2)
17 the following:

“704C. Collection of demographic information.”.

