

108TH CONGRESS
1ST SESSION

H. R. 1748

To amend the Equal Credit Opportunity Act to permit the collection of demographic information in connection with small business loan applications with the applicant's consent, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2003

Mr. MCGOVERN (for himself, Mr. UDALL of New Mexico, Ms. JACKSON-LEE of Texas, Ms. NORTON, Mr. FALEOMAVAEGA, Mrs. DAVIS of California, Mr. DAVIS of Illinois, Mr. OWENS, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. LEE, and Mr. GUTIERREZ) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Equal Credit Opportunity Act to permit the collection of demographic information in connection with small business loan applications with the applicant's consent, 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 "Access and Openness
5 in Small Business Lending Act of 2003".

1 **SEC. 2. SMALL BUSINESS LOAN DATA COLLECTION.**

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

5 **“SEC. 704B. SMALL BUSINESS LOAN DATA COLLECTION.**

6 “(a) IN GENERAL.—Subject to the requirements of
7 this section, in the case of any application to a depository
8 institution for credit for a small business, the depository
9 institution shall—

10 “(1) inquire whether the business is a women-
11 or minority-owned business, without regard to
12 whether such application is received in person, by
13 mail, by telephone, by electronic mail or other form
14 of electronic transmission, or by any other means
15 and whether or not such application is in response
16 to a solicitation by the depository institution; and

17 “(2) maintain a record of the responses to such
18 inquiry separate from the application and accom-
19 panying information.

20 “(b) RIGHT TO REFUSE.—Any applicant for credit
21 may refuse to provide any information requested pursuant
22 to subsection (a) in connection with any application for
23 credit.

24 “(c) NO ACCESS BY UNDERWRITERS.—No loan un-
25 derwriter or other officer or employee of the depository
26 institution, or any affiliate of the depository institution,

1 involved in making any determination concerning an appli-
2 cation for credit shall have access to any information pro-
3 vided by the applicant pursuant to a request under sub-
4 section (a) in connection with such application.

5 “(d) FORM AND MANNER OF INFORMATION.—

6 “(1) IN GENERAL.—Each depository institution
7 shall compile and maintain, in accordance with regu-
8 lations of the Board, a record of the information
9 provided by any loan applicant pursuant to a request
10 under subsection (a).

11 “(2) ITEMIZED.—Information compiled and
12 maintained under paragraph (1) shall also be
13 itemized in order to clearly and conspicuously dis-
14 close the following:

15 “(A) The number of the application and
16 the date the application was received.

17 “(B) The type and purpose of the loan or
18 other credit being applied for.

19 “(C) The amount of the credit or credit
20 limit applied for and the amount of the credit
21 transaction or the credit limit approved for such
22 applicant.

23 “(D) The type of action taken with respect
24 to such application and the date of such action.

1 “(E) The census tract in which is located
2 the principal place of business of the small busi-
3 ness loan applicant.

4 “(F) The gross annual revenue of the busi-
5 ness in the last fiscal year of the small business
6 loan applicant preceding the date of the appli-
7 cation.

8 “(3) NO PERSONALLY IDENTIFIABLE INFORMA-
9 TION.—In compiling and maintaining any record of
10 information under this section, a depository institu-
11 tion may not include in such record the name, spe-
12 cific address (other than the census tract required
13 under paragraph (1)(E)), telephone number, elec-
14 tronic mail address, and any other personally identi-
15 fiable information concerning any individual who is,
16 or is connected with, the small business loan appli-
17 cant.

18 “(e) AVAILABILITY OF INFORMATION.—

19 “(1) SUBMISSION TO AGENCIES.—The data re-
20 quired to be compiled and maintained under this
21 section by any depository institution shall be sub-
22 mitted annually to the agency to whom the enforce-
23 ment of the requirements of this title are committed
24 under section 704.

1 “(2) AVAILABILITY OF INFORMATION.—Infor-
2 mation compiled and maintained under this section
3 shall be retained for not less than 3 years after the
4 date of preparation and shall be made available to
5 the public, upon request, in the form required under
6 regulations prescribed by the Board.

7 “(f) EXEMPTION FOR SMALL INSTITUTIONS.—

8 “(1) IN GENERAL.—This section shall not apply
9 to any depository institution the total assets of
10 which are equal to or less than the exemption
11 amount as of the end of the last full fiscal year of
12 the depository institution preceding the date of the
13 small business loan application.

14 “(2) EXEMPTION AMOUNT.—For purposes of
15 paragraph (1), the exemption amount is the amount
16 determined under subsection (a) of section 309 of
17 Home Mortgage Disclosure Act of 1975 (taking into
18 account the adjustments required under subsection
19 (b) of such section).

20 “(g) DEFINITIONS.—For purposes of this section, the
21 following definitions shall apply:

22 “(1) DEPOSITORY INSTITUTION.—The term ‘de-
23 pository institution’—

1 “(A) has the meaning given the term in
2 section 3 of the Federal Deposit Insurance Act;
3 and

4 “(B) includes any credit union.

5 “(2) MINORITY-OWNED BUSINESS.—The term
6 ‘minority-owned business’ means a business—

7 “(A) more than 50 percent of the owner-
8 ship or control of which is held by 1 or more
9 minority individuals; and

10 “(B) more than 50 percent of the net prof-
11 it or loss of which accrues to 1 or more minor-
12 ity individuals.

13 “(3) WOMEN-OWNED BUSINESS.—The term
14 ‘women-owned business’ means a business—

15 “(A) more than 50 percent of the owner-
16 ship or control of which is held by 1 or more
17 women; and

18 “(B) more than 50 percent of the net prof-
19 it or loss of which accrues to 1 or more women.

20 “(4) MINORITY.—The term ‘minority’ has the
21 meaning given to such term by section 1204(c)(3) of
22 the Financial Institutions Reform, Recovery and En-
23 forcement Act of 1989.

24 “(5) SMALL BUSINESS LOAN.—The term ‘small
25 business loan’ includes any loan described or defined

1 as a small business loan under any of the following
 2 provisions of title 12 of the Code of Federal Regula-
 3 tions (as in effect on the date of the enactment of
 4 the Access and Openness in Small Business Lending
 5 Act of 2003):

6 “(A) Section 25.12(u) of subpart A of part
 7 25.

8 “(B) Section 228.12(u) of part 228.

9 “(C) Section 345.12(u) of part 345.

10 “(D) Section 563e.12(t) of part 563e.”.

11 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

12 Section 701(b) of the Equal Credit Opportunity Act (15
 13 U.S.C. 1691(b)) is amended—

14 (1) by striking “or” after the semicolon at the
 15 end of paragraph (3);

16 (2) in paragraph (4), by striking the period at
 17 the end and inserting “; or”; and

18 (3) by inserting after paragraph (4), the fol-
 19 lowing new paragraph:

20 “(5) to make an inquiry under section 704B in
 21 accordance with the requirements of such section.”.

22 (c) CLERICAL AMENDMENT.—The table of sections
 23 for title VII of the Consumer Credit Protection Act is
 24 amended by inserting after the item relating to section
 25 704A the following new item:

“704B. Small business loan data collection.”.

1 (d) EFFECTIVE DATE.—This section and the amend-
2 ments made by this section shall take effect at the end
3 of the 6-month period beginning on the date of the enact-
4 ment of this Act.

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