

Public Law 94-239
94th Congress

An Act

To amend title VII of the Consumer Credit Protection Act to include discrimination on the basis of race, color, religion, national origin, and age, and for other purposes.

Mar. 23, 1976

[H.R. 6516]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Equal Credit Opportunity Act Amendments of 1976".

Equal Credit
Opportunity Act
Amendments of
1976.
15 USC 1691
note.

(b) Title VII of the Consumer Credit Protection Act is amended by adding at the end thereof the following new section:

"§ 709. Short title

"This title may be cited as the 'Equal Credit Opportunity Act'."

(c) Section 501 of Public Law 93-495 is repealed.

Equal Credit
Opportunity Act.
15 USC 1691
note.
Repeal.
15 USC 1691
note.
15 USC 1691.

SEC. 2. Section 701 of the Equal Credit Opportunity Act is amended to read as follows:

"§ 701. Prohibited discrimination; reasons for adverse action

"(a) It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

"(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

"(2) because all or part of the applicant's income derives from any public assistance program; or

"(3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

"(b) It shall not constitute discrimination for purposes of this title for a creditor—

15 USC 1601
note.

"(1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness;

"(2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness as provided in regulations of the Board;

"(3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Board, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

"(4) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

"(c) It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to—

"(1) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

"(2) any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

"(3) any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Board;

if such refusal is required by or made pursuant to such program.

Notice.

"(d)(1) Within thirty days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

Statement of reasons.

"(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor.

A creditor satisfies this obligation by—

"(A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

"(B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

"(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

"(4) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

"(5) The requirements of paragraph (2), (3), or (4) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than one hundred and fifty applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.

"Adverse action."

"(6) For purposes of this subsection, the term 'adverse action' means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit."

15 USC 1691b.

SEC. 3. (a) Section 703 of the Equal Credit Opportunity Act is amended—

(1) by inserting "(a)" immediately before "The Board";

(2) by inserting after the second sentence thereof the following new sentence: "In particular, such regulations may exempt from one or more of the provisions of this title any class of transactions not primarily for personal, family, or household purposes, if the Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this title."; and

(3) by adding at the end thereof the following new subsection:

Consumer
Advisory Council.
Establishment.

"(b) The Board shall establish a Consumer Advisory Council to advise and consult with it in the exercise of its functions under the

Consumer Credit Protection Act and to advise and consult with it concerning other consumer related matters it may place before the Council. In appointing the members of the Council, the Board shall seek to achieve a fair representation of the interests of creditors and consumers. The Council shall meet from time to time at the call of the Board. Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of such Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding \$100 per day, including travel time. Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.”

(b) (1) Section 110 of the Truth in Lending Act is repealed.

(2) The table of sections of chapter 1 of such Act is amended by striking out item 110.

SEC. 4. Section 704(c) of the Equal Credit Opportunity Act is amended by inserting before the period at the end thereof the following: “, including the power to enforce any Federal Reserve Board regulation promulgated under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule”.

SEC. 5. Section 705 of the Equal Credit Opportunity Act is amended—

(1) by amending subsection (e) to read as follows:

“(e) Where the same act or omission constitutes a violation of this title and of applicable State law, a person aggrieved by such conduct may bring a legal action to recover monetary damages either under this title or under such State law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.”; and

(2) by adding the following new subsections:

“(f) This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to credit discrimination, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this title if the Board determines that such law gives greater protection to the applicant.

“(g) The Board shall by regulation exempt from the requirements of sections 701 and 702 of this title any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this title or that such law gives greater protection to the applicant, and that there is adequate provision for enforcement. Failure to comply with any requirement of such State law in any transaction so exempted shall constitute a violation of this title for the purposes of section 706.”.

SEC. 6. Section 706 of the Equal Credit Opportunity Act is amended to read as follows:

“§ 706. Civil liability

“(a) Any creditor who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

“(b) Any creditor, other than a government or governmental sub-

15 USC 1601
note.

Repeal.
15 USC 1609.
15 USC 1601 *et*
seq.
15 USC 1691c.

15 USC 1691d.

15 USC 1691,
1691a.

Infra.
15 USC 1691e.

division or agency, who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for punitive damages in an amount not greater than \$10,000, in addition to any actual damages provided in subsection (a), except that in the case of a class action the total recovery under this subsection shall not exceed the lesser of \$500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

"(c) Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this title.

"(d) In the case of any successful action under subsection (a), (b), or (c), the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

"(e) No provision of this title imposing liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

"(f) Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall be brought later than two years from the date of the occurrence of the violation, except that—

15 USC 1691c.

"(1) whenever any agency having responsibility for administrative enforcement under section 704 commences an enforcement proceeding within two years from the date of the occurrence of the violation,

"(2) whenever the Attorney General commences a civil action under this section within two years from the date of the occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

15 USC 1691.

"(g) The agencies having responsibility for administrative enforcement under section 704, if unable to obtain compliance with section 701, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted.

"(h) When a matter is referred to the Attorney General pursuant to subsection (g), or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this title, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

42 USC 3605.

"(i) No person aggrieved by a violation of this title and by a violation of section 805 of the Civil Rights Act of 1968 shall recover

under this title and section 812 of the Civil Rights Act of 1968, if such violation is based on the same transaction. 42 USC 3612.

“(j) Nothing in this title shall be construed to prohibit the discovery of a creditor’s credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought.”

SEC. 7. The Equal Credit Opportunity Act is amended by redesignating section 707 as section 708 and by inserting immediately after section 706 the following new section:

15 USC 1691
note.
15 USC 1691e.
15 USC 1691f.

“§ 707. Annual reports to Congress

“Not later than February 1 of each year after 1976, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this title, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements of this title is being achieved, and a summary of the enforcement actions taken by each of the agencies assigned administrative enforcement responsibilities under section 704.”

SEC. 8. Section 708 of the Equal Credit Opportunity Act is amended by adding at the end thereof the following new sentence: “The amendments made by the Equal Credit Opportunity Act Amendments of 1976 shall take effect on the date of enactment thereof and shall apply to any violation occurring on or after such date, except that the amendments made to section 701 of the Equal Credit Opportunity Act shall take effect 12 months after the date of enactment.”

Effective dates.
15 USC 1691
note.

Ante, p. 251.
15 USC 1691.

SEC. 9. The table of sections of the Equal Credit Opportunity Act is amended by striking out

“707. Effective date.”

and inserting in lieu thereof the following new items:

“707. Annual reports to Congress.

“708. Effective date.

“709. Short title.”

Approved March 23, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-210 (Comm. on Banking, Currency and Housing) and No. 94-873 (Comm. of Conference).

SENATE REPORT No. 94-589 (Comm. on Banking, Housing and Urban Affairs).

CONGRESSIONAL RECORD:

Vol. 121 (1975): June 3, considered and passed House.

Vol. 122 (1976): Feb. 2, considered and passed Senate, amended.

Mar. 9, Senate and House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 12, No. 13 (1976): Mar. 23, Presidential statement.

