

[DISCUSSION DRAFT]

117TH CONGRESS
2^D SESSION

H. R. _____

To amend the Equal Credit Opportunity Act to require creditors to consider certain additional credit information when making mortgage loans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M____. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Equal Credit Opportunity Act to require creditors to consider certain additional credit information when making mortgage loans, 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 “Expanding Access to
5 Credit through Consumer-Permissioned Data”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Using alternative data in mortgage lending
2 (either through alternative credit scores or in under-
3 writing) has the potential to increase access to credit
4 for individuals with little or no credit history with
5 the national credit reporting agencies (NCRAs), ac-
6 cording to a review of alternative data use in mort-
7 gage lending by the Government Accountability Of-
8 fice in December 2021.

9 (2) Approximately 45 million consumers do not
10 have any credit history with the NCRAs or did not
11 have enough credit history to be scored, according to
12 a 2015 report by the Bureau of Consumer Financial
13 Protection (CFPB), entitled “Data Point: Credit
14 Invisibles”. The CFPB also reported that this popu-
15 lation disproportionately included low-income con-
16 sumers, younger consumers, and consumers of color.

17 (3) The use of alternative data to establish a
18 low- or moderate-income borrower’s credit history
19 for the purpose of extending mortgage credit can
20 help lenders meet goals of the Community Reinvest-
21 ment Act.

22 (4) Mortgage underwriting systems that allow
23 lenders to use consumer-permissioned alternative
24 credit information may help expand access to mort-
25 gages for borrowers with lower credit scores and

1 communities of color. On September 21, 2021,
2 Fannie Mae updated its automated underwriting
3 system so that it notifies lenders that a borrower
4 may benefit from the inclusion of consistent rental
5 payment information, and with the consumer’s per-
6 mission, the underwriting system will automatically
7 identify rental payments within bank statement data
8 and include this in its credit assessment. According
9 to a fair lending and credit risk analysis by Fannie
10 Mae and the Federal Housing Finance Agency, the
11 populations most likely to benefit from this change
12 are applicants with lower credit scores, who are dis-
13 proportionately consumers of color.

14 **SEC. 3. REQUIREMENT TO CONSIDER ADDITIONAL CREDIT**
15 **INFORMATION WHEN MAKING MORTGAGE**
16 **LOANS.**

17 (a) IN GENERAL.—The Equal Credit Opportunity
18 Act (15 U.S.C. 1691 et seq.) is amended by inserting after
19 section 701 the following:

20 **“§ 701A. Requirement to consider additional credit**
21 **information when making mortgage loans**

22 “(a) IN GENERAL.—A creditor extending a mortgage
23 loan shall, in evaluating the creditworthiness of an appli-
24 cant, consider credit information not reported through a
25 consumer reporting agency, if—

1 “(1) the applicant—

2 “(A) requests such consideration, and has
3 not retracted such request;

4 “(B) provides the credit information to be
5 considered; and

6 “(C) states that the applicant does not be-
7 lieve that credit information reported through
8 consumer reporting agencies fully or accurately
9 reflects the applicant’s creditworthiness in the
10 absence of such information; and

11 “(2) the credit information relates to the same
12 types of credit references that the creditor would
13 consider if reported through a consumer reporting
14 agency, including current payment and transaction
15 information, such as bank statement information
16 and rental payment information.

17 “(b) TREATMENT OF ADDITIONAL INFORMATION.—
18 A creditor shall treat any information provided pursuant
19 to subsection (a) in the same manner and with the same
20 weight as the creditor would treat the same information
21 if it were provided by a consumer reporting agency, unless
22 the creditor reasonably determines that the information is
23 the result of a material misrepresentation.

24 “(c) NOTICE TO APPLICANTS.—

1 “(1) IN GENERAL.—A creditor described under
2 subsection (a) shall provide each applicant for a
3 mortgage loan with a notice that includes—

4 “(A) an explanation of the applicant’s
5 right under this section to provide additional
6 credit information to the creditor for consider-
7 ation, including examples of such additional in-
8 formation, as well as the benefits of providing
9 such information;

10 “(B) the right of the creditor to disregard
11 any such information if the creditor determines
12 that the information is the result of a material
13 misrepresentation; and

14 “(C) the right of an applicant to retract
15 the applicant’s request to use such additional
16 credit information at any point in the applica-
17 tion process.

18 “(2) NOTICE LANGUAGES.—Notices required
19 under paragraph (1) shall be made available in each
20 of the 8 languages most commonly spoken by indi-
21 viduals with limited English proficiency, as deter-
22 mined by the Director of the Bureau using informa-
23 tion published by the Director of the Bureau of the
24 Census.

1 “(3) FORM LANGUAGE.—The Director of the
2 Bureau shall establish form language, which shall be
3 used by each creditor when providing the notices re-
4 quired under this subsection, providing—

5 “(A) the examples described under para-
6 graph (1)(A);

7 “(B) the description of the benefits de-
8 scribed under paragraph (1)(A); and

9 “(C) the non-English language versions of
10 the notices described under paragraph (2).

11 “(d) TREATMENT OF UNDERWRITING SYSTEMS.—
12 Any person who develops or maintains an underwriting
13 system for mortgage loans that is used by a creditor shall
14 ensure such system complies with the requirement de-
15 scribed under subsection (a).

16 “(e) CONSUMER REPORTING AGENCY DEFINED.—In
17 this section, the term ‘consumer reporting agency’ has the
18 meaning given that term under section 603 of the Fair
19 Credit Reporting Act.”.

20 “(b) CLERICAL AMENDMENT.—The table of contents
21 for the Equal Credit Opportunity Act is amended by in-
22 serting after the item relating to section 701 the following:

“701A. Requirement to consider additional credit information when making
mortgage loans.”.