AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 8485
OFFERED BY MS. WILLIAMS OF GEORGIA

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.
2 This Act may be cited as the “Expanding Access to
3 Credit through Consumer-Permissioned Data Act”.
4
5 SEC. 2. FINDINGS.
6 The Congress finds the following:
7 (1) Using alternative data in mortgage lending
8 (either through alternative credit scores or in under-
9 writing) has the potential to increase access to credit
10 for individuals with little or no credit history with
11 the national credit reporting agencies (NCRAs), ac-
12 cording to a review of alternative data use in mort-
13 gage lending by the Government Accountability Of-
14 fice in December 2021.
15 (2) Approximately 45 million consumers do not
16 have any credit history with the NCRAs or did not
17 have enough credit history to be scored, according to
18 a 2015 report by the Bureau of Consumer Financial
19 Protection (CFPB), entitled “Data Point: Credit
Invisibles”. The CFPB also reported that this population disproportionately included low-income consumers, younger consumers, and consumers of color.

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

(4) Mortgage underwriting systems that allow lenders to use consumer-permissioned alternative credit information may help expand access to mortgages for borrowers with lower credit scores and communities of color. On September 21, 2021, Fannie Mae updated its automated underwriting system so that it notifies lenders that a borrower may benefit from the inclusion of consistent rental payment information, and with the consumer’s permission, the underwriting system will automatically identify rental payments within bank statement data and include this in its credit assessment. According to a fair lending and credit risk analysis by Fannie Mae and the Federal Housing Finance Agency, the populations most likely to benefit from this change are applicants with lower credit scores, who are disproportionately consumers of color.
SEC. 3. REQUIREMENT TO CONSIDER ADDITIONAL CREDIT INFORMATION WHEN MAKING MORTGAGE LOANS.

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

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

“(a) REQUIREMENT.—

“(1) IN GENERAL.—A creditor extending a mortgage loan shall, in evaluating the creditworthiness of an applicant, consider consumer-permissioned alternative credit information not reported through a consumer reporting agency, if the applicant meets the conditions described under paragraph (3).

“(2) CONSUMER-PERMISSIONED ALTERNATIVE CREDIT INFORMATION DEFINED.—In this section, the term ‘consumer-permissioned alternative credit information’—

“(A) shall have the meaning given such term by the Director of the Bureau of Consumer Financial Protection, consistent with Regulation B (12 CFR part 1002); and

“(B) only means credit information that, in the judgment of the Director of the Bureau,
relates to the types of information that the creditor would consider if otherwise reported, including cash flow information, employment and income verification information, and current payment and transaction information, such as bank statement information or rental payment information.

“(3) CONDITIONS.—The conditions described under this paragraph are that an applicant described under paragraph (1)—

“(A) requests the consideration of consumer-permissioned alternative credit information;

“(B) authorizes the provision of the consumer-permissioned alternative credit information to be considered; and

“(C) states that the applicant does not believe that credit information reported through consumer reporting agencies fully or accurately reflects the applicant’s creditworthiness in the absence of the consumer-permissioned alternative credit information.

“(b) TREATMENT OF ADDITIONAL INFORMATION.—

“(1) IN GENERAL.—A creditor shall treat consumer-permissioned alternative credit information in
the same manner and with the same weight as the creditor would treat the same information if it were provided by a consumer reporting agency, as defined through regulations by the Director of the Bureau of Consumer Financial Protection.

“(2) EXCEPTION.—A creditor may disregard consumer-permissioned alternative credit information if the creditor reasonably determines that such information is the result of a material misrepresentation, according to regulations provided by the Director of the Bureau.

“(c) NOTICE TO APPLICANTS.—

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

“(A) an explanation of the applicant’s right under this section to authorize the provision of additional credit information to the creditor for consideration, including examples of such additional information, as well as the benefits of providing such information; and

“(B) the right of the creditor to disregard any such information if the creditor reasonably determines that the information is the result of
a material misrepresentation, according to regu-
lations provided by the Director of the Bureau.

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

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

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

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

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

“(d) CONSIDERATION OF CONSUMER-PERMISSIONED
ALTERNATIVE CREDIT INFORMATION.—A creditor shall
ensure that the consumer-permissioned alternative credit
information provided under the requirements of subsection
(a) shall be considered as part of the decisioning process.

“(e) TREATMENT OF UNDERWRITING SYSTEMS.—
“(1) IN GENERAL.—Any person, including any Federal agency that insures, guarantees, supplements, or assists a Federally backed single-family or multifamily mortgage loan, who develops or maintains an underwriting system for mortgage loans shall ensure such system complies with the requirements described under subsection (a).

“(2) RULEMAKING.—The Director of the Bureau (in consultation with the Director of the Federal Housing Finance Agency, the Secretary of Housing and Urban Development, and any other Federal agency that insures, guarantees, supplements, or assists a Federally backed single-family or multifamily mortgage loan) may issue such regulations as, in the judgement of the Director, may be necessary to capture consumer-permissioned data in automated underwriting systems.

“(f) RULE OF CONSTRUCTION.—Nothing in this section shall affect whether a third party that supplies or facilitates the submission of consumer-permissioned alternative credit information is considered a consumer reporting agency under the Fair Credit Reporting Act.

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

(b) CLERICAL AMENDMENT.—The table of contents for the Equal Credit Opportunity Act is amended by inserting after the item relating to section 701 the following:

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

(c) RULEMAKING; APPLICATION DATE.—Not later than the end of the 18-month period beginning on the date of enactment of this Act, the Director of the Bureau of Consumer Financial Protection shall issue final rules to carry out the amendments made by this section, and such amendments shall apply to creditors on and after the effective date of such final rules.