

The original documents are located in Box 41, folder “1976/03/19 HR6516 Equal Credit Opportunity Act Amendments of 1976” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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3/23/76

APPROVED

MAR 23 1976

*Ceremony + remarks
Rose Garden
4:30 PM*

*Statement
Signed 3/23/76*

THE WHITE HOUSE
WASHINGTON
March 18, 1976

ACTION
Last Day: March 23

*To Archive
3/23/76*

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON

SUBJECT:

H.R. 6516 - Equal Credit
Opportunity Act Amendments of 1976

Attached for your consideration is H.R. 6516, sponsored by Representative Annunzio and nine others. The bill would amend Title VII of the Consumer Credit Protection Act, which banned credit discrimination because of sex or marital status, to include discrimination on the basis of race, color, religion, national origin and age, and would make a number of other changes in the Act.

A detailed discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus), NSC and I recommend approval of the enrolled bill and the proposed signing statement which has been cleared by Bob Hartmann.

RECOMMENDATION

That you sign H.R. 6516 at Tab B. **(AT CEREMONY)**

That you approve the signing statement at Tab C.

Approve

[Signature]

Disapprove

*Rec'd in Records Office 4:30 PM 3/23/76
A copy of the memo, together with a copy of the signed
statement given to Thym Smith, Russ Office, for their
disposition 3/23/76 4:45 PM*



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 17 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 6516 - Equal Credit Opportunity
Act Amendments of 1976
Sponsor - Rep. Annunzio (D) and 9 others

Last Day for Action

March 23, 1976 - Tuesday

Purpose

To prohibit discrimination in credit transactions on the basis of race, color, religion, national origin, age, receipt of public assistance, or exercise of credit rights under law and to make other changes in the Equal Credit Opportunity Act.

Agency Recommendations

Office of Management and Budget	Approval (Signing statement attached)
Federal Reserve Board	Approval (Informally)
Department of Health, Education, and Welfare	Approval
Federal Deposit Insurance Corporation	Approval
United States Commission on Civil Rights	Approval
Department of State	Approval
Department of Justice	No objection
Department of the Treasury	No objection
Department of Commerce	No objection
Federal Home Loan Bank Board	No objection



Discussion

The Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act) currently prohibits discrimination against credit applicants on the basis of marital status and sex. The enrolled bill would extend that Act to prohibit credit discrimination based on race, color, religion, national origin, age, receipt of public assistance benefits and exercise of rights under the Consumer Credit Protection Act. Creditors would be permitted to inquire about and to consider an applicant's marital status, participation in a public assistance program, and age if the information sought is not used in a biased, unscientific, and arbitrary manner to affect creditworthiness. In considering age as a factor, the creditor would have to employ an empirically based, statistically sound scoring system, subject to the approval of the Federal Reserve Board, which does not assign a negative value to older age. In cases involving so-called "affirmative action" credit assistance programs specifically established to assist economically disadvantaged groups or to serve particular social needs, creditors could refuse credit without jeopardy, if such refusal were required by or made pursuant to such programs.

H.R. 6516 would also require creditors to respond within 30 days (except when the Federal Reserve Board allows a longer period) to any credit application and to provide, as a minimum, a statement of specific reasons when refusing an applicant, if requested. Creditors handling fewer than 150 applicants annually could provide their reasons for refusal verbally in lieu of written notification.

The enrolled bill would raise the ceiling on punitive damages for class action civil liability suits under the existing Equal Credit Opportunity Act from the present formula of the lesser of \$100,000 or one percent of net worth to the lesser of \$500,000 or one percent of net worth. The individual punitive damage ceiling is set at \$10,000. H.R. 6516 would allow private citizens as well as the Attorney General to bring suits where discrimination in credit transactions has occurred. The Attorney General is authorized to bring a civil enforcement action, either on his own initiative or upon referral from other agencies, whenever a pattern or practice of discriminatory behavior is detected.

H.R. 6516 would also

-- prohibit discrimination against Americans in the extension of credit which might arise from foreign boycott practices since the bill applies to business as well as consumer credit transactions.

-- exempt from punitive damage liability governmental bodies which fail to comply with provisions of this bill.

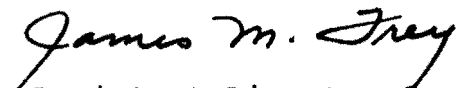
-- allow Federal preemption of State credit discrimination laws, except where such laws are substantially similar to, provide greater protection than, and are not inconsistent with provisions of the enrolled bill.

-- create a new Consumer Advisory Council to assist the Federal Reserve Board in carrying out its supervisory and regulatory responsibilities under the bill.

-- authorize the Federal Reserve Board to exempt classes of business credit transactions from the provisions of the bill where the bill's prohibitions and remedies prove unnecessary.

The Federal Reserve Board and the Attorney General are required to report annually by February 1 on the administration of their functions under the bill and to make any recommendations they deem appropriate. The provisions of H.R. 6516 would take effect on the date of enactment, except that the provision setting forth the prohibited grounds for discrimination takes effect one year after the enactment date.

A signing statement is attached for your consideration to underscore your support for this legislation and to emphasize the need to protect American citizens from credit discrimination whether dictated from abroad by foreign boycott sources or initiated at home.


Assistant Director for
Legislative Reference

Enclosures



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
OFFICE OF CONSUMER AFFAIRS
WASHINGTON, D.C. 20201

March 12, 1976

MEMORANDUM

TO: James M. Frey
Assistant Director for
Legislative Reference
Office of Management & Budget

FROM: Michael A. Sterlacci *MAS*
General Counsel
Office of Consumer Affairs

SUBJECT: Enrolled Bill H.R. 6516, 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."

Donald Hirsch has asked me to respond for the Department of Health, Education, and Welfare to your request for views on the Enrolled Bill, H.R. 6516.

The Office of Consumer Affairs fully supports this measure. It represents a natural progression in the overall effort to insure that the civil rights of all our citizens are protected. More specifically, it is a logical extension of our national policy of barring discriminatory practices in the credit area as enunciated in the Equal Credit Protection Act.

In today's society, where credit is virtually a necessity of life, discrimination in the extension of credit is detrimental to both the consumer and the creditor. But with the enactment of H.R. 6516, the consumers will undoubtedly become better informed and the industry more competitive to the ultimate benefit of both parties.

This legislation contains two provisions of major significance. By expanding the categories of prohibited discrimination, the fallacies arising out of stereotyped generalizations will be exposed and, consequently, the practice of "blackballing", which was born out of these fallacies will be stopped. Applicants will be insured that only relevant factors will be considered in

determining their credit worthiness.

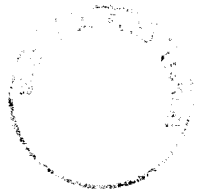
This office has repeatedly expressed its support for this type of legislation. On March 21, 1975, Mrs. Knauer wrote a letter to Mr. Frank Annunzio, Chairman, Subcommittee on Consumer Affairs, Committee on Banking and Currency expressing her support for H.R. 3386 which prohibited discrimination in the extension of credit on the basis of race, color, religion, national origin and age. I wrote a memorandum to OMB endorsing S. 483 which dealt with age discrimination on September 17, 1975.

The other major aspect of this bill is the requirement that creditors notify consumers of the specific reasons for the adverse action taken on their application for credit. This is a necessary adjunct to the anti-discrimination objective of the act, because, if creditors are required to explain their actions and standards with respect to the extension of credit, they will have an incentive to base their judgments as to credit worthiness only on relevant criteria. Moreover, this provision interfaces with the thrust of the Fair Credit Reporting Act. If a consumer is apprised of the reasons for the adverse action taken against him, then it will make more meaningful his/her right to learn what information is being maintained on that person by a credit reporting agency. In addition, the individual will be in a better situation to determine the accuracy of the information and to pursue his/her remedies under the Fair Credit Reporting Act.

Much of the congressional criticism of H.R. 6516 was directed towards the cost burden that would be imposed on the creditor as a result of this requirement for written notification of adverse action. As you know, § 615 of the Fair Credit Reporting Act already requires creditors to notify consumers of adverse action with respect to a credit or insurance application if such action was taken as a result of a consumer report from a credit reporting agency. Besides the notice of action taken, the creditor must advise the consumer of the name and address of the credit reporting agency. As the present law is already applicable to virtually all the creditors that would be affected by the enactment of H.R. 6516, it would seem that the cost implications of providing this additional information would be negligible.

James M. Frey
Page 3

Therefore, for the reasons cited above, we strongly recommend that the President approve this legislation. The proposed law would be another step towards the Administration's ultimate goal of achieving equal justice for all its citizens.





FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D. C. 20429

OFFICE OF THE CHAIRMAN

March 12, 1976



Honorable James T. Lynn
Director
Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Dear Mr. Lynn:

By enrolled bill request dated March 10, 1976, your Office requested our views and recommendations on H. R. 6516, 94th Congress, an enrolled bill cited as the "Equal Credit Opportunity Act Amendments of 1976."

H. R. 6516 would amend the Equal Credit Opportunity Act, which is Title VII of the Consumer Credit Protection Act, to prohibit discrimination in any credit transaction on the basis of race, color, religion, national origin or age (provided the applicant has the capacity to contract) or because all or part of the applicant's income derives from any public assistance program or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Equal Credit Opportunity Act presently prohibits credit discrimination based on sex or marital status. The enrolled bill would, however, permit inquiry of the applicant's age or of whether his income derives from public assistance benefits for the purpose of determining the amount or stability of the applicant's income, credit history, or other pertinent element of credit worthiness as determined by Federal Reserve regulations. Age (but not public assistance income) would also be permitted to be used in a credit scoring system provided such system does not assign a negative value to elderly applicants and is scientifically sound based on the particular creditor's actual customer experience.

The enrolled bill would also require creditors to notify applicants of action taken on a credit application and on request to give the specific reasons for any adverse action taken, except that no written statement of reasons for adverse action would be required to be given by creditors who act on 150 or fewer applications per year. While the bill's provisions would apply to all types of credit transactions, the Federal Reserve would be authorized to exempt classes of credit transactions (other than consumer credit transactions) if the Board expressly finds that application of the Act is not necessary to achieve its purposes.

Another important change effected by the enrolled bill would be to increase the limitations on class action civil liability for violations of the Equal Credit Opportunity Act from the present limits of the lesser



Honorable James T. Lynn

-2-

March 12, 1976

of \$100,000 or one percent of a creditor's net worth to the lesser of \$500,000 or one percent of net worth. The enrolled bill's provisions expanding the prohibited bases of credit discrimination would become effective 12 months after enactment; other provisions would become effective upon enactment.

In testimony on the original Equal Credit Opportunity Act in October of 1973, the FDIC recommended at that time that the then proposed ban on credit discrimination based on sex or marital status be expanded to cover discrimination based on race, color, religion or national origin. At that time, we also urged that the class action civil liability limitations be established at the greater of \$50,000 or one percent of a creditor's net worth. In subsequent testimony in April of 1975 on H. R. 3386, a predecessor to the enrolled bill, we reaffirmed these recommendations and also indicated that we had no objection to prohibiting credit discrimination on the basis of age. We likewise do not object to adding the prohibitions against credit discrimination because of the receipt of public assistance benefits or the good faith exercise of rights granted by the Consumer Credit Protection Act.

Accordingly, we recommend that the President approve H. R. 6516.

Sincerely,

Frank Wille

Frank Wille
Chairman



UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425



STAFF DIRECTOR

MAR 12 1976

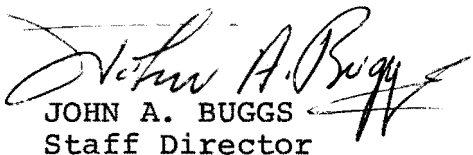
Mr. James M. Frey
Assistant Director
for Legislative Reference
New Executive Office Building, Room 7201
Washington, D.C. 20503

Dear Mr. Frey:

The U.S. Commission on Civil Rights urges the President to sign H.R.6516 into law. The Commission has long supported the inclusion of the additional categories of prohibited discrimination in the granting of credit in the Equal Credit Opportunity Act (PL93-495). In the Commission's view adequate evidence exists to show discriminatory credit denials against otherwise credit worthy persons, based on race, color, religion, national origin and age. The prohibition against discrimination in the granting of credit on the above bases, taken together with similar prohibition against credit denials based on sex or marital status, should effectively eliminate credit discrimination in its most arbitrary forms.

The Commission believes this legislation will do much to preclude credit-granting institutions from basing their decisions on factors other than the individuals credit-worthiness and his/her ability to pay.

Sincerely,


JOHN A. BUGGS
Staff Director





DEPARTMENT OF STATE

Washington, D.C. 20520

MAR 12 1976

Dear Mr. Lynn:

In reference to Mr. Frey's memorandum of March 10, the Department of State recommends approval of H.R. 6516 entitled Equal Credit Opportunity Act.

Sincerely,

Robert J. McCloskey
Robert J. McCloskey
Assistant Secretary for
Congressional Relations

Honorable James T. Lynn,
Director, Office of Management
and Budget,
Washington, D.C.

Department of Justice
Washington, D.C. 20530

March 11, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 6516), "To amend title VII of the Consumer Credit Act to include discrimination on the basis of race, color, religion, national origin, and age, and for other purposes."

The Department of Justice interposes no objection to Executive approval of this legislation.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General





THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

MAR 11 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 6516, "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."

The enrolled enactment would amend the Equal Credit Opportunity Act which presently only applies to discrimination based on sex or marital status.

In his July 24, 1975 testimony before the Subcommittee on Consumer Affairs of the Senate Banking Committee on bills concerning this matter, Deputy Secretary Gardner stated that the objectives of the legislation are commendable and a basic and integral part of our American economic system that should be incorporated into law. He recommended several ways to improve the legislation that was being considered. Most of these recommendations are included in the enrolled enactment. A notable exception being that the Deputy Secretary opposed as too severe a provision which would permit punitive damages not to exceed the greater of \$50,000 or 1 per centum of the net worth of the creditor. The enrolled enactment would permit, in class actions, the recovery of the lesser of \$500,000 or 1 per centum of the net worth of the creditor.

The Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,


General Counsel



**GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE**
Washington, D.C. 20230

MAR 15 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning H.R. 6516, an enrolled enactment

"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,"

to be cited as the "Equal Credit Opportunity Act Amendments of 1976".

Title VII of the Consumer Credit Protection Act (15 U. S. C. 1691), cited as the "Equal Credit Opportunity Act", presently prohibits any creditor (as defined in the Act) from discriminating against an applicant for credit on the basis of sex or marital status. The principal purpose of H.R. 6516 is to amend title VII so as to extend such prohibitions to include (with certain specified exceptions): (1) discrimination on the basis of race, color, religion, national origin, or age (provided the applicant for credit has the capacity to contract), as well as sex and marital status; and (2) discrimination based on the receipt by applicants of public assistance and their exercise in good faith of rights under the Consumer Credit Protection Act. In addition, the legislation includes amendments to raise the ceiling amount on class action recoveries; to require the Federal Reserve Board to establish a Consumer Advisory Council to advise and consult the Board in carrying out its functions under the Consumer Credit Protection Act; and to permit the Board by regulation to exempt any class of credit transactions not primarily for personal, family or household purposes if it finds that their inclusion would not serve the purposes of title VII.

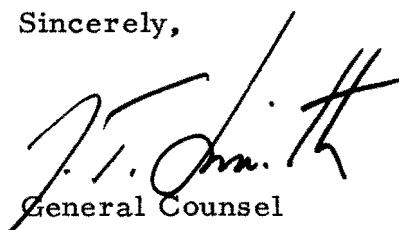


While this Department would have no objection to approval by the President of H. R. 6516, we do have the following comment.

We recommend that at the first opportunity, an attempt should be made to amend the Act with respect to new section 706(b) relating to punitive damages. As we read this section, punitive damages would, as a matter of course, be imposed upon a creditor failing to comply with the Act's requirements, and only in determining the amount of such damages could a court consider the extent to which a creditor's failure of compliance was intentional. We do not believe that punitive damages should be imposed upon unintentional violations unless there are repeated instances of such violations, establishing a pattern of negligent conduct. We can see no justification for punitive damages for a first, or for isolated, unintended violations.

Enactment of this legislation is not expected to involve any increase in the budgetary requirements of this Department.

Sincerely,



J. T. Smith
General Counsel

Federal Home Loan Bank Board



320 First Street, N.W.
Washington, D.C. 20552

Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

March 12, 1976

Mr. James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Washington, D. C. 20503

Attention: Ms. Martha Ramsey

Dear Mr. Frey:

This is in response to your Enrolled Bill Request on H.R. 6516, the "Equal Credit Opportunity Act Amendments of 1976". The bill extends the prohibition against discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction to include discrimination on the basis of race, color, religion, national origin, and age (provided the applicant has the capacity to contract); or on the basis that all or part of the applicant's income derives from any public assistance program; or on the basis that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. Appropriate limitations on these prohibitions are included. These limitations are concerned with permissible inquiries, consideration of the age of credit applicants and credit assistance and other credit programs. In addition, the bill would newly require creditors to provide statements of reasons in writing (or verbally in the case of creditors having fewer than 151 credit applications) as a matter of course to applicants against whom adverse action is taken or to give applicants written notice of adverse action which discloses the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days of such written notification. Adverse action is defined as 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. The Board supports the extension of the nondiscrimination prohibition comparable to that in the Civil Rights Acts of 1964 and 1968. The Board does not oppose the requirement relating to informing applicants of the reasons for adverse actions on credit applications.

Mr. James M. Frey
Page Two
March 12, 1976

The bill revises the civil liability section of the Equal Credit Opportunity Act ("ECOA") by increasing the limit on class action recovery from the lesser of \$100,000 or 1% of the creditor's net worth to the lesser of \$500,000 or 1% of the creditor's net worth and by changing the statute of limitation on actions brought under the Act from one to two years, or one year after commencement of enforcement proceedings or actions by the responsible agency under section 704. The Board does not oppose the increase in punitive damage liability, since, in assessing this penalty, courts are to consider a variety of factors, including the resources of the creditor in question.

Annual reports to the Congress by the Federal Reserve Board and the Attorney General concerning the administration of their functions under the Act would be newly required. The bill would also create an exemption from punitive damage liability for a government or governmental subdivision or agency which fails to comply with the provisions of the Act, establish a Consumer Advisory Council to advise the Federal Reserve Board, repeal section 110 of the Truth-in-Lending Act, add a Federal preemption provision to section 705, and add an enforcement power through the Attorney General. The effective date of the Act for the revised nondiscrimination prohibition is one year from the date of enactment. The Board supports the governmental agency exemption from punitive damages liability, since other sanctions are available with respect to actions by governmental agencies, such as the oversight function of Congress. The Board does not object to the other proposed amendments.

Sincerely,


Daniel J. Goldberg
Acting General Counsel

THE WHITE HOUSE
WASHINGTON

Note: Bobbie Kilberg's
suggested change was given
to

David Lissy - o.k.
Dick Parsons - o.k.
Bob Hormats - o.k.
Kathy Ryan - o.k.
Doug Bennett

THE WHITE HOUSE
WASHINGTON

Dick: Do you agree with Bobbie
on amending the signing statement
on H.R. 6516. (attached is copy
of the way ss is now)

Judy G

Judy

Bobbie's
seems to
to

suggestion
be overkill
but O.K.
D

THE WHITE HOUSE

WASHINGTON

March 18, 1976

MEMORANDUM FOR: JUDY JOHNSTON

FROM: BOBBIE GREENE KILBERG

SUBJECT: H. R. 6516 - Equal Credit Opportunity Act Amendments of 1976

Bobbie

The Counsel's Office supports approval of H. R. 6516, In the signing statement, we strongly suggest that a more explicit reference be made to the purpose of the President's November 20 Statement, i. e., to prevent discriminatory conduct against Americans that might arise from foreign boycott practices. [November 20 Statement is attached for your information.]

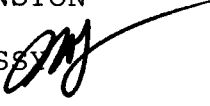
We have been under a great deal of criticism in recent days from the American Jewish community both because of military sales to the Middle East and because of allegations that the Administration is retreating from the President's November 20 Statement on the Arab boycott. Since the President supported this piece of legislation as a means to deal with allegations of religious discrimination in the context of the Arab boycott, the President should get credit with the Jewish community for signing the bill. That can best be accomplished by a more explicit reference to the November 20 Statement. Suggested language, to be substituted for the third paragraph in the present signing statement, follows below:

"Last November 20 in a statement directed at discriminatory conduct against Americans that might arise from foreign boycott practices, I stated my support for legislation to amend the Equal Credit Opportunity Act to bar creditor discrimination on the basis of race, color, religion, or national origin against any credit applicant in any aspect of a credit transaction. The Act currently prohibits discrimination on the basis of sex or marital status."

[Keep in fourth paragraph which also mentions foreign boycott practices.]

THE WHITE HOUSE
WASHINGTON

March 18, 1976

MEMORANDUM FOR: JUDY JOHNSTON
FROM: DAVID LISS 
SUBJECT: H.R. 6516 -- Equal Credit Opportunity
Act Amendments of 1976

I strongly concur with Bobbie Kilberg's suggested revision.

The New York Times, in an editorial last week, questioned the Administration's commitment to its anti-boycott stance. This signing statement gives us a chance for the President to take credit (justifiably) and to restate his views without breaking new ground.

cc: Dick Parsons
Bobbie Kilberg

to
Cavanaugh
3-17-76



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 17 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 6516 - Equal Credit Opportunity
Act Amendments of 1976
Sponsor - Rep. Annunzio (D) and 9 others

Last Day for Action

March 23, 1976 - Tuesday

Purpose

To prohibit discrimination in credit transactions on the basis of race, color, religion, national origin, age, receipt of public assistance, or exercise of credit rights under law and to make other changes in the Equal Credit Opportunity Act.


Agency Recommendations

- | | |
|--|---------------------------------------|
| Office of Management and Budget | Approval (Signing statement attached) |
| Federal Reserve Board | Approval (Informally) |
| Department of Health, Education, and Welfare | Approval |
| Federal Deposit Insurance Corporation | Approval |
| United States Commission on Civil Rights | Approval |
| Department of State | Approval |
| Department of Justice | No objection |
| Department of the Treasury | No objection |
| Department of Commerce | No objection |
| Federal Home Loan Bank Board | No objection |



NATIONAL SECURITY COUNCIL

March 18, 1976

MEMORANDUM FOR: JAMES CANNON
FROM: Jeanne W. Day 
SUBJECT: H. R. 6516

The NSC Staff concurs in H. R. 6516 - Equal Credit Opportunity Act Amendments of 1976.

THE WHITE HOUSE

WASHINGTON

March 18, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.F.*
SUBJECT: H.R. 6516 - Equal Credit Opportunity Act
Amendments of 1976

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed. We have submitted request for a signing ceremony for this bill as well as H.R. 8835, Truth in Leasing Bill.

Attachments

Date: March 17

Time: 545pm

FOR ACTION: Kathy Ryan ✓
 Max Friedersdorf
 Ken Lazarus NSC/S
 Robert Hartmann
 Dick Parsons
 Paul Leach

cc (for information): Jack Marsh
 Ed Schmults
 Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: March 18

Time: 300pm

SUBJECT:

H.R. 6516 - Equal Credit Opportunity Act
 Amendments of 1976

ACTION REQUESTED:

<input type="checkbox"/> For Necessary Action	<input checked="" type="checkbox"/> For Your Recommendations
<input type="checkbox"/> Prepare Agenda and Brief	<input type="checkbox"/> Draft Reply
<input checked="" type="checkbox"/> For Your Comments	<input type="checkbox"/> Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Approve cum signing statement
JAR

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
 For the President

Date: March 17

Time: 545pm

FOR ACTION: Kathy Ryan
Max Friedersdorf
Ken Lazarus NSC/S
Robert Hartmann
Dick Parsons
Paul Leach

cc (for information): Jack Marsh
Ed Schmults
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: March ~~18~~ ²³

Time: 300pm

SUBJECT:

H.R. 6516 - Equal Credit Opportunity Act
Amendments of 1976

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:



Please return to Judy Johnston, Ground Floor West Wing

*Recommend approval; message
OK as written. I think that
the suggestion of Bobbie Netanyahu
would distort the message - and
confuse the average person to whom
the legislation is*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

primarily aimed.
James M. Cannon
For the President
3/19/76

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 17

Time: 545pm

FOR ACTION: Kathy Ryan
Max Friedersdorf
Ken Lazarus
Robert Hartmann
Dick Parsons
Paul Leach

NSC/S

cc (for information): Jack Marsh
Ed Schmults
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: March 18

Time: 300pm


SUBJECT:

.H.R. 6516 - Equal Credit Opportunity Act
Amendments of 1976

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Approved 

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 17

Time: 545pm

FOR ACTION: Kathy Ryan *hr*
 Max Friedersdorf *mf* cc (for information): Jack Marsh
 Ken Lazarus *kl* NSC/S *kl* Ed Schmults
 Robert Hartmann Jim Cavanaugh
 Dick Parsons *dp*
 Paul Leach *pl*

FROM THE STAFF SECRETARY

DUE: Date: March 18

Time: 300pm

SUBJECT:

H.R. 6516 - Equal Credit Opportunity Act
Amendments of 1976

ACTION REQUESTED:

- | | |
|---|--|
| <input type="checkbox"/> For Necessary Action | <input checked="" type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

STATEMENT BY THE PRESIDENT

I have today signed H.R. 6516, which expands the scope of the Equal Credit Opportunity Act.

This Administration is committed to the goal of equal opportunity in all aspects of our society. In financial transactions, no person should be denied an equal opportunity to obtain credit for reasons unrelated to his or her creditworthiness.

Last November, I stated my support for legislation to amend the Equal Credit Opportunity Act to bar creditor discrimination on the basis of race, color, religion, or national origin against any credit applicant in any aspect of a credit transaction. The Act currently prohibits discrimination on the basis of sex or marital status.

This bill carries out my recommendations. It applies to business as well as consumer credit transactions and, thus, reaches discrimination against Americans in the extension of credit which might arise from foreign boycott practices.

In addition, this bill permits the Attorney General, as well as private citizens, to initiate suits where discrimination in credit transactions has occurred. It also provides that a person to whom credit is denied is entitled to know of the reasons for the denial.

It is with great pleasure that I sign a bill that represents a major step forward in assuring equal opportunity in our country.



Gerald R. Ford

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I am today announcing a number of decisions that provide a comprehensive response to any discrimination against Americans on the basis of race, color, religion, national origin or sex that might arise from foreign boycott practices.

The United States Government, under the Constitution and the law, is committed to the guarantee of the fundamental rights of every American. My Administration will preserve these rights and work toward the elimination of all forms of discrimination against individuals on the basis of their race, color, religion, national origin or sex.

Earlier this year, I directed the appropriate departments and agencies to recommend firm, comprehensive and balanced actions to protect American citizens from the discriminatory impact that might result from the boycott practices of other governments. There was wide consultation.

I have now communicated detailed instructions to the Cabinet for new measures by the United States Government to assure that our anti-discriminatory policies will be effectively and fully implemented.

These actions are being taken with due regard for our foreign policy interests, international trade and commerce and the sovereign rights of other nations. I believe that the actions my Administration has taken today achieve the essential protection of the rights of our people and at the same time do not upset the equilibrium essential to the proper conduct of our national and international affairs.

I made the basic decision that the United States Government, in my Administration, as in the administration of George Washington, will give "to bigotry no sanction." My Administration will not countenance the translation of any foreign prejudice into domestic discrimination against American citizens.

I have today signed a Directive to the Heads of All Departments and Agencies. It states:

(1) That the application of Executive Order 11478 and relevant statutes forbid any Federal agency, in making selections for overseas assignments, to take into account any exclusionary policies of a host country based upon race, color, religion, national origin, sex or age. Individuals must be considered and selected solely on the basis of merit factors. They must not be excluded at any stage of the selection process because their race, color, religion, national origin, sex or age does not conform to any formal or informal requirements set by a foreign nation. No agency may specify, in its job description circulars, that the host country has an exclusionary entrance policy or that a visa is required:

(2) That Federal agencies are required to inform the State Department of visa rejections based on exclusionary policies; and

(3) That the State Department will take appropriate action through diplomatic channels to attempt to gain entry for the affected individuals.

I have instructed the Secretary of Labor to issue an amendment to his Department's March 10, 1975, Secretary's Memorandum on the obligation of Federal contractors and subcontractors to refrain from discrimination on the basis of race, color, religion, national origin or sex when hiring for work to be performed in a foreign country or within the United States pursuant to a contract with a foreign government or company. This amendment will require Federal contractors and subcontractors, that have job applicants or present employees applying for overseas assignments, to inform the Department of State of any visa rejections based on the exclusionary policies of a host country. The Department of State will attempt, through diplomatic channels, to gain entry for those individuals.

My Administration will propose legislation to prohibit a business enterprise from using economic means to coerce any person or entity to discriminate against any U. S. person or entity on the basis of race, color, religion, national origin or sex. This would apply to any attempts, for instance, by a foreign business enterprise, whether governmentally or privately owned, to condition its contracts upon the exclusion of persons of a particular religion from the contractor's management or upon the contractor's refusal to deal with American companies owned or managed by persons of a particular religion.

I am exercising my discretionary authority under the Export Administration Act to direct the Secretary of Commerce to issue amended regulations to:

(1) prohibit U. S. exporters and related service organizations from answering or complying in any way with boycott requests that would cause discrimination against U. S. citizens or firms on the basis of race, color, religion, sex or national origin; and

(2) require related service organizations that become involved in any boycott request to report such involvement directly to the Department of Commerce.

Related service organizations are defined to include banks, insurers, freight forwarders and shipping companies that become involved in any way in a boycott request related to an export transaction from the U. S.

Responding to an allegation of religious and ethnic discrimination in the commercial banking community, the Comptroller of the Currency issued a strong Banking Bulletin to its member National Banks on February 24, 1975. The Bulletin was prompted by an allegation that a national bank might have been offered large deposits and loans by an agent of a foreign investor, one of the conditions for which was that no member of the Jewish faith sit on the bank's board of directors or control any significant amount of the bank's outstanding stock. The Bulletin makes it clear that the Comptroller will not tolerate any practices or policies that are based upon considerations of the race, or religious belief of any customer, stockholder, officer or director of the bank and that any such practices or policies are 'incompatible with the public service function of a banking institution in this country.'

I am informing the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System and the Federal Home Loan Bank Board that the Comptroller's Banking Bulletin reflects the policy of my Administration and I encourage them to issue similar policy statements to the financial institutions within their jurisdictions, urging those institutions to recognize that compliance with discriminatory conditions directed against any of their customers, stockholders, employees, officers or directors is incompatible with the public service function of American financial institutions.

I will support legislation to amend the Equal Credit Opportunity Act, which presently covers sex and marital status, to include prohibition against any creditor discriminating on the basis of race, color, religion, or national origin against any credit applicant in any aspect of a credit transaction.

I commend the U.S. investment banking community for resisting the pressure of certain foreign investment bankers to force the exclusion from financing syndicates of some investment banking firms on a discriminatory basis.

I commend the Securities and Exchange Commission and the National Association of Securities Dealers, Inc., for initiating a program to monitor practices in the securities industry within their jurisdiction to determine whether such discriminatory practices have occurred or will occur. I urge the SEC and NASD to take whatever action they deem necessary to insure that discriminatory exclusion is not tolerated and that non-discriminatory participation is maintained.

In addition to the actions I am announcing with respect to possible discrimination against Americans on the basis of race, color, religion, national origin or sex, I feel that it is necessary to address the question of possible antitrust violations involving certain actions of U.S. businesses in relation to foreign boycotts. The Department of Justice advises me that the refusal of an American firm to deal with another American firm in order to comply with a restrictive trade practice by a foreign country raises serious questions under the U.S. antitrust laws. The Department is engaged in a detailed investigation of possible violations.

The community of nations often proclaims universal principles of human justice and equality. These principles embody our own highest national aspirations. The anti-discriminations measures I am announcing today are consistent with our efforts to promote peace and friendly, mutually beneficial relations with all nations, a goal to which we remain absolutely dedicated.

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EQUAL CREDIT OPPORTUNITY ACT

MARCH 9, 1976.—Ordered to be printed

Mr. PROXMIRE, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 6516]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6516) 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 having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That (a) this Act may be cited as the "Equal Credit Opportunity Act Amendments of 1976".

(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.

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—

"(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.

"(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.

"(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 150 applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.

"(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."

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:

"(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 interest 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 subdivision 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 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 thereby by the Board or in conformity with any interpretation or approval by the Board or in conformity 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—

"(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.

"(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.

"(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.

"(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:

"§ 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."

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."

And the Senate agree to the same.

WILLIAM PROXMIRE,
J. R. BIDEN,
R. MORGAN,

Managers on the Part of the Senate.

HENRY S. REUSS,
FRANK ANNUNZIO,
GLADYS NOON SPELLMAN,
LEONOR K. SULLIVAN,
WILLIAM A. BARRETT,
CHALMERS P. WYLIE,
MILLICENT FENWICK,

Managers on the Part of the House.

**JOINT EXPLANATORY STATEMENT OF THE
COMMITTEE OF CONFERENCE**

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6516) 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, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying Conference Report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill. The Senate amendment, the House bill and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the Conferees, and minor drafting and clarifying changes.

CATEGORIES OF PROHIBITED DISCRIMINATION

In addition to the categories of race, color, religion, national origin and age which were contained in both bills, the Senate amendment contained prohibitions against discrimination based on receipt of public assistance benefits and exercise of rights under the Consumer Credit Protection Act. The House bill did not contain these two provisions, but the Conferees agreed to their inclusion in the conference report.

PERMISSIBLE CONSIDERATION OF CERTAIN CATEGORIES

The Senate amendment permits inquiry of the applicant's age or of whether the applicant's income derives from public assistance benefits for purposes of determining the amount or stability of the applicant's income, credit history, or other pertinent element of creditworthiness as determined in Board regulations. The House bill contained no equivalent provision. The provision from the Senate amendment was accepted and included in the final substitute bill, for the reasons discussed in the Senate committee report.

The Senate amendment also permitted the use of empirically derived credit scoring systems which consider age and receipt of public assistance provided they were scientifically sound. The House bill contained no parallel provision, but did provide that it was not a violation of the Act for a creditor to treat certain age categories more favorably than others. The provisions were treated together by the Conferees, whose primary concern was to assure that elderly applicants were not disadvantaged by scoring systems or other forms of

credit-granting standards. The substitute bill contains a compromise provision which permits the use of age (but not public assistance income) in a credit scoring system provided such system does not assign a negative value to elderly applicants, and is scientifically sound based on the particular creditor's actual customer experience.

As in the Senate amendment any such scoring system must meet standards promulgated in regulations of the Board. It is not the intention of the Conferees, however, that each such system be approved by the Board on an *ad hoc* basis.

In the substitute bill, the separate House provision permitting more favorable treatment of applicants on the basis of age is retained with the modification that it applies only to elderly applicants.

AFFIRMATIVE ACTION PROGRAMS

Both the original House bill and the Senate amendment contained provisions specifically permitting the continuance of affirmative action type programs authorized by law, or offered by non-profit organizations. The substitute bill adopts the Senate version of this provision which is applicable to all "credit" programs rather than the narrower "loan" programs cited in the House bill. The Conferees were aware that there are a number of such ongoing programs. This provision merely clarifies the Congressional intent under the original Equal Credit Opportunity Act that credit denials pursuant to such programs are not violations of the Act.

Similarly, in the case of special purpose credit programs offered by profit-making organizations, the Conferees approved the language common to both the House bill and the Senate amendment exempting such programs from the restrictions of the Act so long as they conform to Board regulations. The intent of this section of the statute is to authorize the Board to specify standards for the exemption of classes of transactions when it has been clearly demonstrated on the public record that without such exemption the consumers involved would effectively be denied credit.

As in the case of government sponsored or non-profit programs, this provision is intended to confirm that ongoing special programs offered by commercial creditors are not automatically violative of this Act.

REASONS FOR ADVERSE ACTION

The Senate amendment provided that creditors must notify applicants of action taken on the application, and at least on request must give applicants statements of reasons for adverse action. The House bill contained no equivalent provision. The substitute bill set out in the Conference Report adopts the Senate provision, with two modifications: (1) the definition of "statement of reasons" is changed to require that it contain "the specific reasons for the adverse action taken"; and (2) an exemption from the requirements to give *written* notifications and statements of reasons is provided for creditors who act on 150 or fewer applications a year. The intention of this latter provision is to relieve the very small credit grantor from the burden of preparing formal written documents when that creditor conducts a small-volume credit operation.

BUSINESS CREDIT EXEMPTION

The original Equal Credit Opportunity Act applies to all credit transactions, and the House bill continues this scope. The Senate amendment, on the other hand, authorized the Federal Reserve Board to exempt classes of credit transactions (other than consumer credit transactions) if the Board expressly finds that application of the Act is not necessary to achieve its purpose. The Conferees accepted the Senate provision. The intention of the Conferees is to permit exemptions only when the inclusion of those classes of transactions would serve no useful purpose in achieving the antidiscrimination goals of this Act.

CONSUMER ADVISORY COUNCIL

The original House bill called for the creation of a new Advisory Committee to advise and consult with the Board concerning the Equal Credit Opportunity Act. The Senate amendment instead would establish a new Consumer Advisory Council to advise the Board on all its functions under the Consumer Credit Protection Act. This Council would also absorb the present functions of the Truth in Lending Advisory Committee. The Conference Report adopts the Senate provision.

FEDERAL TRADE COMMISSION ENFORCEMENT

The Conferees accepted, from the Senate amendment, a provision clarifying that the Federal Trade Commission could enforce this Act in the same manner as if it were an FTC trade regulation rule.

RELATIONS TO STATE LAWS

Both the House bill and the Senate amendment contained provisions restricting an aggrieved applicant to a single recovery when a creditor's conduct violates both state and federal law. With some technical changes, the Conference Report contains the Senate provision, which makes it clear that an applicant can bring only one lawsuit for monetary damages, but is not otherwise restricted in his or her remedies under state law and under this Act.

The Conference Report also contains two provisions, patterned on similar sections of the Fair Credit Billing Act, which make it clear that this Act does not preempt state law unless that law is inconsistent with the federal Act. Similarly, the Board is directed to exempt from the federal Act any classes of transactions which are subject to state law substantially similar or more protective than this Act. The provision also confirms that the permitted exemptions are from the "requirements" of this Act and not from its remedial provisions.

CIVIL LIABILITY

Both the House bill and the Senate amendment provided substantially expanded civil liability rules for violations of the Act. The House bill continued the present limits on punitive damages from the present Act: \$10,000 for individual actions, and \$100,000 for class actions. In addition the House bill would have required that violations

be willful before punitive damages would lie. The Conferees accepted the Senate version of these points, which did not include the "willful" criterion, and set the maximum class action recovery at the lesser of \$500,000 or 1% of the creditor's net worth.

The Conference Report also contains an amendment of section 706 (e) as offered by one of the House Conferees. This amendment would expand the "good faith reliance" defense to include reliance on interpretations and approvals issued by Federal Reserve staff under delegation from the Board itself. This provision in the substitute bill mirrors language recently added to the Truth in Lending title of the Consumer Credit Protection Act.

The original House bill retained the one-year statute of limitations from the present Act, but would have permitted aggrieved applicants to bring private actions within one year after the successful completion of an agency or Attorney General action. The Senate bill set the basic statute of limitations at two years, and permits individual actions to be brought within one year after the commencement of a public enforcement action provided that action is begun within the two year period. The Conference Report contains the Senate version on statute of limitations.

The substitute bill also contains a provision which was in the Senate amendment, but not in the House bill, confirming that nothing in this Act protects any creditor's credit granting standards from discovery under appropriate procedures in any court or agency proceeding.

EFFECTIVE DATE

The House bill would have taken effect six months after enactment. The Senate amendment provided that its provisions would take effect on enactment except for the substantive changes to section 701 which would take effect eighteen months after enactment. The Conferees agreed to the Senate formula, but charged the delay period from eighteen to twelve months. The intent of the Conferees is that the full regulation take effect on the scheduled date.

WILLIAM PROXMIRE,
J. R. BIDEN,
R. MORGAN,

Managers on the Part of the Senate.

HENRY S. REUSS,
FRANK ANNUNZIO,
GLADYS NOON SPELLMAN,
LEONOR K. SULLIVAN,
WILLIAM A. BARRETT,
CHALMERS P. WYLIE,
MILLCENT FENWICK,

Managers on the Part of the House.

EQUAL CREDIT OPPORTUNITY ACT AMENDMENTS
OF 1975

MAY 14, 1975.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. REUSS, from the Committee on Banking, Currency and Housing,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 6516]

The Committee on Banking, Currency and Housing, to whom was referred the bill (H.R. 6516) to amend the Equal Credit Opportunity Act to include discrimination on the basis of race, color, religion, national origin, and age, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 3, insert "(a)" immediately after "That".

Page 1, immediately after line 4, insert the following:

(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 'Equity Credit Opportunity Act'."

Page 1, line 6, strike out "(title V of Public Law 93-495)" and insert in lieu thereof the following: ", as redesignated by subsection (b) of the first section of this Act,".

Page 2, lines 2 and 4, immediately after "Act" insert the following: ", as redesignated by subsection (b) of the first section of this Act,".

Page 2, line 6, strike out "subsection" and insert in lieu thereof "subsections".

Page 2, line 19, strike out the quotation mark and the last period.
Page 2, immediately after line 19, insert the following:

(d) Inquiry and consideration by a creditor of the age of an applicant when used by such creditor in the extension of credit in favor of an applicant because such applicant is in a particular age category shall not constitute discrimination under this section.

Page 2, line 20, strike out "(a)".

Page 2, line 21, insert ", as redesignated by subsection (b) of the first section of this Act," immediately after "Act".

Page 3, line 21, insert ", as redesignated by subsection (b) of the first section of this Act," immediately after "Act".

Page 3, line 21, strike out "by inserting 'age provided the applicant'" and all that follows thereafter through line 23, and insert in lieu thereof the following:

to read as follows:

(e) No person aggrieved by a violation of this title shall recover under this title on any transaction for which recovery is had under the laws of any State relating to the prohibition of discrimination on the basis of race, color, religion, national origin, sex, marital status, or, provided the applicant has the capacity to contract, age.

Page 3, line 25, insert ", as redesignated by subsection (b) of the first section of this Act," immediately after "Act".

Page 5, lines 9 and 10, strike out "or any other agency having rule-writing or enforcement responsibilities under the Act".

Page 7, line 4, insert ", as redesignated by subsection (b) of the first section of this Act," immediately after "Act".

Page 7, line 20, strike out "as redesignated by section 5" and insert in lieu thereof the following: "as redesignated by subsection (b) of the first section of this Act and by section 6".

Page 7, immediately after line 24, insert the following:

SEC. 8. The table of sections of the Equal Credit Opportunity Act, as redesignated by subsection (b) of the first section of this 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."

SEC. 9. Section 501 of title V of Public Law 93-495 is repealed.

Amend the title so as to read: "A bill 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."

HISTORY OF LEGISLATION

H.R. 3386 was introduced on February 20, 1975. Hearings on the legislation were held on April 22 and 23, 1975. On April 24 the Subcommittee met in executive session and adopted a number of amendments

to the legislation. The Subcommittee ordered a clean bill introduced and recommended favorably to the full Committee by a vote of 8 to 0. On April 30, 1975, Mr. Annunzio, the Subcommittee Chairman introduced the clean bill, H.R. 6516, for himself and all of the members of the Consumer Affairs Subcommittee. The full Committee met in executive session on May 6 and ordered the bill favorably reported with amendments.

NEED FOR THE LEGISLATION

During the 93d Congress legislation was enacted (P.L. 93-495) that prohibited discrimination in the granting of credit based on sex or marital status. Because this legislation was enacted during the closing days of the 93d Congress, it was impossible to achieve legislation that would have covered all forms of credit discrimination.

The Committee finds that discrimination in credit transactions on the basis of race, color, religion, national origin and age must be prevented. Numerous instances of denial of credit for reasons other than a person's creditworthiness were brought to the Committee's attention during hearings on the legislation. Further examples are contained in the Committee's files.

The importance of credit in our society was emphasized by Arthur S. Flemming, Chairman of the U.S. Commission on Civil Rights, in testimony before the Consumer Affairs Subcommittee:

It would be difficult to exaggerate the role of credit in our society. Credit is involved in an almost endless variety of transactions reaching from the medical delivery of the newborn to the rituals associated with the burial of the dead. The availability of credit often determines an individual's effective range of social choice and influences such basic life matters as selection of occupation and housing. Indeed, the availability of credit has a profound impact on an individual's ability to exercise the substantive civil rights guaranteed by the Constitution.

Your Committee believes that H.R. 6516 is landmark legislation. As Dr. Flemming stated, the legislation:

* * * promises to halt discrimination on the basis of race, color, religion, national origin and age in the granting of credit. Unlike the broad prohibitions contained in the Civil Rights Act of 1866, H.R. 3386 (H.R. 6516) pertains directly to the problem of credit discrimination. Unlike Title VIII of the Civil Rights Act of 1968, H.R. 3386 (H.R. 6516) forbids discrimination based on race, color, religion, national origin and age in all areas of credit not just mortgage finance.

It has been stated that credit is a privilege, not a right, and your Committee does not dispute this. Nevertheless, no one has the right arbitrarily to deny an individual credit on the basis of factors such as race, religion, national origin, age, sex, or marital status.

The Committee in its deliberations gave special attention to discrimination in credit on the basis of age. A common type of age discrimination brought to the Committee's attention is the arbitrary establishment of an age limit (usually around 65 years of age) after

which credit will not be established or will be revoked. One bank was found to require its overdraft checking account customers to agree not to write any checks on their accounts after reaching the age of 64. It was suggested to the Committee by some creditors that age limits are necessary because insurance companies will not write credit life insurance for borrowers passed certain ages. In fact, credit life is normally required in only a small percentage of loan transactions.

Empirical data proves that senior citizens are often better than average credit risks. The following table, showing credit performance of Montgomery Ward customers by age groups, illustrates this fact.

CUSTOMER AGE RELATED TO ACCOUNT PERFORMANCE

Customer age	Balance dollars 2 to 8 months delinquent as percent of all balances	Balance dollars 6 to 8 months delinquent as percent of all balances	Balance dollars charged off annually as percent of all balances
18 to 24.....	7.95	0.93	3.98
25 to 29.....	6.52	.73	3.76
30 to 34.....	5.24	.56	2.89
35 to 44.....	3.80	.36	1.76
45 to 54.....	2.40	.21	1.12
55 to 64.....	1.71	.15	.87
65 and up.....	1.63	.15	1.11

Other creditors reported similar experiences with elderly borrowers. In short, these creditors have told the Committee, "The elderly are our best customers." Despite this, many creditors discriminate against the elderly.

GENERAL COMMENTS

Several general comments on H.R. 6516 are in order. The term "age" as used in the legislation refers to an individual's age, not to the age of a business entity seeking credit. Thus, a three-week old business which was denied a loan because it had not been in operation for a sufficient period of time, could not charge "age" discrimination under this bill. The bill would, however, cover denial of a business loan to an individual because of his age.

The question of what type of inquiry a creditor can make of potential borrowers, your Committee feels, justifies further comment. It is clear that a creditor cannot use the race, color, religion, national origin or sex of a borrower under any circumstances in connection with deciding whether to grant or deny credit. However, the bill recognizes that there are two circumstances under which the creditor may use the age of a borrower.

Under section 2(b) of the bill a creditor may ask the age of a borrower in order to determine whether the borrower has the capacity to contract. A creditor may inquire about and consider the age of the borrower in evaluating creditworthiness only in one other narrowly defined area. Section 2(d) adds a new section 701(d) under which the Committee intends that a creditor may consider age when the purpose is affirmatively to extend credit to an age group which might not otherwise meet credit standards. Examples of such affirmative consideration of age are programs to provide credit to young couples without previous credit experience and to the elderly who might have incomes

which would be considered too low in ordinary circumstances but who should be granted credit for their limited needs. Several creditors stated to the Committee that they had established special "affirmative action" loan programs for such borrowers, referred to sometimes as "golden years" programs and "young homemakers" or "newlywed" programs. H.R. 6516 would not require the discontinuation of such programs.

There is no prohibition in this legislation against a creditor's asking a borrower's age, either in person or on a loan form. However, the creditor may use that age information only for the purposes described above, and in the case of special programs such as described above, only after the creditor has considered all other permissible factors in the credit granting process. Aside from the rights and remedies provision and the "affirmative action" programs described above, a creditor may not consider a borrower's age in determining whether to grant or deny credit. The intent of the legislation is that consideration of age by a creditor must be limited to the minimal exemptions noted above.

The Committee provides the following comments on new section 703(b) added by section 3 of the bill:

The first sentence of this new subsection provides that the mere fact that a creditor does not lend to a protected group in a ratio equal to the proportion which that group constitutes of the population of the creditor's lending area is not a *per se* violation of section 701. The second sentence of the new subsection provides that a creditor shall not be deemed to be in violation of section 701 for not considering the classifications in section 701(a) in its determination of creditworthiness or other aspects of a credit transaction. These provisions are not, however, intended to limit the use of population statistics to establish a *prima facie* case of discrimination in accordance with the "effects" test established by the Supreme Court in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), or otherwise to overrule the holding of the case. For example, the Federal Home Loan Bank Board uses the *Griggs* effects test in connection with alleged "redlining" of geographic areas by mortgage lenders, and the provision is not intended to affect the Board's enforcement efforts. It must also be made clear that section 703(b) is in no way intended to alter any legal remedies available to an aggrieved party. It in no way alters any existing law relating to burden of proof.

The Committee believes that small businesses should be protected from onerous recordkeeping requirements. The Committee recognizes that in a number of civil rights cases courts have ruled that statistical evidence can be used to establish a *prima facie* case of discrimination, shifting the burden of proof to the defendant to prove nondiscrimination. The language of section 703(b) does not challenge this general legal principle. However, if the principle were used as a rationale for requiring small retail merchants to keep and compile detailed records of the characteristics of all who seek credit from them, the Committee believes that their burden might prove to be too great. The purpose of section 703(b) is to protect such businesses from having such requirements imposed upon them. On the other hand, even if a creditor does not ask a borrower's race or age, for example, but denies credit for one of those reasons, the creditor would clearly be guilty of discrimination.

Section 703(b) is not intended to apply to housing lending or to large businesses. The Committee recognizes that a collection of data on residential mortgage loan applications and approvals can be a useful law enforcement tool in investigating discrimination in the financing of housing. Thus, it is the Committee's intent that section 703(b) not apply to loans which come under the coverage of the Fair Housing Act.

While H.R. 6516 applies to all credit transactions it is not intended to force creditors to make unrealistic credit decisions. For example, a mortgage lender could not deny a mortgage to a creditworthy elderly applicant, but it might not be realistic to make a 35 year mortgage to an 85 year old person. Whether the refusal to make such a loan would be discriminatory would be a question of the reasonableness of the creditor's decision. The Committee is aware that most mortgage loans are made with an expectation that they will be paid off before maturity, and such factors should be considered in determining the reasonableness of a lender's refusal to make such a loan in such a case. In the same vein, it should be understood that a reduction in the amount or terms of a proposed credit transaction is not necessarily to be construed as a denial of credit. For example, if a borrower makes a loan application for \$800 but the lender feels the applicant's financial condition justifies only a \$500 loan, then this would not constitute, *per se*, credit denial.

STATEMENTS REQUIRED IN ACCORDANCE WITH HOUSE RULES

In compliance with clause 2(1)(3) and 2(1)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made:

With regard to subdivision (A) of clause 3, relating to oversight findings, the Committee finds, in keeping with clause 2(b)(1) of Rule X, that this legislation is in full compliance with the provision of this rule of the House, which states:

In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee . . .

The objective of the bill is to extend the provisions of title VII of the Consumer Credit Protection Act to discrimination in the granting of credit based on race, color, religion, national origin, and age, to provide for an advisory committee to advise and consult with the Federal Reserve Board with respect to its functions under the Act, and to otherwise strengthen the title.

In compliance with subdivision (B) of clause 3, the Committee states that changes made by this bill involve no new budget authority.

With respect to subdivisions (C) and (D) of clause 3, the Committee advises that no estimate or comparison has been prepared by the Director of the Congressional Budget Office relative to any provisions of H.R. 6516, nor have any oversight findings or recommendations been made by the Committee on Government Operations with respect to the subject matter contained in H.R. 6516.

In compliance with clause 2(1)(4) of Rule XI of the House of Representatives, the Committee states that H.R. 6516 is not expected to have any measurable inflationary impact on prices and costs in the

operation of the national economy. The advisory council which would be created by this bill will be paid for the days it meets and is expected to meet only occasionally. The economic impact of this expenditure is expected to be nominal. The additional enforcement and rule-writing responsibilities that would be established by the bill should be able to be carried out with the existing staffs of the agencies involved or with only a limited number of additional staff. To the extent that the bill results in the removal of artificial barriers to credit, it is expected to stimulate economic growth.

In compliance with clause 2(1)(2)(B) of Rule XI of the House of Representatives, the following statement is made relative to the record vote on the motion to report H.R. 6526: The legislation was reported unanimously by a 36 to 0 vote.

SECTION-BY-SECTION ANALYSIS OF H.R. 6516

Short titles

Subsection (a) of the first section provides for a short title: that this Act may be cited as the "Equal Credit Opportunity Act Amendments of 1975".

Subsection (b) amends title VII of the Consumer Credit Protection Act by adding a new section to the existing law, which provides that title VII may be cited as the "Equal Credit Opportunity Act". Section 709 replaces, with identical language, section 501 of title V of Public Law 93-495 which is repealed by section 9 of the bill.

Section 2. Amendments to section 701 of the Equal Credit Opportunity Act (Prohibited Discrimination)

This section provides for the amendment of the Equal Credit Opportunity Act, as redesignated by subsection (b) of the first section of this Act:

(1) by adding the categories of age, provided the applicant has the capacity to contract, race, color, religion, and national origin to subsection (a) of section 701, which now prohibits any creditor from discriminating against any applicant on the basis of sex or marital status;

(2) by amending subsection (b) of section 701 by inserting "or age" immediately after "marital status". This amendment provides that an inquiry with regard to age shall not constitute discrimination for purposes of this title 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 creditworthiness; and

(3) by adding two new subsections to section 701 of the existing law. New subsection (c) provides that the refusal of credit in accordance with the terms of the following three types of programs shall not constitute a violation of this section: (1) any loan assistance program expressly authorized by law for an economically disadvantaged class of persons; (2) any loan assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or (3) any special purpose loan program offered by a profitmaking organization to meet special social needs which meets standards prescribed in regulations by the Board. Subsection (c) of the bill is meant to prevent lenders under such loan programs from

being charged with discrimination simply for refusing credit to persons not in the particular group provided for.

Under new subsection (d), inquiry and consideration by a creditor of the age of an applicant would be permissible only when the purpose is affirmatively to extend credit in favor of an age group which might not otherwise meet credit standards. "Extension of credit" in subsection (d) is meant to include renewal or continuation of credit, as well as an initial extension of credit to an applicant. This subsection is meant to allow creditors to grant credit to two categories of applicants who might otherwise not receive such credit: those who are too young to have previous credit experience and the elderly who might have incomes that would be considered too low in ordinary circumstances to entitle them to credit.

Section 3. Amendments to section 703 of the Equal Credit Opportunity Act (Regulations)

This section redesignates section 703 of the existing law as section 703(a) and adds new subsections (b) and (c). Under new subsection (b), the fact that a creditor's loans to any of the classifications in section 701 subsection (a) of the bill are not equal to the population percentage of such classifications in the creditor's trade area, is not a *per se* violation of section 701. Also, a creditor shall not be deemed to be in violation of section 701 for not considering the classifications in section 701 subsection (a) in its determination of the creditworthiness of an applicant or from any other aspect of a credit transaction. These provisions are not intended to limit existing law regarding the establishment of a *prima facie* case or the use of statistical proof.

Subsection (c) of the bill provides that the Board shall establish an advisory committee to assist it. In appointing the members of the committee, the Board shall seek to achieve a fair representation of the interests of creditors and consumers.

Section 4. Amendments to section 705 of the Equal Credit Opportunity Act (Relation to State Laws)

This section amends subsection (e) of section 705 of the existing law to provide that no person aggrieved by a violation of this title shall recover under this title on any transaction for which he or she recovers under the laws of any State relating to the prohibition of discrimination on the basis of race, color, religion, national origin, sex, marital status, or, provided the applicant has the capacity to contract, age.

Amended subsection (e) changes the existing law which requires, except as otherwise provided in title VII, that an applicant can elect to pursue remedies either under the title or under the laws of any State or governmental subdivision relating to the prohibition of discrimination based on sex or marital status with respect to any aspect of a credit transaction. Amended subsection (e) provides for the following changes:

(1) an aggrieved person who has recovered under an applicable State law cannot also recover under this title. This means an aggrieved person can pursue remedies short of recovery of damages under either title VII or State law, or both. Such person can sue for recovery of damages under either title VII or State law, or both. However, if such person recovers under a State law, he

cannot then recover under title VII. If such person sues under State law and loses, he can still seek recovery under this title. In contrast, under existing subsection (e) mere pursuit of a remedy, rather than actual recovery, under this title or under the laws of any State or governmental subdivision foreclosed pursuing a remedy in the other jurisdiction;

(2) subsection (e) is expanded to include State laws relating to discrimination categories other than sex and marital status;

(3) the State laws covered are not limited to those dealing with discrimination with respect to a credit transaction; and

(4) the reference in existing subsection (e) to " * * * the laws of any State or governmental subdivision * * * " is changed to " * * * the laws of the State * * * ".

Section 5. Amendments to section 706 of the Equal Credit Opportunity Act (Civil Liability)

This section amends section 706 of the existing law by changing the wording of subsection (a) from "any creditor who fails to comply with any requirement imposed under this title shall be liable . . ." to "any creditor who violates section 701 or any regulation prescribed under section 703 shall be liable . . ." and by changing the wording of the provision regarding those to whom the creditor would be liable with regard to a class action from ". . . a representative of a class" to ". . . a member of a class." "Member of a class" is a broader term than "representative of a class".

Subsection (b) of section 706, which provides for punitive damages, as amended by H.R. 6516 would change the existing law in several ways:

(1) it specifically excludes any Government or governmental subdivision or agency from liability for punitive damages;

(2) it provides that only a creditor who "willfully" violates section 701 or any regulation prescribed under section 703 shall be liable for punitive damages. The addition of "willfully" is meant to prevent a creditor from being held liable for punitive damages for a technical, nonwillful violation of section 701 or any regulation prescribed under section 703. Under subsection (b) of the existing law a creditor's liability for punitive damages arises merely for failure ". . . to comply with any requirements imposed under this title . . .";

(3) it specifically requires violation of section 701 or a regulation prescribed under section 703 for creditor liability for punitive damages. Subsection (b) and subsection (c) of the existing law are more general referring to failure to comply with ". . . any requirement imposed under this title . . ."; and

(4) it combines subsection (b) and (c) of the existing law (with some word changes) which deal, respectively, with punitive damages recoverable by an applicant who proceeds in an individual capacity and with punitive damages recoverable in a class action. Subsection (b) as amended omits the language contained in subsection (c) of the existing law allowing class action recovery ". . . in such amount as the court may allow, except that

as to each member of the class no minimum recovery shall be applicable, . . .”.

In place of existing subsection (d), a new subsection (c) provides that upon application of an aggrieved applicant, the appropriate United States district court may grant such equitable and declaratory relief as is necessary to enforce section 701 or any regulation prescribed under section 703. New subsection (c)'s provision for equitable and declaratory relief has a broader effect than subsection (d) of the existing law, which only provides for preventive relief. However, it is more limited in one respect since application by an aggrieved applicant for equitable and declaratory relief may be made only to an appropriate United States district court. Application to a State court for preventive relief is possible under subsection (d) of the existing law.

New subsection (d) utilizes some different language, but, in effect, restates subsection (e) of the existing law as to the costs of a successful action together with reasonable attorneys' fees.

In place of subsection (f) of the existing law, new subsection (e) provides that no provision of title VII imposing liability shall apply to any act done or omitted in good faith in conformity with any official regulation or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such regulation or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. Subsection (f) of the existing law refers to “any rule, regulation, or interpretation thereof by the Board”. New Subsection (e) clarifies that the regulation or interpretation must be an official regulation or interpretation of the Board.

New subsection (f) replaces and provides that an action may be brought in the appropriate United States district court without regard to the amount in controversy. The right to bring such an action in the State law is no longer stated. No Federal action shall be brought later than one year from the date of the occurrence of the violation, unless within one year from the date of the occurrence of the violation:

(1) any agency having responsibility for administrative enforcement under section 704 begins its enforcement proceeding within one year from the date of the occurrence of the violation and obtains compliance with this title by a creditor who was in violation of such title; or

(2) the Attorney General begins a civil action within one year from the date of the occurrence of the violation in an appropriate United States district court under this section against a creditor who is found by the court to be in violation of this title. In either event, and applicant who has been a victim of discrimination which was the subject of the administrative action or the judgment of the court may bring an action under this section against such creditor within one year after the date of the creditor's compliance with the administrative action or the judgment of the court.

Subsections (g), (h), and (i) are entirely new. Subsection (g) provides that agencies having responsibility for administrative enforcement under section 704 are authorized to refer a matter to the Attorney General for civil action if the agency is unable to obtain compliance with section 701.

Subsection (h) provides that the Attorney General may bring a civil action in any appropriate United States district court for appropriate

relief including injunctive relief, if the matter has been referred pursuant to subsection (g) or the Attorney General has reason to believe one or more creditors are engaged in a pattern or practice which violates this title.

Subsection (i) provides that 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 both violations are based on the same transaction.

Section 6. New section 707 of the Equal Credit Opportunity Act (Annual Report to Congress)

Section 6 redesignates existing section 707 (Effective date) as section 708 and adds a new section 707 providing that not later than February 1 of each year after 1976, the Board and the Attorney General shall each make reports to the Congress concerning: the administration of their functions under this title, an evaluation of the extent to which compliance with 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.

Section 7. Amendments to section 708 of the Equal Credit Opportunity Act (Effective date)

This section provides that the amendments made by the bill shall take effect six months after the date of its enactment.

Section 8. Technical amendment

This section provides for a technical amendment to the table of sections of the Equal Credit Opportunity Act to reflect the changes made by the bill.

Section 9. Technical amendment

This section provides that section 501 of title V of Public Law 93-495 is repealed. Section 501, which provides that this title may be cited as the “Equal Credit Opportunity Act”, is replaced by section 709 as added by the first section of the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

EQUAL CREDIT OPPORTUNITY ACT

TITLE VII—EQUAL CREDIT OPPORTUNITY

Sec.	
701.	Prohibited discrimination.
702.	Definitions.
703.	Regulations.
704.	Administrative enforcement.
705.	Relation to State laws.
706.	Civil liability.
	[707. Effective date.]
707.	Annual reports to Congress.
708.	Effective date.
709.	Short title.

§ 701. Prohibited discrimination

(a) It shall be unlawful for any creditor to discriminate against any applicant on the basis of *age provided the applicant has the capacity to contract, race, color, religion, national origin, sex or marital status* with respect to any aspect of a credit transaction.

(b) An inquiry of marital status or *age* shall not constitute discrimination for purposes of this title 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 creditworthiness.

(c) *The declination of credit on terms offered pursuant to—*

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

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

(3) *any special purpose loan program offered by a profitmaking organization to meet special social needs which meets standards prescribed in regulations by the Board;*
shall not constitute a violation of this section.

(d) *Inquiry and consideration by a creditor of the age of an applicant when used by such creditor in the extension of credit in favor of an applicant because such applicant is in a particular age category shall not constitute discrimination under this section.*

* * * * *

§ 703. Regulations

(a) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. Such regulations shall be prescribed as soon as possible after the date of enactment of this Act, but in no event later than the effective date of this Act.

(b) *The fact that a creditor's loans to any classification enumerated in section 701(a) are not equal to the population percentage of such classifications in the creditor's trade area, is not a violation of section 701. In addition, a creditor shall not be deemed to be in violation of section 701 if the creditor excludes the classifications in section 701(a) from its determination of the creditworthiness of an applicant or from any other aspect of a credit transaction.*

(c) *The Board shall establish an advisory committee to advise and consult with it in the exercise of its functions under this Act. In appointing the members of the committee, the Board shall seek to achieve a fair representation of the interests of creditors and consumers. The committee shall meet from time to time at the call of the Board. Members of the committee who are not regular full-time employees of the United States shall, while attending meetings of such committee, be entitled to receive compensation at a rate fixed by the Board, but not exceeding \$100 per day, including traveltime. Such members may be allowed travel expenses, including transportation*

and subsistence, while away from their homes or regular place of business.

* * * * *

§ 705. Relation to State laws

(a) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this title: *Provided, however,* That this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.

(b) Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this title.

(c) Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit from the same creditor: *Provided,* That in any case where such a State law is so preempted each party to the marriage shall be solely responsible for the debt so contracted.

(d) When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States.

[(e) Except as otherwise provided in this title, the applicant shall have the option of pursuing remedies under the provisions of this title in lieu of, but not in addition to, the remedies provided by the laws of any State or governmental subdivision relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.]

(e) *No person aggrieved by a violation of this title shall recover under this title on any transaction for which recovery is had under the laws of any State relating to the prohibition of discrimination on the basis of race, color, religion, national origin, sex, marital status, or, provided the applicant has the capacity to contract, age.*

§ 706. Civil liability

(a) Any creditor who [fails to comply with any requirement imposed under this title] *violates section 701 or any regulation prescribed under section 703* shall be liable to the aggrieved applicant in an amount equal to the sum of any actual damages sustained by such applicant acting either in an individual capacity or as a [representative] member of a class.

[(b) Any creditor 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, as determined by the court, in addition to any actual damages provided in section 706(a): *Provided, however,* That in pursuing the recovery allowed under this subsection, the applicant may proceed only in an individual capacity and not as a representative of a class.

[(c) Section 706(b) notwithstanding, any creditor who fails to comply with any requirement imposed under this title may be liable

for punitive damages in the case of a class action in such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not exceed the lesser of \$100,000 or 1 percent of the net worth of the creditor. In determining the amount of award in any class 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.

[(d) When a creditor fails to comply with any requirement imposed under this title, an aggrieved applicant may institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other action.

[(e) In the case of any successful action to enforce the foregoing liability, 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 the provisions of subsections (a), (b), and (c) of this section.

[(f) No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

[(g) Without regard to the amount in controversy, any action under this title may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.]

(b) *Except with respect to any Government or governmental subdivision or agency, any creditor who willfully violates section 701 or any regulation prescribed under section 703 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 in the case of a class action the total recovery shall not exceed the lesser of \$100,000 or 1 per centum of the net worth of the creditor. In determining the amount of award in any class 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 may grant such equitable and declaratory relief as is necessary to enforce section 701 or any regulation prescribed under section 703.*

(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 regulation or interpretation thereof by the Board, notwithstanding that*

after such act or omission has occurred, such regulation or interpretation 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. No such action shall be brought later than one year from the date of the occurrence of the violation, except—*

(1) *whenever any agency having responsibility for administrative enforcement under section 704 commences its enforcement proceeding within one year from the date of the occurrence of the violation and obtains compliance with this title by a creditor who was in violation of such title, or*

(2) *whenever the Attorney General commences a civil action within one year from the date of the occurrence of the violation in an appropriate United States district court under this section against a creditor who is found by the court to be in violation of this title,*

then any applicant who has been a victim of the discrimination with respect to the administrative action under paragraph (1) or the judgment of the court under paragraph (2) may, within one year after the date of compliance with the administrative action or within one year after the date of the judgment of the court, as the case may be, bring an action under this section against such creditor.

(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.*

(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 each such violation is based on the same transaction.*

§ 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.

§ 707.] § 708. Effective date

This title takes effect upon the expiration of one year after the date of its enactment, except that the amendments made by the Equal Opportunity Act Amendments of 1975 shall take effect six months after the date of its enactment.

§ 709. *Short title*

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

SECTION 501 OF PUBLIC LAW 93-495

【§ 501. *Short title*

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

ADDITIONAL VIEWS OF HON. LEONOR K. SULLIVAN

Legislation to amend the Equal Credit Opportunity Act of October 28, 1974, is needed in order to accomplish these two important purposes:

1. To strengthen materially—before it takes effect October 28, 1975—the weak law now on the books to prohibit discrimination in credit transactions by reason of sex or marital status. (How this law was enacted last year as a non-germane Senate rider to an unrelated House bill, without the House having had any opportunity to act on its specific provisions, is described below in the history of this legislation.)

2. In addition to strengthening the existing law applying to discrimination based on sex or marital status, it is essential also to effectively prohibit discrimination in credit by reason of race, color, religion, national origin, or age.

Most of the provisions of H.R. 6516 as reported from the Committee on Banking, Currency, and Housing are directed to these two desirable objectives. Furthermore, the Committee amendments reported to the House are generally technical or substantive improvements. But H.R. 6516 (introduced as a clean bill following action by the Subcommittee on Consumer Affairs on H.R. 3386) contains several serious changes from the original bill which not only water down the proposed new prohibitions dealing with race, color, religion, national origin, and age, but *actually reduce the effectiveness of the weak existing law dealing with discrimination by reason of sex or marital status.*

Thus, the women's groups which worked so hard to get Congress to enact a law to outlaw credit practices based on archaic concepts of women's role in the economy would find H.R. 6516—if not strengthened on the House Floor—a trade-off. Several good new enforcement weapons would be added to the law, but at the expense of greater difficulty in getting into court than is now the case when violations occur.

ADDITION OF THE WORD "WILLFULLY"

A glance at the Ramseyer section of the report showing changes in existing law will reveal that H.R. 6516 revises significantly, and mostly for the better, the existing law's Section 706 dealing with civil liability. One of the major changes ascribes important enforcement powers to the Attorney General, in pursuing credit discrimination violations called to his attention by the various Federal enforcement agencies or, in acting on his own initiative, "whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation" of the Equal Credit Opportunity Act. Another new provision provides aggrieved applicants for credit a period of up to one year after an enforcement agency *establishes* a violation by a creditor to enter a suit for damages. Otherwise, the one-year statute of limitations in the present Act could well expire before an applicant who had been turned down for credit became aware from a Federal agency action that he

or she may have been discriminated against illegally by that creditor and had a legitimate cause of action for redress.

However, against these consumer protection improvements in the law, section 706 as revised by H.R. 6516, would provide that no consumer could successfully seek punitive damages unless the creditor "willfully" violates the law.

This word is not in the present law. Removal of the word "willfully" from H.R. 6516 would not open the way to frivolous law suits based on technical violations because other provisions of the legislation require that in successful class actions the court in determining the amount of the award must take into consideration, among other things, "the extent to which the creditor's failure of compliance was intentional." This is, in any event, a test which the courts would apply in any case involving punitive damages. Requiring that *willfulness* be proved as a condition of collecting punitive damages would mean that the kind of proof generally required in criminal cases would have to be produced in civil actions under this law. (Unlike the Truth in Lending Act, the Equal Credit Opportunity Act contains no provision for criminal penalties for wilful violations.)

SHOULD PROVIDE THE RIGHT TO KNOW THE REASON FOR DENIAL OF CREDIT

One of the most frustrating experiences of the *creditworthy* applicant in being turned down for credit is to try to find out why. Under the Fair Credit Reporting Act, such an applicant must be told whether the rejection was based wholly or in part on information provided by a credit bureau, but not the *reason* for rejection. Many consumers who are refused credit ostensibly because of a credit report then go to the credit bureau but find nothing in their record which can be considered adverse. The creditor does not indicate what material in the credit report has prompted the turndown.

In developing its regulation for implementing the Equal Credit Opportunity Act of 1974 applying to discrimination by reason of sex or marital status, the Federal Reserve Board proposes that all credit applications carry a notation that in case of rejection the applicant is entitled to ask for the reason and to receive it in writing, and that the rejected applicant must be given the creditor's reason for rejection upon so requesting it. An amendment I offered in Committee to write this protection specifically into the law was rejected on a tie vote, 18 to 18. It will be reoffered on the House Floor to provide statutory support for the Federal Reserve regulatory proposal. It would provide consumers with information they need to know in order to determine whether a rejection for credit is legitimately based on lack of creditworthiness and potential difficulty in obtaining payment of the credit. Such a provision would eliminate many misunderstandings which could cause needless litigation.

Adoption of this amendment would strengthen the law, and would prevent a successful challenge to the Fed's right to require such disclosure to all consumers covered under the Equal Credit Opportunity Act. Under the Act as now written, the Federal Reserve has full authority to make provision in its regulations for adjustments and exceptions for "any class of transactions" necessary in its judgment to effectuate the purposes of the law. If enacted, therefore, this amend-

ment would not—as some critics charged in Committee it would do—have to require every "mom and pop" grocery store or neighborhood gas station operator to provide written explanations for refusing to put a casual customer's Sunday purchase "on the tab."

RELATION TO STATE LAWS (COMMITTEE AMENDMENT)

The Committee amendment language now in Section 4 of the amended bill dealing with state laws was originally a part of another section of H.R. 3386 and apparently was inadvertently dropped in drafting the clean bill.

It eliminates Section 705 (e) of the existing law which now requires an aggrieved applicant seeking redress for discrimination to elect to use *either* machinery of the Federal law or of any state law applying to the same transaction. Many of the state laws prohibiting credit discrimination provide only for mediation by the state human rights commission or similar agency, with no provision for recovery of damages. A consumer who is referred to a state agency for help in investigating a rejection for credit based perhaps on illegal discrimination should not thereby be precluded from recovering damages he or she would be entitled to for violation of this Federal law. At the same time, the amendment makes clear that damages can not be obtained under the Federal law if recovery has been had under a state anti-discrimination law affecting the same transaction.

For instance, according to information obtained by the Subcommittee in 1974 on state anti-discrimination laws, summarized in Part 2 of the 1974 hearings on Credit Discrimination, the *Connecticut* Human Rights Commission can investigate complaints and order payment of actual damages only; in *Maryland* the Commissioner of Small Loans can issue cease and desist orders and seek criminal penalties, but there is no provision for private suits; similarly in *Minnesota*, there is no provision for private suits but the State Commission Against Discrimination can seek criminal penalties for contempt of a Commission order; *New Jersey's* law provides for complaints to the Attorney General but no provision for damages; *Rhode Island's* law provides primarily for conciliation by the Commission on Human Rights; *Illinois's* law sets up no enforcement machinery; and administrative remedies only are available in *West Virginia*, *Vermont*, *Alaska*, *Kansas*, and *South Dakota*. A \$1,000 fine can be imposed in *Wisconsin*.

Actual damages can be obtained under court action in *Washington* (plus court costs), in *California* (plus \$250), in *Utah*, and in *Texas* (or \$50, whichever is greater). In *Colorado*, consumers can sue for actual damages, and if successful can receive at least \$100 and up to \$1,000, plus costs. *Massachusetts* provides for actual and special damages up to \$1,000. *Oregon* permits both compensatory and punitive damages.

AVOIDING CONFUSION IN ENFORCEMENT POLICY (COMMITTEE AMENDMENT)

A provision of H.R. 6516 struck out by a committee amendment would have amended Section 706 of the existing law to provide a "good faith" defense against liability under the Act for any creditor who can show that he acted in conformance with any "interpretation" of

the act provided by any of the many Federal agencies which now have enforcement responsibilities under the Equal Credit Opportunity Act—the FTC, the CAB, the SEC, the Small Business Administration, the Farm Credit Administration, the FDIC, the Home Loan Bank Board, the Comptroller of the Currency, the Interstate Commerce Commission, the Federal Credit Union Administration, or the Secretary of Agriculture—in addition to the Federal Reserve, which alone has the power to issue regulations under the Act.

Both the Federal Reserve and the FTC have advised the Committee that allowing a proliferation of agencies authorized to issue legally-binding interpretations of the Act would cause vast confusion as to compliance requirements and undermine if not destroy the goal of uniformity of enforcement policy. The Federal Reserve, furthermore, has assured the Committee that it and the 12 regional Federal Reserve Banks stand ready at any time to advise any businessman who requests guidance on what he can or cannot do under the Act.

The Fed also provides such guidance to business firms under the Truth in Lending Act, for which it also has sole power for issuing regulations and official interpretations. Under both laws the creditor can depend absolutely as a “good faith” defense against charges of violation any action based on conformance to the policy set down by the Federal Reserve Board. The Government should speak with one voice on this crucial matter of compliance policy, not through 12 separate agencies issuing differing interpretations.

The Committee amendment striking the words “or any other agency having rulewriting or enforcement responsibilities under the Act” in the revised Section 706(e) should therefore be approved by the House to prevent chaotic dispersal of binding rule-making authority among the 12 different agencies of government enforcing the Equal Credit Opportunity Act.

NEED FOR CLASS ACTIONS AS AN EFFECTIVE DETERRENT

Perhaps the most serious of all of the changes made in H.R. 3386 by the Subcommittee and now contained in H.R. 6516 is one which continues the ceiling in the present law of \$100,000 or 1% of net worth, *whichever is less*, as the maximum amount of recovery of punitive damages in a class action suit, regardless of the number of persons involved or the seriousness of the violation or violations. H.R. 3386, before amendment in the Subcommittee, would have set these maximum limits at \$50,000 or 1% of net worth, *whichever is greater*.

To a very large national creditor, a \$100,000 judgment in a class action suit is inconsequential as a deterrent to serious violations; similarly, to a small local creditor, thinly capitalized, a judgment aggregating only 1% of net worth is also negligible as a deterrent. Private law suits, particularly the threat of class actions, are regarded by the enforcement agencies as an invaluable adjunct to administrative enforcement efforts, but only if the penalties are significant enough to justify the tremendous complexities of utilizing the class action device under the severe restrictions of Federal Rule 23 as recently upheld by the Supreme Court. If the word “willfully” stays in the bill, the limitations on class action penalties in the legislation as now written preclude any effective use of class actions in promoting creditor compliance with the Equal Credit Opportunity Act.

Unless the words “lesser of \$100,000 or 1% of net worth” are replaced by the language originally in H.R. 3386, “greater of \$50,000 or 1% of net worth”, it would be preferable in my opinion to have no reference in the Equal Credit Opportunity Act to class actions.

EXTRA CREDITOR PROTECTIONS ADDED IN SECTION 3(b)

I tried and failed in Committee to strike from Section 3(b) the second sentence holding a creditor not in violation of the Act if the creditor excludes race, color, religion, national origin, age, sex, or marital status “from its determination of the credit worthiness of any applicant or from any other aspect of a credit transaction.” I find these words unclear and a potential loophole of vast dimensions. Congressman Mitchell of Maryland tried and failed in Committee to delete all of Section 3(b) including the first sentence which in effect holds that no prima facie case of violation can be established by evidence of apparent discrimination based on statistical data. I support Congressman Mitchell's contention that such evidence, while certainly not conclusive, should at least be permitted to be taken into consideration, particularly when the figures are so flagrantly lopsided as to indicate pretty strongly that the creditor may be discriminating illegally.

HISTORY OF THE LEGISLATION

While I have been critical of some of the provisions of the bill and of existing law which I think are weak or are loopholes in fighting unfair credit discrimination, I am nevertheless deeply proud of the progress that has been made in this field in the very short period of three years since the National Commission on Consumer Finance held hearings at my instigation on the extent of discrimination against women, particularly married women, in the use of credit. The Commission, which was created by Title 4 of the Consumer Credit Protection Act of 1968, conducted a study between 1970 and the end of 1972 into all aspects of consumer credit in the United States and made many excellent (along with some hotly disputed) recommendations for improvement of the consumer credit field. But the aspect of the Commission's work which instantly won the greatest public interest and support was in dramatizing the extent of credit discrimination against women. Congressman Gonzalez of Texas and former Congressman Lawrence G. Williams of Pennsylvania served with me as House Members of the 9-member Commission during the 92nd Congress.

Three years ago this month when we held our Commission hearings on this issue, there was not a single law, I believe, on the books of any state, and not a single bill in either House of Congress, to prohibit credit discrimination based on sex or marital status. Immediately thereafter—even before the Commission completed its final report in December 1972—the states began passing laws to prohibit discrimination in credit because of sex, or because of sex or marital status, and dozens of bills along the same line were introduced in Congress. The Senate passed such a bill without hearings in the 93rd Congress as part of an omnibus bill containing numerous controversial provisions to revise the Truth in Lending Act. In the House, the Subcommittee on Consumer Affairs drafted and proceeded to take up a separate bill dealing with discrimination by reason of race, color, religion, national origin, age, sex, and marital status, with the agreement among its

13 co-sponsors that we would all oppose any attempt to make the House anti-discrimination bill a vehicle for going to Conference on the Senate's omnibus Truth in Lending bill.

But after the Subcommittee on Consumer Affairs had completed action on its broad-based anti-discrimination bill last year and before the full Committee acted on it, the House Conferees from another Subcommittee went to Conference with the Senate on the Bank Deposit insurance bill to which the Senate had attached all of the provisions of their consumer credit bill. The House Conferees agreed to these Senate riders, including the weak Senate anti-discrimination bill, and the Conference Report then came before the House under a Rule waiving points of order against the non-germane Senate amendments. Thus there was no way to obtain separate votes in the House on the individual provisions of the non-germane Senate amendments. Under the equivalent of a Closed Rule on the Conference Report on the Bank Deposit Insurance Bill the House was faced with the choice of defeating or recommitting the entire Conference Report, including provisions desperately sought by the homebuilding industry as a means to try to revive that depression-ridden segment of the economy.

That is how a weak Equal Credit Opportunity Act was enacted, to take effect October 28, 1975, and how some seriously weakening amendments to the class action provisions of the Truth in Lending Act were also enacted, to take effect immediately on passage and apply retroactively to pending cases, without the House having had the opportunity to vote on any of these specific provisions or to amend them.

This year, therefore, I introduced on the opening day of the 94th Congress a new credit discrimination bill, H.R. 1065, which was later reintroduced in identical form as H.R. 3386 on February 20 by the new Chairman of the Subcommittee on Consumer Affairs, Mr. Annunzio, and was co-sponsored by seven others of us on the Subcommittee and by Chairman Reuss of the parent Committee. This legislation was intended to close the loopholes in the 1974 statute on equal credit and to expand its coverage to include all of the categories now cited in H.R. 6516, along with sex and marital status. H.R. 6516 incorporates most of the provisions originally introduced in the last Congress as H.R. 14856, and H.R. 1065 and H.R. 3386 as introduced in this Congress, I am proud of the work which has gone into this legislation *as far as it goes*.

But since the new bill as it now stands is not as strong as it needs to be to meet its objectives, I call upon the House to join in making the Equal Credit Opportunity Act into the kind of law it *should* be to eliminate unfair and irrational discrimination against millions of creditworthy Americans—men and women; single, married, or divorced; black or white; under 26 or over 65; English or Spanish-speaking—*as long as they are creditworthy*.

The Chairman of the Subcommittee, Mr. Annunzio, has worked hard to get a good bill through. I appreciate the courageous position he has taken on some of the more controversial issues considered in the Subcommittee and in the full Committee. I hope we can all be proud of the final version of this legislation in fighting credit discrimination.

LEONOR K. SULLIVAN.

94TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 94-589

EQUAL CREDIT OPPORTUNITY ACT
AMENDMENTS OF 1976

REPORT
OF THE
COMMITTEE ON BANKING, HOUSING
AND URBAN AFFAIRS
UNITED STATES SENATE
TO ACCOMPANY
H.R. 6516
TOGETHER WITH
ADDITIONAL VIEWS



JANUARY 21, 1976.—Ordered to be printed

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(III)

EQUAL CREDIT OPPORTUNITY ACT AMENDMENTS OF 1975

JANUARY 21, 1976.—Ordered to be printed

Mr. BIDEN, from the Committee on Banking, Housing and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 6516]

The Committee on Banking, Housing and Urban Affairs, to which was referred the bill (H.R. 6516) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

HISTORY OF THE LEGISLATION

The Equal Credit Opportunity Act Amendments bill, S. 1927, was introduced by Senators Biden and Proxmire on June 12, 1975. Earlier, Senator Brock had introduced a bill, S. 483, dealing exclusively with age discrimination; and a House-passed bill, H.R. 6516, had been sent to the Senate. All three bills were referred to the Consumer Affairs Subcommittee, which held hearings on them on July 15, 17 and 24, 1975. That Subcommittee met in executive session on September 29, 1975, and recommended a revised version of S. 1927 to the full Committee. In meetings on December 12 and 15 the full Committee met and approved the bill as recommended, with several amendments. The Committee then substituted the text of its bill for that of H.R. 6516, which without objection is herewith reported.

Hearings in the House of Representatives in 1974 produced testimony of discrimination against credit applicants on account of their sex or marital status, and also on account of other characteristics unrelated to creditworthiness. The resulting legislation, the Equal Credit Opportunity Act of 1974 (Title V of Public Law 93-495), enacted at the end of the 93rd Congress, dealt only with discrimination on the grounds of sex or marital status, and this legislation is therefore the natural extension of that Act to encompass other categories of discriminatory practices.

The bill expands the prohibitions against discrimination in credit transactions to include age, race, color, religion, national origin, receipt of public assistance benefits, and exercise of rights under the Consumer Credit Protection Act. At the same time, the bill recognizes the utility and desirability of "affirmative action" type credit programs whether offered under governmental auspices or by private credit grantors. The bill also recognizes the genuine need of creditors to know their applicants' age and the source of their income in order to make a determination of creditworthiness.

In one of its most important provisions, the bill establishes for the first time in federal legislation the right of rejected credit applicants to obtain a statement of reasons for the action taken against them.

The remainder of the bill is incidental to its major purpose of extending the federal ban on discriminatory credit practices. The bill creates a new Consumer Advisory Council in the Federal Reserve Board to advise and consult with it concerning its supervisory functions under this Act and the rest of the Consumer Credit Protection Act. In the process this Council will absorb the existing Truth in Lending Advisory Committee. The bill further clarifies the relationship of this Act to existing or future state law dealing with credit discrimination, generally permitting such state law to continue in effect so long as it is not inconsistent with this Act.

The bill substantially strengthens the enforcement mechanisms in the present law. The ceiling for class action recoveries of civil penalties is raised from the present formula of the lesser of \$100,000 or 1% of the creditor's net worth, to the lesser of \$500,000 or 1%. The U.S. Attorney General is empowered to bring enforcement actions, either on referral from other agencies or on his own initiative where there are patterns or practices in violation of the Act. The Federal Reserve Board and the Attorney General, will be required to submit annual reports on their activities.

The original Equal Credit Opportunity Act, dealing only with discrimination on the grounds of sex or marital status, applied to *all* credit transactions, not only those involving consumer applicants. The Federal Reserve Board's regulations under that Act have recognized that there are often significant operational differences between consumer and business credit, and this bill permits the Board to exempt classes of business credit transactions where the Act's prohibitions and remedies prove unnecessary.

Credit has ceased to be a luxury item, either for consumers or for business entrepreneurs. Consumer credit outstanding continues to grow at a phenomenal pace and now stands slightly below \$200 billion, not even counting 1-4 family mortgage credit which would add more than \$400 billion to that total. Virtually all home purchases are made on credit. About two-thirds of consumer automobile purchases are on an installment basis. Large department stores report that 50% or more of their sales are on revolving or closed-end credit plans. Upwards of 15% of all consumer disposable income is devoted to credit obligations other than home mortgages.

In this circumstance the Committee believes it must be established as clear national policy that no credit applicant shall be denied the credit he or she needs and wants on the basis of characteristics that have nothing to do with his or her creditworthiness. The Committee readily acknowledges that irrational discrimination is not in the creditor's own best interests because it means he is losing a potentially valuable and creditworthy customer. But, despite this logical truth, the hearing record is replete with examples of refusals to extend or to continue credit arrangements for applicants falling within one or more of the categories addressed by this bill.

Discrimination against the elderly was the most often cited abuse, despite the fact that in the experience of many creditors their older customers were their best customers. The Committee finds no justification for any policy of refusing to extend credit to persons merely because they fall within certain age groups, particularly when the only reasons offered for such blanket refusals are the unavailability of credit life insurance, or the mere "likelihood" of insufficient income on retirement, or the possibility that the applicant will not survive through the full term of an adequately secured mortgage.

Past instances of discrimination against racial minorities were cited in the record. More recently, studies conducted by federal agencies have indicated the strong probability of race discrimination in mortgage credit. (The pilot studies conducted by the Comptroller of the Currency and the Federal Home Loan Bank Board are contained in the hearing record.) In its testimony, the Department of Justice also noted the emerging problems of credit discrimination as a result of the Arab oil boycott; the Department urged the inclusion of race, color, religion and national origin to parallel other civil rights legislation.

In short, this bill identifies characteristics of applicants which the Committee believes are, and must be, irrelevant to a credit judgment, and prohibits or curtails their use.

At the same time the Committee recognizes and affirms the creditor's right to make a rational decision about an applicant's creditworthiness. Thus the bill allows inquiries about the applicant's age and about whether the applicant's income is from public assistance and permits use of those characteristics in scientifically sound credit

scoring systems. It also permits and encourages "affirmative action" type credit programs.

The requirement that creditors give reasons for adverse action is, in the Committee's view, a strong and necessary adjunct to the antidiscrimination purpose of the legislation, for only if creditors know they must explain their decisions will they effectively be discouraged from discriminatory practices. Yet this requirement fulfills a broader need: rejected credit applicants will now be able to learn where and how their credit status is deficient and this information should have a pervasive and valuable educational benefit. Instead of being told only that they do not meet a particular creditor's standards, consumers particularly should benefit from knowing, for example, that the reason for the denial is their short residence in the area, or their recent change of employment, or their already over-extended financial situation. In those cases where the creditor may have acted on misinformation or inadequate information, the statement of reasons gives the applicant a chance to rectify the mistake.

Beyond these substantive needs, and now that the law will be expanded considerably beyond its present sex and marital status scope, the Committee believes it is essential that strong enforcement mechanisms be established, and that the states be left free to develop their own more vigorous anti-discrimination laws. On the former point, the bill increases the ceiling for class action recoveries of punitive damages, and authorizes enforcement actions by the Attorney General as well as by other agencies. State laws on credit discrimination are not displaced unless they are inconsistent with the federal law, and states with substantially similar or stronger laws may be exempted from this Act in favor of their local laws.

In sum, this bill is intended to prevent the kinds of credit discrimination which have occurred in the past, and to anticipate and prevent discriminatory practices in the future. The Committee believes the bill will do this without infringing on the freedom of creditors to make informed credit judgments and avoid unsound practices. This legislation should therefore redound to the benefit of both creditors and applicants, by producing a more informed and competitive marketplace, where credit applicants can be assured of evenhanded treatment in their quest for what has become a virtual necessity of life.

EXPLANATION OF THE LEGISLATION

Categories of Prohibited Discrimination

The prohibitions against discrimination on the basis of race, color, religion or national origin are unqualified. In the Committee's view, these characteristics are totally unrelated to creditworthiness and cannot be considered by any creditor. In determining the existence of discrimination on these grounds, as well as on the other grounds discussed below, courts or agencies are free to look at the effects of a creditor's practices as well as the creditor's motives or conduct in individual transactions. Thus judicial constructions of anti-discrimination legislation in the employment field, in cases such as *Griggs v. Duke Power Company*, 401 U.S. 424 (1971), and *Albemarle Paper Company v. Moody* (U.S. Supreme Court, June 25, 1975), are intended to serve

as guides in the application of this Act, especially with respect to the allocations of burdens of proof.

Creditors are obviously free to require that their applicants have reached the age of majority so that they are competent to enter binding contracts. Creditors are precluded from rejecting or "blackballing" any applicant solely because of his or her age, but creditors may inquire about the applicant's age in order to assess other factors directly related to creditworthiness. Thus a creditor justifiably may inquire how close to retirement an applicant is so that he may judge whether the applicant's income will continue at a sufficient level to support the credit extension. Similarly, the creditor is entitled to ask the applicant's age to gauge the pattern or intensity of his or her credit history. The Federal Reserve Board is given authority to identify other pertinent elements of creditworthiness for which age is a necessary preliminary inquiry. One such element might be the adequacy of any security offered by the applicant. An elderly applicant might not qualify for a 5%-down condominium loan because the duration of the loan exceeds his life expectancy and the condominium itself has a speculative future value. But that same applicant ought to be deemed creditworthy when he seeks a \$10,000 home improvement loan secured by a \$50,000 homesite.

Similar considerations apply in the case of public assistance recipients, and the Committee intends this category to be read broadly to include all federal, state or local governmental assistance programs, whether premised on entitlement or need. Blackballing such applicants, or arbitrarily discounting such income, is forbidden, but this provision in the bill should not be read to mandate extensions of credit to individuals on public assistance whose incomes can be expected to be low or marginal. To the extent such income levels, either alone or in conjunction with other income (for example, social security plus pension), would meet the creditor's usual standards, the Committee believes it is intolerable that the recipients of such income should be disadvantaged because of its source. Creditors can still consider the amount and stability of such income, or its accessibility through judicial process, in the same way they would consider the incomes of others. The Committee believes and intends that this provision in the bill will help assure reasonable access to the credit market to those persons who are financially dependent, and, in the case of public assistance to the needy, will help in their quest for financial independence.

The prohibition in subsection 701(a)(3) is intended to bar retaliatory credit denials or terminations against applicants who exercise their rights under any part of the Consumer Credit Protection Act. That would include this title, the Fair Credit Reporting Act, and also the various chapters of the Truth in Lending Act. The "good faith" qualification recognizes that some applicants may engage in frivolous or nuisance disputes which do reflect on their willingness to honor their obligations.

The essential prohibition in this legislation is directed at discrimination "against" applicants. Nothing in this section should be read to bar occasional extensions of credit to individuals who would not normally qualify, or to bar experimental or ongoing special programs which

prefer applicants in certain categories so long as there is no accompanying restriction of credit available to applicants not in those categories. For example, this Act is not intended to prohibit positive credit programs aimed at "young adults" or "golden age" accounts.

Credit Scoring Systems

The provision in section 701(b) authorizing the inclusion of age and public assistance income in empirically derived credit scoring systems provoked considerable discussion in the Subcommittee and in the Committee. These systems are being used more and more frequently, predominantly by the larger creditors who have the statistical base and the resources to devise workable and reliable scoring techniques. The "system" usually consists of an allocation of points to characteristics of the applicant, the total number of points depending on how that applicant compares to a statistical sampling of previous applicants with similar credentials.

Creditor witnesses strongly urged that this bill permit the use of age and source of income in such scoring systems. In their experience age tended to be one of the best "predictors" of the eight to twelve characteristics typically incorporated into these scoring systems.

The following table indicates, for one large retailer, how the composite scores produced by their scoring system correlate to the actual performance of their credit customers.

CREDIT SCORE RELATED TO ACCOUNT PERFORMANCE—SPRING 1974

Score	Average dollars		Balance dollars		Charged off annually as percent of all balances
	Annual sales	Balance of open accounts	2 to 8 months delinquent as percent of all balances	6 to 8 months delinquent as percent of all balances	
180 to 189	179	251	10.23	1.52	6.85
190 to 199	186	254	9.54	1.38	6.35
200 to 209	235	258	8.20	1.06	4.78
210 to 219	276	279	6.83	.82	3.75
220 to 229	312	298	5.76	.62	3.00
230 to 239	346	316	4.88	.49	2.56
240 to 249	367	323	4.22	.42	2.13
250 to 259	382	324	3.82	.36	1.86
260 to 269	393	326	3.53	.30	1.60
270 to 279	413	325	3.25	.28	1.54
280 to 289	436	335	3.01	.24	1.44
290 to 299	447	335	2.75	.23	1.38
300 to 309	460	341	2.61	.21	1.18
310 to 319	471	346	2.39	.18	1.10
320 to 329	477	354	2.36	.18	1.00
330 and up	482	338	2.02	.15	.91
Total	377	317	4.15	.42	2.15

Though some members of the Committee were concerned that these scoring systems were inherently discriminatory in that they saddled each applicant with the statistical characteristics of similar prior applicants, a majority of the Committee believes that, on balance, a carefully constructed scoring system is in fact more fair and less discriminatory than a system which relies in large part on the subjective impressions and judgments of individual credit grantors or their employees. And the testimony before the Subcommittee did not seem to indicate that creditors using scoring systems had been the source of serious complaints.

The scoring systems which may include age and public assistance factors under this section are those which are "demonstrably and statistically sound" as this phrase may be spelled out in Board regulations. By this the Committee means that any such system must be based on sound statistical methodology, and that its results must be statistically significant and useful in the context of a particular creditor's operations. Thus the Committee does not sanction the use of age and public assistance benefits in a numeric scoring system which is a mere consensus of the subjective views of a particular creditor's loan officers.

Affirmative Action Programs

Certain credit programs are specifically designed to prefer members of economically disadvantaged classes, and the Committee does not intend to undermine these programs. Rather, subsection 701(c) makes it clear that denials of credit to persons ineligible for those programs does not violate this Act.

Examples of such programs would include government sponsored housing credit subsidies for the aged or the poor. Credit offered to a limited clientele by non-profit organizations—such as credit unions, or educational loan programs—would enjoy the same protection.

In addition, subsection 701(c) (3) authorizes the Board to prescribe standards for other special purpose programs offered by profit-making organizations (commercial creditors) which will likewise be immune from a charge that they violate the Act. By its reference to "special social needs" the Committee expects that the minimum requirement for any such program will be that it is designed to increase access to the credit market by persons previously foreclosed from it.

Reasons for Adverse Action

The Committee believes that the provision entitling rejected applicants to a statement of reasons for adverse action is among the most significant parts of the bill. With few exceptions, creditors have refused to do anything more than notify rejected applicants of the fact of the rejection. Only rarely do creditors give even a cursory explanation of the reasons why. The creditors' apparent rationale has been that since they had no legal obligation to explain their action they would not venture the effort or the potential embarrassment of doing so.

The Committee is convinced that this attitude is not only shortsighted on the creditors' part, but that it deprives rejected credit applicants of necessary and useful information. Further, the Committee believes that this disclosure is essential to achieve the anti-discrimination goals of the legislation, for a creditor who knows he may have to explain his decision is much less likely to rest it on improper grounds. In addition, we believe that knowing the reasons for adverse action will, over time, have a very beneficial educational effect on the credit-consuming public and a beneficial competitive effect on the credit marketplace.

That a refusal to disclose reasons is shortsighted for creditors is borne out by the experience of creditors who have volunteered that information. Often, it appears, disclosure permits the applicant to correct or supplement information in his application, causing the creditor to change his decision and make a profitable loan he otherwise

would have rejected. In other cases the disclosure of reasons appears to be a valued public relations tool. National BankAmericard, Inc., for example, has recommended to its member banks that they adopt a policy of giving reasons to rejected applicants.

There was much debate in the Subcommittee, and among witnesses, whether to require a written statement of reasons in every case of adverse action against a credit applicant. Testimony from creditors and data from other sources indicates that significant costs would be involved in complying with such a universal requirement, but this testimony and data was questioned by consumer representatives as being an overstatement of the true costs of compliance. It was also argued that automatic written statements of reasons would aid in the enforcement of the antidiscrimination provisions of the Act because thorough documentation of a creditor's practices would be possible.

The Committee's judgment is that a blanket requirement for written reasons in every case is not necessary to achieve the benefits intended. With the wide variety of ways in which credit applications are handled and processed, such a requirement could be overly restrictive and cumbersome, as well as expensive.

The provision itself is intended to operate in a sensible and flexible way.

Whether the creditor approves or rejects the application, the applicant must be notified of the decision within a reasonable time. Where that decision is adverse, the creditor has options. He may elect to send a written statement of reasons automatically in every case, and this statement could obviously be combined with the denial notification itself.

Alternatively the creditor must give every rejected applicant a written notification of the fact of rejection and of the applicant's right to get a statement of reasons on request. The Committee intends that this notice of rights be clear and conspicuous in whatever instrument is used to convey it. The written notification will probably most often be mailed, but could consist of a simple card handed to the applicant at the time the adverse decision is conveyed face to face. If this notification also explains that the applicant can get an oral statement of reasons confirmed in writing, the creditor may give an oral explanation, either in person or by phone. Absent this latter explanation, any requested statement of reasons must be in writing.

Where a Fair Credit Reporting Act disclosure is also called for, the Committee expects that the notices required under that Act and under this section will be combined for a substantial savings in costs of handling and mailing.

The Committee does not expect or intend that statements of reasons be given in the form of long, detailed personal letters. The bill calls for a "concise indication" of the applicant's deficiencies, and a short, check-list statement will be sufficient so long as it reasonably indicates the grounds for adverse action. The Board's regulations may suggest formats for such statements. Examples of such brief statements were submitted by several witnesses in the hearings on this legislation. Some of these, not necessarily ideal, are as follows:

DATE _____

DEAR _____: Thank you for your interest in applying for credit at _____. We are sorry that we cannot open a credit ac-

count with you at this time. Our decision is based on our own policies. The reason for the decline is indicated below:

- length of employment
- lack of credit references
- credit references too new
- time in residence
- income for credit limit requested
- too many other credit obligations at this time
- other _____

Please feel free to call me at _____ if you have any further questions or if you wish to reapply at a later date.

Sincerely,

Manager, New Accounts.

APRIL 2, 1974.

Sample sample, Sample sample.

DEAR MR. SAMPLE: We are sorry that we cannot comply with your request for an _____ at this time.

We can assure you that your application has been given every consideration and nothing which would reflect adversely on you has been found in our investigation. Your application is declined because it does not meet our membership requirements with respect to length of residence.

It has been our experience that applicants who do not meet these requirements at one time may qualify later on, after achieving additional residence and employment stability. We cordially invite you to submit a new application at a later date when your circumstances have changed.

The above reference number and date of this letter must be given if communication with us is necessary.

Thank you for your interest in our service.

Sincerely,

New Accounts Department.

APRIL 2, 1974.

Ref: H-0061395

Sample sample, Sample sample.

DEAR MR. SAMPLE: We are sorry but we cannot comply with your request for an _____ at this time.

We can assure you that your application has been given every consideration and that nothing which would reflect adversely on you has been found in our investigation. It is declined because your individual income does not meet our minimum requirements.

Perhaps you have other income sources that did not appear on your application and that were not readily apparent in our investigation. If you do, please give us this additional information in writing now so we can evaluate it. Or, if you do not have other sources of income just now, we cordially invite you to submit a new application at a later date when your circumstances have changed.

The above reference number and date of this letter must be given if communication with us should be necessary.
Thank you for your interest in our service.

New Accounts Department.

Sincerely,

This flexible mechanism for allowing credit applicants to learn why creditors turned them down is triggered by any "adverse action" taken by the creditor. This term is carefully defined to include denials, revocations, unilateral changes in the terms of a credit plan, or refusals to grant substantially all the credit requested. The Board may set guidelines for what "substantially the amount or on substantially the terms requested" means in differing contexts.

The Committee does not intend to require the giving of reasons where no such explanation can reasonably be expected by the debtor, and thus the last sentence of section 701(d)(5) makes it clear that there is no "adverse action" when, for example, a consumer attempts to use a credit card which has been revoked for non-payment, or when a borrower seeks to refinance a loan which is already in default. Similarly, there is no adverse action taken within the meaning of this section when a credit card issuer refuses to authorize new credit under a revolving credit plan for a customer who seeks such credit in a point-of-sale transaction where that new credit would exceed the established limit for that customer. This would hold true even where a particular creditor would treat an attempted purchase as an implied request for an increased credit line. The formalized statement of reasons called for in this section is appropriate, in the Committee's view, only where there is an equally formalized application for credit, and not for inexplicit requests for increased limits on open end credit plans.

Business Credit

The present Equal Credit Opportunity Act prohibits discrimination in any type of credit transaction, including all forms of business credit, on the basis of sex or marital status. Final regulations implementing that Act were issued by the Federal Reserve Board on October 16, 1975, and came into effect on October 28, 1975. The regulations make certain "adjustments and exceptions" with respect to the treatment of different classes of business credit transactions, as authorized under section 703 of the Act.

The Committee considered an amendment to section 703 authorizing the Board, in prescribing regulations, to exempt from any of the provisions of the Act "any class of transactions not primarily for personal, family or household purposes." This language, added onto the authority already provided in existing law, could have been interpreted as mandating a broad exemption of business credit transactions from the coverage of the Act.

In order to clarify the intent, the Committee approved an amended version of the proposed language which authorizes exemptions from "one or more" of the provisions of the Act, but only "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." The purpose of the amendment is to narrow the scope of the exemption authority granted to the Board and to make it clear that Congress does not intend to deny the antidiscrimination protections of the Act to minorities, women and others who encounter problems of discrimination in obtaining credit to establish businesses or conduct normal business operations.

The Committee recognizes that there are a number of differences between consumer credit and business credit. On the other hand, the Committee has received evidence of discrimination in business credit transactions encountered by the groups covered under present law and under the proposed amendments to the Act. J. Stanley Pottinger, Assistant Attorney General for Civil Rights in the Justice Department, testified on this point and also expressed specific opposition to the proposal to exempt business credit from the Act in a letter to Senator Biden, stating as follows:

In our view, the Act should not be narrowed to apply only to consumer transactions. So limited, the Act would probably not apply to the Arab boycott, referred to in my testimony, or to discrimination in business credit transactions against minority-owned businesses. In addition, the distinction between business and consumer transactions would be difficult to draw in many cases, resulting in needless litigation.

Under the language as amended, the Board would have the authority to exempt classes of business transactions from the coverage of one or more of the provisions of the Act, if it finds that there is no incidence of discrimination in such transactions. In order to grant an exemption, however, the Board would have to make an express finding that there was no evidence or likelihood of discrimination in that class of transactions, nor would the potential for discrimination be greater if the Board were to exempt that class of transactions from compliance with one or more provisions of the Act. In using the language "one or more" of the provisions, the Committee intends to indicate to the Board that it should not grant broad exemptions but rather should weigh carefully the impact of specific provisions of the Act on the class of transactions in question, with a view to lifting only those requirements which impose administrative burdens while not contributing substantially to carry out the purposes of the Equal Credit Opportunity Act.

For the purposes of this section, the term "class of transactions" is to be interpreted narrowly to mean types of business credit transactions with common characteristics, and not all business credit in general. In considering any exemptions under this section, the Board should take into account factors which might logically bear on the presence or absence of discrimination, such as the size of the companies or institutions involved, the dollar amount of the transaction under consideration, or the parity of bargaining power between the parties to the transaction.

Consumer Advisory Council

Early drafts of this bill, and the House bill itself, called for a separate Advisory Committee on the Equal Credit Opportunity Act similar to that for Truth in Lending. At the urging of the Federal Reserve

Board, however, the Subcommittee and Committee agreed to establish a broader Advisory Council to advise and consult with the Board concerning its responsibilities under the entire Consumer Credit Protection Act. The separate Truth in Lending Advisory Committee will be abolished.

The Committee believes that combining into one group all the consumer-related advisory functions in the Board will facilitate the operation of that process, and permit a more coordinated approach to the implementation of consumer legislation. This provision also checks the proliferation of this kind of advisory committee and results in some savings of federal funds.

Relation to State Laws

The present Equal Credit Opportunity Act leaves almost totally unclear the status of existing or future state laws dealing with discrimination in credit transactions. The Committee believes that practices of discrimination are so abhorrent that federal law ought not foreclose the states from initiating their own laws unless those laws are incompatible with this legislation. A similar policy has been adopted by the Congress with respect to Truth in Lending and more recently with the Fair Credit Billing Act.

This bill clarifies the relationship of the Equal Credit Opportunity Act to state law in several ways.

First, the amended section 705(e) makes it clear that where both state law and federal law are violated by the same conduct, an aggrieved applicant is entitled to but one recovery of monetary damages. He may choose to sue under the state law or under the federal law, but not both. At the same time, an applicant is free to pursue administrative, injunctive or declaratory relief under either federal or State law without being forced to make an election of remedies. Thus an aggrieved applicant may utilize any conciliation services available under state law without foregoing his or her right to seek monetary damages separately. Or that applicant might seek a declaratory judgment in federal court without losing any available claim to monetary damages under state law. The Committee assumes, however, that in any such bifurcated proceeding the normal rules of *res judicata* and collateral estoppel will apply.

New subsections (f) and (g) of section 705 track similar language in the Fair Credit Billing Act. State law is displaced by this Act only to the extent of inconsistencies between them, and the Board may determine whether such inconsistencies exist. The Committee appreciates that the limitation set on the Board's authority in this regard—that the Board cannot find state law inconsistent if it “gives greater protection to the applicant”—is somewhat imprecise. Identical language in the Fair Credit Billing Act was found manageable by the Board, however, and the Committee believes that it is better to use a familiar standard in this area than to attempt a separate “laundry list” of inconsistencies for different parts of the Consumer Credit Protection Act. The Committee intends that those state laws which give greater protection to the applicant, as determined by the Board, shall apply equally to all credit granting institutions doing business in that state.

Some states (*e.g.*, Massachusetts) have adopted antidiscrimination legislation quite similar to this Act. Other states may be expected to do so in the future. Subsection 705(g) like comparable provisions in the Truth in Lending and Fair Credit Billing Acts, will permit classes of transactions in such states to be exempted from the substantive requirements and prohibitions of the federal law whenever the local law is substantially the same or stronger than the federal. To resolve an uncertainty under prior legislation, this bill makes clear that where such exemptions are made in favor of state law, the full remedial and enforcement structure of this Act remains in place. Thus aggrieved applicants retain their access to the federal courts, and the federal enforcement agencies may retain their authority to act against violators. It is expected, however, that these agencies will generally defer to the appropriate state officials.

Civil Liability

Since discrimination is inherently insidious, almost presumptively intentional, yet often difficult to detect and ferret out, the Committee believes that strong enforcement of this Act is essential to accomplish its purposes. The bill therefore provides enforcement opportunities of three kinds. Under section 704 (which remains unchanged) various federal agencies are given administrative enforcement responsibility. Under the revised section 706, the United States Attorney General is also authorized to bring enforcement actions, either on referral of cases from the administrative agencies, or on the Attorney Generals' own initiative where there are patterns or practices in violation of the Act. The entrusting of enforcement responsibility to the Attorney General is premised on the assumption that that office's experience in the enforcement of other civil rights legislation can be effectively expanded and built on to achieve maximum compliance with the antidiscrimination policies of the Equal Credit Opportunity Act.

The chief enforcement tool, however, will continue to be private actions for actual and punitive damages. Much of the testimony received in the hearings, and much of the debate in Subcommittee and Committee centered on the adequacy of the recovery ceiling for punitive damages in class actions. The present law sets that ceiling at the lesser of \$100,000 or 1% of the creditors' net worth. The Subcommittee had recommended that this be changed to the *greater* of \$50,000 or 1%. The Committee eventually agreed upon a level of \$500,000 or 1% of the creditor's net worth, whichever is less.

The setting of *any* ceiling on class action liability is meant to limit the exposure of creditors to vast judgments whose size would depend on the number of members who happened to fall within the class. The *risk* of any ceiling on class action recoveries is that, if it is too low, it acts as a positive disincentive to the bringing of such actions and thus frustrates the enforcement policy for which class actions are recognized.

In the context of this Act, where individual recoveries of punitive damages could be as high as \$10,000, a \$100,000 ceiling tends to discourage the bringing of a class action whenever there are more than

10 members in the class. In a parallel situation under Truth in Lending, where the class action ceiling is also \$100,000, several courts have noted the incompatibility of that ceiling with the effective use of the class action device. *Boggs v. Alto Trailer Sales, Inc.* (No. 74-1605, 5th Cir., April 14, 1975); *Weathersby v. Fireside Thrift Co.* (No. C-73-0563 AJZ, N.D. Calif., Feb. 25, 1975).

The Committee wishes to avoid any implication that the ceiling on class action recovery is meant to discourage use of the class action device. The recommended \$500,000 limit, coupled with the 1% formula, provides, we believe, a workable structure for private enforcement. Small businessmen are protected by the 1% measure, while a potential half million dollar recovery ought to act as a significant deterrent to even the largest creditor. Creditors are also protected by the list of factors (in section 706(b)) a court should consider in determining any class action award.

The Committee is aware of the many difficulties surrounding the use of class actions for civil penalties or punitive damages. The largest obstacle to class actions may lie in the procedural rules applicable to them—as, for example, the notification requirements under the case of *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974)—rather than in any necessarily arbitrary ceiling on recovery. For this reason the Committee, through its Subcommittee on Consumer Affairs, intends to look at alternative private enforcement procedures such as the so-called qui tam or private attorney general action. We are hopeful that there may be workable and effective substitutes for the class action as a consumer enforcement device not only for this Act but also for other similar legislation.

The Committee also recommends a change in the statute of limitations applicable to actions brought under this Act. The present one-year limitation is, we believe, too short a period of time for violations of antidiscrimination legislation. The development and investigation of the necessary facts—especially in the case of agency or Attorney General actions—may require more than a year. Discriminatory practices, unlike violations of Truth in Lending, are not apparent from the face of particular documents or contracts. The Committee therefore recommends that the statute of limitations be extended to two years. In addition, where an agency or attorney General action has been commenced within two years of a violation, and where it is likely that individual applicants may only learn of potential violations through publicity surrounding the government's action, we believe the affected applicant should have a reasonable additional time to bring his or her private action. The bill therefore permits private actions to be brought within one year after the commencement of a government action where both involve the same conduct.

Finally, the Committee has added a new subsection 706(j) to make clear that if a creditor's credit granting standards are otherwise subject to discovery in any judicial or administrative proceeding, nothing in this Act clothes those standards with immunity. Such standards may be relevant and necessary in particular actions, and the Committee does not intend to preclude such discovery by any inference in this Act that those standards are beyond reach.

Effective date

The substantive provisions of this bill would become effective eighteen months after its enactment. This period should give the Federal Reserve Board time to promulgate necessary regulations sufficiently in advance of the effective date to allow creditors to bring their practices into compliance.

The original Equal Credit Opportunity Act allowed only twelve months between enactment and effective date, and as a result the actual content of final regulations was not known until a few days before they became effective. Since the purpose of these regulations is to effectuate compliance and not to trap creditors in unintended violations, the Committee believes it is very important that the Board have sufficient time to draft, and that creditors have adequate time to adjust to, new regulations. The necessity for phasing in new regulations over a period of a year or more should be avoided.

The remainder of this Act—beyond the substantive requirements and prohibitions—will take effect on enactment. This would include the provisions on civil liability and enforcement, and on relation to state law.

COST OF LEGISLATION

In compliance with Sec. 252(a)(1) of the Legislative Reorganization Act of 1970, as amended (2 U.S.C. 190j), the Committee estimates that there will be no measurable cost to the Federal Government in carrying out the provisions of this legislation. Enforcement activities by federal agencies, including the drafting of regulations, can be carried out with present agency resources, or with minimal additions. Since the Consumer Advisory Council created by this legislation would absorb the existing Truth in Lending Advisory Committee, no new expenditures for that Council are anticipated beyond whatever per diem is required for additional Council members.

GORDON RULE

In the opinion of the Committee it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

SECTION-BY-SECTION ANALYSIS

Section 1. *Short title.*—This section provides that this Act may be cited as the Equal Credit Opportunity Act Amendments of 1975. It also incorporates the short title of Title VII of the Consumer Credit Protection Act ("The Equal Credit Opportunity Act") into a new section 709 of that title.

Section 2. *Prohibited discrimination: Statements of Reasons.*—This section re-writes section 701 of the present Equal Credit Opportunity Act.

Subsection (a) adds the following new categories of prohibited discrimination: race, color, religion, national origin, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or exercise of rights under the Consumer Credit Protection Act. These are in addition to the existing prohibitions against discrimination on the grounds of sex or marital status.

Subsection (b) confirms that it is not a violation of this Act for creditors to inquire about marital status in order to ascertain the creditors rights and remedies in a particular transaction; nor is it a violation to inquire of the applicant's age or about public assistance benefits for the purpose of assessing legitimate elements of credit-worthiness. Empirical credit scoring systems which consider age or public assistance benefits may be used so long as they are demonstrably and statistically sound.

Subsection (c) makes clear that it is not a violation of this Act to refuse credit under three types of specially limited affirmative-action type programs: programs authorized by law for economically disadvantaged persons; programs run by non-profit organizations for their members or for economically disadvantaged persons; or special credit programs offered by profitmaking organizations to meet special social needs approved in Board regulations.

Subsection (d) establishes the right of applicants to be informed of whatever action the creditor takes within a reasonable time. In addition, where that action is adverse to the applicant, the applicant has a right to a statement of reasons why. That statement may be given automatically in writing. Or creditors may give rejected applicants written notice of their right to such a statement of reasons on request. In this case applicants have sixty days from the time the creditor notifies them of adverse action to request the reasons, and the creditor has thirty additional days to supply them. Such statements of reasons must be in writing, unless the creditor has advised the applicant (in the written notification of rights) of his or her right to have any oral statement of reasons confirmed in writing on written request. The subsection further provides that statements of reasons are satisfactory if they contain a concise indication of the applicant's credit deficiencies according to the standards used by the creditor.

Subsection (d) also provides that notifications and statements of reasons from third-party creditors may be made directly by the creditor or indirectly through the party requesting that credit be extended to an applicant.

The term "adverse action," which triggers the obligation to provide reasons, is defined to mean a denial or revocation of credit, a change in credit terms, or a refusal to grant credit substantially as the applicant requested it. "Adverse action" does not include refusals to extend additional credit to applicants who are delinquent or in default, or where the new credit would exceed an established credit limit.

Section 3. *Exemptions: Advisory Council.*—This section amends section 703 of the Equal Credit Opportunity Act by adding a new sentence and a new subsection (b). The new sentence specifies that Board regulations implementing this Act may exempt classes of credit transactions (other than consumer transactions) from one or more of the provisions of this Act if the Board finds that the application of those provisions would not contribute substantially to achieving the purposes of this legislation.

New subsection 703(b) establishes a Consumer Advisory Council to advise and consult with the Board concerning its functions under the Consumer Credit Protection Act and other consumer matters. The Board shall consist of representatives of consumers and creditors, shall meet at the call of the Board, and its members shall be entitled to compensation up to \$100 per day plus expenses. The section of the Truth in Lending Act establishing a separate Advisory Committee for that Act is repealed.

Section 4. *Federal Trade Commission enforcement.*—This section amends section 704 of the Equal Credit Opportunity Act to make clear that the enforcement powers of the Federal Trade Commission include the power to enforce any Federal Reserve Board regulation under this title as if the violation were a violation of a Federal Trade Commission trade regulation rule.

Section 5. *Relation to State law.*—This section amends section 705 of the Equal Credit Opportunity Act by rewriting one subsection and adding two new ones.

Subsection (e) is rewritten to make clear that where the same conduct violates both state and federal law, an aggrieved person may sue for money damages either under this Act or under state law but not both. This election is inapplicable to any administrative or court action not seeking money damages.

New subsection (f) provides that state laws dealing with credit discrimination are displaced by this Act only to the extent they are inconsistent with it. The Board can determine whether there are inconsistencies but cannot find state law inconsistent where it gives greater protection to applicants.

New subsection (g) provides that classes of credit transactions within a state are to be exempted from the requirements of this Act if the applicable state law is substantially similar to, or gives greater protection than, this Act. But violations of such state law continue to be violations of this title.

Section 6. *Civil liability.*—This section rewrites section 706 of the Equal Credit Opportunity Act.

Subsection (a) restates the present law to the effect that aggrieved applicants may recover actual damages either in individual or class actions.

Subsection (b) permits recoveries of punitive damages up to \$10,000 in individual actions, or up to the lesser of \$500,000 or 1% of the creditors net worth in class actions, in addition to any actual damages. In determining the amount of punitive damages the court is instructed to consider relevant factors including the frequency and persistence of violations, the creditor's resources, the number of persons affected and whether the creditor's violation was intentional.

Subsection (c) provides that aggrieved applicants may also seek equitable and declaratory relief in any appropriate court of competent jurisdiction.

Subsection (d) confirms that in any successful action the award shall include reasonable attorney's fees.

Subsection (e) establishes a defense to liability for creditors who act in conformity with any official rule regulation or interpretation of the Board, even though that regulation, interpretation or rule is later declared invalid by judicial or other authority.

Subsection (g) establishes that any action for violation of this title can be brought in the appropriate federal district court, or in any other court of competent jurisdiction, within two years of the violation. This two-year statute of limitations may be extended an additional year from the commencement of an administrative enforcement action or from the commencement of an action by the Attorney General where such agency or Attorney General action is itself brought within two years of the violation.

Subsections (g) and (h) authorize the Attorney General to bring civil actions against violators either on referral of cases from the responsible agencies or whenever the Attorney General believes there is a pattern or practice of violations.

Subsection (i) provides that a person may recover either under this title or under section 805 of the 1968 Civil Rights Act, where the same transaction violates both.

Subsection (j) confirms that nothing in this title shields a creditor's credit granting standards from discovery in any proceeding where they would otherwise be discoverable.

Section 7. *Annual Reports.*—This section adds a new section 707 to the Equal Credit Opportunity Act requiring the Board and the Attorney General to submit annual reports on their administration of this Act.

Section 8. *Effective date.*—This amendment to the effective date provision in the present law provides that the amendments made by this Act take effect on enactment except that the amendments to section 701 take effect eighteen months after enactment.

Section 9. *Table of Sections.*—This section amends the table of sections to reflect the additions made by this Act.

ADDITIONAL VIEWS OF MR. HELMS

The Equal Credit Opportunity Act Amendments have as their purpose the prohibition of discrimination in the granting of credit on the basis of age, race, color, religion, national origin, and the receipt of public assistance benefits. While this is certainly a laudable objective, I am apprehensive that Federal legislation is not the proper instrumentality to achieve these ends and that the proposal if enacted will be counterproductive.

Province of State Law

Until the passage of the Consumer Credit Protection Act in 1968, the regulation of consumer credit was the exclusive domain of the states. Historically, the primary source of regulation came through the usury statutes. Other early consumer credit legislation dealt with such matters as disclosure of credit information, credit insurance, debt adjusting, wage assignments, and garnishments. To remedy the fragmented approach to consumer credit protection, the National Conference of Commissioners on Uniform State Laws has recommended the enactment by the states of the Uniform Consumer Credit Code. In addition, many states have enacted or are considering enactment of legislation prohibiting unreasonable discrimination in credit granting. Thus, until recently, the regulation of consumer credit and consumer credit contracts has been the sanctuary of the states. I view with serious concern the recent tendency as exemplified by the Real Estate Settlement Procedures Act, the Fair Credit Billing Act, and the Equal Credit Opportunity Act, to encroach upon state efforts to regulate consumer and home mortgage credit. These amendments are just one more nail in the coffin of the right of the individual to have local matters determined by the state legislatures.

The lack of need for Federal legislation in this area was highlighted by the findings of the National Commission on Consumer Credit made public in December of 1972. The Commission did not find sufficient evidence to prove the hypothesis that there is racial discrimination in the granting of consumer credit. However, evidence before the Commission suggested that credit-worthy consumers living in poverty areas have severe problems in obtaining credit—problems largely associated with the difficulties creditors have in collecting debts in certain areas of inner cities. The Commission found that the basic problem of providing credit to the poor is not a credit problem but an income and employment problem.

On the other hand, while the Commission concluded from anecdotal evidence that there were incidences of discrimination in granting of credit to women, it did not recommend legislation in solving the problem. Rather, it felt that competition among the credit grantors would remedy any shortcomings in the system. In my view, the hearings on this subject before the Subcommittee on Consumer Affairs have not produced any hard evidence which would lead a reasonable person

to reach a conclusion contrary to the findings of the National Commission on Consumer Finance that Federal legislation is not needed.

Legislation will be counterproductive

Not only has the Congress been encroaching on right of the states to legislate on local matters, it has also usurped much of the vital decision-making power formally exercised by business and consumers in a free market. This is vividly illustrated in the consumer credit areas. The first effort was the Truth in Lending Act which had an equally noble purpose. But the implementation of this legislation has burdened industry with great costs, all of which are passed on to the consumer. On top of this, there is no empirical evidence that there have been offsetting economic benefits. Rates have not dropped and there does not seem to be an awareness among most consumers of comparative costs of credit. Last year the real regulatory overkill came with the enactment of the Fair Credit Billing Act, the Equal Credit Opportunity Act, and the Real Estate Settlement Procedures Act. Now, even before we have had an opportunity to see how the Equal Credit Opportunity Act will work, Congress is extending it to cover additional fields of activity.

Although the sponsors of this legislation have decried bureaucratic regulations imposing paper work on industry they have included provisions that would require lenders to give in writing upon request reasons for denial of credit. Yet no survey shows that the consumer is dissatisfied with the present system.

This regulatory overkill can have the result of harming those intended to benefit by either drying up sources of credit or making credit more expensive or both.

Equally devastating is the effect that the regulatory overkill is having on small business. A good example may be seen in the testimony given before the Consumer Affairs Subcommittee by a small independent merchant from Worcester, Massachusetts. The witness states that if the regulatory trend is to continue many independent credit retailers will be forced out of business. The witness reiterated that retail merchants don't refuse business and don't discriminate on account of color, sex, religion, or national origin. They give anyone credit who is creditworthy. That's just good business. However, he did not feel that he or other small retailers would be able to handle the proposed letter of rejection. This regulatory overkill is forcing merchants out of the credit business and many who stay in business at all are having to rely on bank credit cards. This not only hurts business for the independent retailer but it limits the financing choices for the consumer.

In conclusion, I find abhorrent any discrimination in the granting of credit not related to an applicant's willingness and ability to pay. However, I do not feel that the proposed legislation will contribute to its stated goals and could be counterproductive by increasing the cost of credit for the consumer and could very well limit the availability of credit and credit options for those intended to be aided by the bill. I fear the overall effect of the legislation will be to drive more small business people out of the credit business and into the hands large credit grantors. Ultimately, this could lead to a monopoly of credit granting in the hands of large national firms or the government itself. I do not believe that is in anyone's best interest.

JESSE HELMS.

ADDITIONAL VIEWS OF MR. GARN

Although I completely agree with the objectives of the Equal Credit Opportunity Amendments, I have reservations concerning some of the specific provisions of the legislation.

Exemption of Business Credit

The Subcommittee bill considered by the full Committee provided that the Federal Reserve may by regulations exempt from the provisions of the Act any class of transactions not primarily for personal, family or household purposes. Language was added by the full Committee to require that prior to exempting any class of transactions the Board make an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of the Act. Since there was a paucity of evidence at the hearings on the legislation indicating that there had been abuses in the business credit area, I would hope that the Board take prompt action to exempt business credit from provisions of the Act written with consumer credit in mind.

For example, the requirement for written reasons for credit declinations was not fashioned in the light of commercial practice. Commercial credit involves the extension of credit between merchants for inventory stock, plant equipment, and the like. The very nature of most business to business relationships means that purchases are made frequently and continuously, often without a lot of red tape. Making this provision applicable to business credit would be very expensive and place impediments in the way of commercial transactions. The additional expense and paper work would be astronomical and would not contribute to the achievement of the purposes of the Act.

Written Reasons for Adverse Action

Although the Committee was wise in not requiring automatic written reasons for denial of credit it does require a written notification to the applicant of his or her rights to the reasons for the denial. I am concerned with the potential burden that this provision will place on credit grantors. The cost of compliance will ultimately be borne by the consumer.

Industry practice differs regarding the giving of notice of denial of credit. Some large retailers and credit-card grantors mail a written notification of a declination while other retailers and finance companies prefer to notify an applicant orally that the credit application has been denied. The cost of such written notifications can run into millions of dollars.

The authors of this provision seem to ignore the lesson of Truth in Lending and RESPA that what is intended as a simple disclosure provision too often turns out to be a bureaucratic nightmare of paperwork. I am particularly concerned with the burden this section will put on small business. Without question, its effect will be to force an increasing number of small credit grantors out of the credit business.

Good Faith Reliance on Board Opinions

The Committee by a tie vote failed to approve an amendment which would permit creditors to rely upon interpretations to be issued by duly authorized officials or employees of the Federal Reserve System, in addition to the present permission for them to rely upon regulations and interpretations issued by the Board.

The need for this provision is twofold. The simplicity perceived by the authors of Truth in Lending has not materialized, leaving credit grantors with a maze of unclear and often complicating statutory provisions, regulations and court opinions which make compliance next to impossible. Although the Federal Reserve System has been helpful in issuing staff letters of advice, neither the Board nor Congress have done much to clarify the law. Whereas cases in the 5th and 9th Federal Circuits have held staff opinions to be entitled to great deference, the 2nd Circuit in *Ives v. Grant* (CA 2, July 31, 1975) gave staff opinions "short shrift."

In failing to solve the problem arising under Truth in Lending by clearly drafted legislation and binding interpretative opinions Congress and the Board are merely shifting the burden and responsibility to the Federal court system. This is reflected in the 1975 Annual Report of the Administrative Office of the United States Courts showing a rise in Truth in Lending caseload from 415 in fiscal years 1972 to 2,237 in fiscal year 1975, a 439% increase. This solution has resulted in more confusion, conflicting judgments, huge court costs and attorneys' fees with a great waste of time and energy of the courts and industry which could better be spent in solving more serious problems of our society.

Due Process in the Rulemaking Procedure

During the consideration of the Equal Credit Opportunity Act Amendments I offered and withdrew, upon assurance that there would be later hearings on the subject, an amendment to provide for an adjudicatory proceeding when the Federal Reserve Board engages in rulemaking under the Equal Credit Opportunity Act. The purpose of this proposal is to assure that all parties have an opportunity to be heard and that a record be established sufficient for a judicial determination as to whether the agency has abused its discretion or acted in an arbitrary or capricious manner.

Since it is important that the public have confidence in the integrity of the regulatory process, I am hopeful that the Consumer Affairs Subcommittee at an early date will fully explore this matter in oversight hearings.

Civil Liability

One of the most controversial issues faced by the Committee dealt with the limitation of liability in class action suits. The Subcommittee had raised the present ceiling of \$100,000.00 or 1 per cent of the net worth of the creditor, whichever is greater, to \$50,000.00 or 1 per cent of the net worth of the creditor, whichever is the lesser. I offered an amendment to restore the present limitations on class action liability because I felt that the greater limitation in the Subcommittee's bill would be excessive.

A \$50,000.00 maximum liability could wipe out a small business. On the other hand, a 1 per cent of net worth limitation for large firms

would be no limitation at all. For example, 1 per cent of Exxon's net worth is \$137,176,910.00. Bank of America's 1 per cent is \$18,000,000.00 and First National City Bank of New York is \$22,000,000.00. This would make it attractive to sue the large firms who generally are quite careful to comply with the law.

The National Small Business Association wrote the Subcommittee that a potential class action liability of \$50,000.00 could, if awarded, be destructive to the total business of many small businesses. The Association feels that the present civil penalty provisions of the Equal Credit Opportunity Act are themselves harsh but at least there is some protection in the present liability limitations.

The Assistant Attorney General of the Civil Rights Division advised the Consumer Affairs Subcommittee that the \$100,000.00 limitation is on the facts we have to date an adequate deterrent. In his view an award of \$100,000.00 punitive damages would not necessarily be a "slap on the wrists", even for the largest creditors. To increase the maximum recovery to a figure greater than \$100,000.00 might well encourage the filing of meritless law suits under the Act.

One of the greatest deterrents in class action exposure is the cost of the litigation to the defendant and the possibility that the defendant may be required to pay the attorneys' fees of the plaintiff. Class action attorneys' fees can be substantial. For example, the Senate Commerce Committee in its Class Action Study of June, 1974, made the following findings:

Attorneys' fees were often substantial and accounted for the greatest reduction in the recovery ultimately received by the class. In 20 of the 32 cases in which the class received awards and for which information was available, the plaintiff attorneys' fees exceeded \$100,000. Antitrust and securities actions accounted for the largest fees comprising all the suits involving fees of over \$500,000 and 35 percent of the cases with fees between \$100,000 and \$500,000. In slightly more than half of the 28 actions where information was available plaintiff attorney's fees represented 25 percent or less of the total recovery but in 3 cases fees amounted to over 50 percent of the total recovery. While plaintiffs' attorneys' fees did not consume the class recovery, they were nonetheless often quite substantial, particularly in securities and antitrust actions. There is no way to assess whether attorneys were grossly over-compensated but the question is legitimately raised when fees reach such great amounts. (Committee on Commerce, *Class Action Study*, June 1974, p. 29 and 30.)

In the *Ratner* case (*Ratner v. Chemical Bank of New York Trust Company*, 54 F. R. D. 412 (S. D. N. Y. 1972)) which involved a technical violation of the Truth in Lending law, the court did make an award of attorneys' fees to the plaintiff in the amount of \$25,000.00.

In a later case *Weathersby, Jr. v. Fireside Thrift Company*, No. 3-73-0563 (N. D. Calif 1975)) the United States District Court for the Northern District of California in commenting on *Ratner* stated that "Nevertheless, plaintiff should find the prospect of mandatory award without proof of injury sufficient to stimulate them to bring suit, particularly since they may also recover attorneys' fees, which

can be quite high even where the actual recovery for the plaintiff is small."

In the *Ratner* case the outside defense counsel cost the Chemical Bank \$250,000.00. Internal costs to the bank were \$100,000.00. Plaintiff's attorney received \$25,000.00 while the plaintiff who was unable to establish actual damages received punitive damages of \$100.00. Total costs to the bank were \$375,100.00.

Attorneys' fees for plaintiff were \$60,000.00 in *Ives v. W. T. Grant*. (C. A. 2, July 31, 1975) Individual plaintiff's received a mere \$4.00 each. The defendant was found guilty for failure to itemize finance charges under Grant's credit plan even though staff letter of Federal Reserve had advised itemization not necessary.

Since in many cases the attorney's fees are the largest cost in class action suits, the question arises whether the present system for awarding counsel fees to winning litigants in public interest litigation is equitable. Professor John P. Dawson of Harvard in a recent article (Dawson, *Lawyers and Involuntary Clients in Public Interest Litigation*, 88 Harv. L. Rev. 849-930 (1975)) concludes that the essentially uncontrolled and unguided discretion of trial judges to fix lawyers' rewards at times results in potentially enormous sums.

The American Bar foundation research publication on *The Status of Class Action Litigation* made the following finding concerning abuses in class action litigation:

What we have seen supports the charges—and the beliefs—that class actions have given rise to some distinctive abuses. Cases have been filed by attorneys who expect that the threat of class demands will yield settlements of claims so dubious as to be frivolous. Shady business has been involved on both sides where payments have been made to a plaintiff or to his attorney in return for abandonment of claims on behalf of an entire class. Settlements awarding much to attorneys and little to members of the class suggest abuse in some cases although such results may be quite proper in others. Too, attorneys have sometimes filed suits merely to tag along and claim fees for work done by others in cases filed earlier which cover the same classes. (G. W. Foster, Jr. *The Status of Class Action Litigation*, 1974, for the American Bar Association, pp. 26 and 27.)

Much of the litigation under Truth in Lending has been over technical violations. For example, in the *Ratner* case the violation involved the failure of the defendant to fill in the blank space indicating the annual percentage rate for a consumer who owed no service charge. The consumer suffered no injury. The experience of at least one large retailer under Truth in Lending Act is that every action seeking large punitive damages from the company has been based on trivial, purely mechanical violations.

Exposure to litigation will be substantial under the Equal Credit Opportunity Act because in each instance the granting of credit involves an exercise of judgment that goes into distinguishing between a good and a bad credit risk. The process could easily involve an unintended, non-malicious mistake or an unknowing technical vio-

lation of the act. This risk is compounded as technical regulations by both the federal government and states proliferate: already, approximately 30 states have enacted legislation forbidding credit discrimination based on sex or marital status, several providing for requirements which are different from the Federal Equal Credit Opportunity Act and Regulation B of the Federal Reserve Board.

The Committee accepted my proposal to restore the present approach to the civil liability limitation after adopting Senator Proxmire's amendment to raise the monetary limitation from \$100,000.00 to \$500,000.00. Although I feel that the \$500,000.00 limitation is a bit excessive, the overall approach is a reasonable one.

Since there are obvious problems with the present class action section of the law, hearings should be held to determine how the present class action section is operating and what changes, if any, should be made. This is a highly technical area and a number of other bodies have looked at it and made conflicting recommendations. The previously cited class action study of the Senate Commerce Committee did look at the use of class actions in enforcing consumer protection statutes. Also, the Judiciary Committee held hearings on the subject in 1970. The American Bar Association made a report on consumer class actions and made a recommendation that the present procedure under Federal Rule of Procedure 23 not be changed. Last year, Senators Proxmire and Brock introduced S.3690 to provide an alternative to class action suits and recommended hearings on the subject.

JAKE GARN.

ADDITIONAL VIEWS OF MR. TOWER

While I agree with the objectives of the Equal Credit Opportunity Amendments, I share the concerns which Senator Garn has expressed over certain provisions of this legislation. I am particularly concerned over the requirement that creditors give written notification to those being denied credit. Ultimately, the costs of such written notification must be borne by borrowers, and the paper work burden and administrative expenses associated with such written notification could easily outweigh any realized or anticipated benefit. I believe that before it is implemented, those who advocated the adoption of the provision should demonstrate that this would not be the case.

I am also concerned over efforts to apply this Act to business credit. The Federal Reserve, of course, is authorized to exempt business credit from the provisions of this Act. The provisions of this Act are not really suited to all forms of business credit, and an exemption in such cases would be clearly appropriate. I would hope that the Federal Reserve would make such an exemption at an early date.

JOHN TOWER.

(27)



EQUAL CREDIT OPPORTUNITY ACT

MARCH 4, 1976.—Ordered to be printed

Mr. REUSS, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 6516]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6516) 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 having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That (a) this Act may be cited as the "Equal Credit Opportunity Act Amendments of 1976".

(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.

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—

"(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.

"(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.

"(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 150 applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.

"(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."

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:

"(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 interest 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 subdivision 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 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 thereby 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—

“(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.

“(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.

“(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.

“(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:

"§ 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."

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."

And the Senate agree to the same.

HENRY S. REUSS,
FRANK ANNUNZIO,
GLADYS NOON SPELLMAN,
LEONOR K. SULLIVAN,
WILLIAM A. BARRETT,
CHALMERS P. WYLIE,
MILLICENT FENWICK,

Managers on the Part of the House.

WILLIAM PROXMIRE,
J. R. BIDEN,
R. MORGAN,

Managers on the Part of the Senate.

**JOINT EXPLANATORY STATEMENT OF THE
COMMITTEE OF CONFERENCE**

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6516) 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, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying Conference Report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill. The Senate amendment, the House bill and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the Conferees, and minor drafting and clarifying changes.

CATEGORIES OF PROHIBITED DISCRIMINATION

In addition to the categories of race, color, religion, national origin and age which were contained in both bills, the Senate amendment contained prohibitions against discrimination based on receipt of public assistance benefits and exercise of rights under the Consumer Credit Protection Act. The House bill did not contain these two provisions, but the Conferees agreed to their inclusion in the conference report.

PERMISSIBLE CONSIDERATION OF CERTAIN CATEGORIES

The Senate amendment permits inquiry of the applicant's age or of whether the applicant's income derives from public assistance benefits for purposes of determining the amount or stability of the applicant's income, credit history, or other pertinent element of creditworthiness as determined in Board regulations. The House bill contained no equivalent provision. The provision from the Senate amendment was accepted and included in the final substitute bill, for the reasons discussed in the Senate committee report.

The Senate amendment also permitted the use of empirically derived credit scoring systems which consider age and receipt of public assistance provided they were scientifically sound. The House bill contained no parallel provision, but did provide that it was not a violation of the Act for a creditor to treat certain age categories more favorably than others. The provisions were treated together by the Conferees, whose primary concern was to assure that elderly applicants were not disadvantaged by scoring systems or other forms of

credit-granting standards. The substitute bill contains a compromise provision which permits the use of age (but not public assistance income) in a credit scoring system provided such system does not assign a negative value to elderly applicants, and is scientifically sound based on the particular creditor's actual customer experience.

As in the Senate amendment any such scoring system must meet standards promulgated in regulations of the Board. It is not the intention of the Conferees, however, that each such system be approved by the Board on an *ad hoc* basis.

In the substitute bill, the separate House provision permitting more favorable treatment of applicants on the basis of age is retained with the modification that it applies only to elderly applicants.

AFFIRMATIVE ACTION PROGRAMS

Both the original House bill and the Senate amendment contained provisions specifically permitting the continuance of affirmative action type programs authorized by law, or offered by non-profit organizations. The substitute bill adopts the Senate version of this provision which is applicable to all "credit" programs rather than the narrower "loan" programs cited in the House bill. The Conferees were aware that there are a number of such ongoing programs. This provision merely clarifies the Congressional intent under the original Equal Credit Opportunity Act that credit denials pursuant to such programs are not violations of the Act.

Similarly, in the case of special purpose credit programs offered by profit-making organizations, the Conferees approved the language common to both the House bill and the Senate amendment exempting such programs from the restrictions of the Act so long as they conform to Board regulations. The intent of this section of the statute is to authorize the Board to specify standards for the exemption of classes of transactions when it has been clearly demonstrated on the public record that without such exemption the consumers involved would effectively be denied credit.

As in the case of government sponsored or non-profit programs, this provision is intended to confirm that ongoing special programs offered by commercial creditors are not automatically violative of this Act.

REASONS FOR ADVERSE ACTION

The Senate amendment provided that creditors must notify applicants of action taken on the application, and at least on request must give applicants statements of reasons for adverse action. The House bill contained no equivalent provision. The substitute bill set out in the Conference Report adopts the Senate provision, with two modifications: (1) the definition of "statement of reasons" is changed to require that it contain "the specific reasons for the adverse action taken"; and (2) an exemption from the requirements to give written notifications and statements of reasons is provided for creditors who act on 150 or fewer applications a year. The intention of this latter provision is to relieve the very small credit grantor from the burden of preparing formal written documents when that creditor conducts a small-volume credit operation.

BUSINESS CREDIT EXEMPTION

The original Equal Credit Opportunity Act applies to all credit transactions, and the House bill continues this scope. The Senate amendment, on the other hand, authorized the Federal Reserve Board to exempt classes of credit transactions (other than consumer credit transactions) if the Board expressly finds that application of the Act is not necessary to achieve its purpose. The Conferees accepted the Senate provision. The intention of the Conferees is to permit exemptions only when the inclusion of those classes of transactions would serve no useful purpose in achieving the antidiscrimination goals of this Act.

CONSUMER ADVISORY COUNCIL

The original House bill called for the creation of a new Advisory Committee to advise and consult with the Board concerning the Equal Credit Opportunity Act. The Senate amendment instead would establish a new Consumer Advisory Council to advise the Board on all its functions under the Consumer Credit Protection Act. This Council would also absorb the present functions of the Truth in Lending Advisory Committee. The Conference Report adopts the Senate provision.

FEDERAL TRADE COMMISSION ENFORCEMENT

The Conferees accepted, from the Senate amendment, a provision clarifying that the Federal Trade Commission could enforce this Act in the same manner as if it were an FTC trade regulation rule.

RELATIONS TO STATE LAWS

Both the House bill and the Senate amendment contained provisions restricting an aggrieved applicant to a single recovery when a creditor's conduct violates both state and federal law. With some technical changes, the Conference Report contains the Senate provision, which makes it clear that an applicant can bring only one lawsuit for monetary damages, but is not otherwise restricted in his or her remedies under state law and under this Act.

The Conference Report also contains two provisions, patterned on similar sections of the Fair Credit Billing Act, which make it clear that this Act does not preempt state law unless that law is inconsistent with the federal Act. Similarly, the Board is directed to exempt from the federal Act any classes of transactions which are subject to state law substantially similar or more protective than this Act. The provision also confirms that the permitted exemptions are from the "requirements" of this Act and not from its remedial provisions.

CIVIL LIABILITY

Both the House bill and the Senate amendment provided substantially expanded civil liability rules for violations of the Act. The House bill continued the present limits on punitive damages from the present Act: \$10,000 for individual actions, and \$100,000 for class actions. In addition the House bill would have required that violations

be willful before punitive damages would lie. The Conferees accepted the Senate version of these points, which did not include the "willful" criterion, and set the maximum class action recovery at the lesser of \$500,000 or 1% of the creditor's net worth.

The Conference Report also contains an amendment of section 706 (e) as offered by one of the House Conferees. This amendment would expand the "good faith reliance" defense to include reliance on interpretations and approvals issued by Federal Reserve staff under delegation from the Board itself. This provision in the substitute bill mirrors language recently added to the Truth in Lending title of the Consumer Credit Protection Act.

The original House bill retained the one-year statute of limitations from the present Act, but would have permitted aggrieved applicants to bring private actions within one year after the successful completion of an agency or Attorney General action. The Senate bill set the basic statute of limitations at two years, and permits individual actions to be brought within one year after the commencement of a public enforcement action provided that action is begun within the two year period. The Conference Report contains the Senate version on statute of limitations.

The substitute bill also contains a provision which was in the Senate amendment, but not in the House bill, confirming that nothing in this Act protects any creditor's credit granting standards from discovery under appropriate procedures in any court or agency proceeding.

EFFECTIVE DATE

The House bill would have taken effect six months after enactment. The Senate amendment provided that its provisions would take effect on enactment except for the substantive changes to section 701 which would take effect eighteen months after enactment. The Conferees agreed to the Senate formula, but charged the delay period from eighteen to twelve months. The intent of the Conferees is that the full regulation take effect on the scheduled date.

HENRY S. REUSS,
FRANK ANNUNZIO,
GLADYS NOON SPELLMAN,
LEONOR K. SULLIVAN,
WILLIAM A. BARRETT,
CHALMERS P. WYLIE,
MILLICENT FENWICK,

Managers on the Part of the House.

WILLIAM PROXMIRE,
J. R. BIDEN,
R. MORGAN,

Managers on the Part of the Senate.

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

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.

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".

(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.

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—

“(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.

“(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.

“(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.

“(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.”

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:

“(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-

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—

“(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.

“(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.

“(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.

“(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 :

“§ 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.”

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.”

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have today signed H.R. 6516, which expands the scope of the Equal Credit Opportunity Act.

This Administration is committed to the goal of equal opportunity in all aspects of our society. In financial transactions, no person should be denied an equal opportunity to obtain credit for reasons unrelated to his or her creditworthiness.

Last November, I stated my support for legislation to amend the Equal Credit Opportunity Act to bar creditor discrimination on the basis of race, color, religion, or national origin against any credit applicant in any aspect of a credit transaction. The Act currently prohibits discrimination on the basis of sex or marital status.

This bill carries out my recommendations. It applies to business as well as consumer credit transactions and, thus, reaches discrimination against Americans in the extension of credit which might arise from foreign boycott practices.

In addition, this bill permits the Attorney General, as well as private citizens, to initiate suits where discrimination in credit transactions has occurred. It also provides that a person to whom credit is denied is entitled to know of the reasons for the denial.

It is with great pleasure that I sign a bill that represents a major step forward in assuring equal opportunity in our country.

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OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

REMARKS OF THE PRESIDENT
UPON SIGNING H.R. 8835
THE TRUTH IN LEASING BILL
AND

H.R. 6516, THE EQUAL CREDIT OPPORTUNITY BILL

THE ROSE GARDEN

2:07 P.M. EST

Mrs. Knauer, distinguished Members of the
Congress:

This is a very, very important day for all American consumers of every persuasion, of every race, of all ages. It is important because with my signing of the two bills before me the Administration reconfirms its commitment to equal opportunity.

It also underscores our desire to make Government far more responsive to the needs of the American consumer, and I indicate my appreciation to the Members of the House, as well as the Senate, for their cooperation in this regard.

The equal opportunity amendments and the Consumer Leasing Act reflect our joint determination to achieve goals of fairness and equality in a broad range of business transactions, transactions which millions of American consumers engage in every day of every year.

Last November I spoke out deploring discrimination against Americans that might arise from foreign boycott practices. At that time, I also voiced my firm support for the amendments to the Consumer Credit Protection Agency, which would bar such discrimination.

The Consumer Credit Protection Act already on the books prohibits credit discrimination based on sex and marital status. The amounts that I am signing today broaden the act to prohibit credit discrimination on the basis of race, color, religion, national origin and age.

MORE

(OVER)

The other bill that I am signing today, the Consumer Leasing Act of 1976, also broadens consumer protection. It amends the 1968 Truth in Lending Act to extend to lease contracts, the disclosures and protection requirements now imposed on credit transactions.

With the rise of consumer leasing of automobiles and other equipment as an alternative to installment buying, this measure meets a very real need.

I am delighted to sign both bills today, and I congratulate the Members of Congress, both Democrat and Republican, for their working with us on this project. The bills add to a growing list of steps that we have taken in the last year to help give all consumers a far fairer shake, to make our country far more equitable and a more just place for all Americans to live.

I thank the Members of Congress, and Mrs. Knauer, for being here on this beautiful day in the Rose Garden for this occasion.

END (AT 2:12 P.M. EST)