

117TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } 117-

LGBTQ BUSINESS EQUAL CREDIT ENFORCEMENT AND
INVESTMENT ACT

MAY --, 2021.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Ms. WATERS, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 1443]

The Committee on Financial Services, to whom was referred the bill (H.R. 1443) to amend the Equal Credit Opportunity Act to require the collection of small business loan data related to LGBTQ-owned businesses, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “LGBTQ Business Equal Credit Enforcement and Investment Act”.

SEC. 2. SMALL BUSINESS LOAN DATA COLLECTION.

(a) IN GENERAL.—Section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2) is amended—

(1) by inserting “LGBTQ-owned,” after “minority-owned,” each place such term appears;

(2) in subsection (e)(2)(G), by inserting “, sexual orientation, gender identity” after “sex”; and

(3) in subsection (h), by adding at the end the following:

“(7) LGBTQ-OWNED BUSINESS.—The term ‘LGBTQ-owned business’ means a business—

“(A) more than 50 percent of the ownership or control of which is held by 1 or more individuals self-identifying as lesbian, gay, bisexual, transgender, or queer; and

“(B) more than 50 percent of the net profit or loss of which accrues to 1 or more individuals self-identifying as lesbian, gay, bisexual, transgender, or queer.”.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the term “sex”, as used within the Equal Credit Opportunity Act, includes an individual’s sexual orientation and gender identity, and that this Act, in part, clarifies that the sex, sexual orientation, and gender identity of the principal owners of a business should be collected under section 704B of the Equal Credit Opportunity Act as three separate forms of information.

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PURPOSE AND SUMMARY

On February 26, 2021, Representative Ritchie Torres (D-NY-15) introduced H.R. 1443, the LGBTQ Business Equal Credit Enforcement and Investment Act, which would amend the Equal Credit Opportunity Act (ECOA) to require financial institutions to collect and report the self-identified sexual orientation and gender identity of small businesses owners. The collection of this information would be in addition to the sex, race, and ethnicity of small business owners, which are already required under ECOA. This bill also includes a definition for businesses owned by lesbian, gay, bisexual, transgender or queer or questioning (LGBTQ) individuals.

BACKGROUND AND NEED FOR LEGISLATION

On June 15, 2020, the Supreme Court ruled that the prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964 (Title VII) encompasses sexual orientation discrimination and gender identity discrimination.¹ In March 2021, the Consumer Financial Protection Bureau (CFPB) issued an interpretative rule, consistent with that Supreme Court decision, to clarify that, with respect to any aspect of a credit transaction, the prohibition against sex discrimination in ECOA² and Regulation B encompasses sexual orientation discrimination and gender identity discrimination, including discrimination based on actual or perceived nonconformity with sex-based or gender-based stereotypes and discrimination based on an applicant's associations.³

While there is a lack specific data on LGBTQ+ owned businesses due in part to a lack of data collection requirements, recent research demonstrates that LGBTQ+ individuals in the United States face significant barriers to economic opportunity, including access to credit. For example, in 2015, one national survey found that that transgender respondents were three times more likely than the general population to report annual household income below \$10,000, and had an unemployment rate that was three times higher than the national rate.⁴ Moreover, in 2019, more LGBT people were living in poverty than straight cisgender people, with LGBT people of color experiencing higher poverty rates than same-race cisgender straight people.⁵ For example, one study found that nearly 31 percent of Black LGBT people live in poverty, compared with nearly 25 percent of Black cisgender straight people.⁶ Research also shows that LGBTQ individuals and communities experience discrimination when applying for a mortgage and other forms of credit

¹ *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020).

² 15 U.S. Code § 1691 (1974).

³ Consumer Financial Protection Bureau, *Equal Credit Opportunity (Regulation B); Discrimination on the Bases of Sexual Orientation and Gender Identity*, 86 Fed. Reg. 14363 (March 16, 2021) (interpretive rule).

⁴ S. E. James, et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality, (2016).

⁵ M.V. Lee Badgett, et al., *LGBT Poverty in the United States: A study of differences between sexual orientation and gender identity groups*, UCLA School of Law, Williams Institute, (October 2019).

⁶ *Id.*

because of their sexual orientation or gender identity.⁷ For example, a study of Home Mortgage Disclosure Act (HMDA) data from 2019 found that loans in neighborhoods with a higher density of LGBTQ people received higher interest and fees, regardless of the applicants' sexuality.⁸

An estimated 70 percent of LGBTQ individuals live in states that do not prohibit credit discrimination based on sexual orientation or gender identity.⁹ Under the current Federal statute, ECOA-- which prohibits creditors from denying, discouraging, or applying inconsistent standards to, consumers seeking credit products or loans based on their sex-- does not explicitly protect individuals against discrimination based on their sexual orientation or gender identity. However, plenty of legal precedent supports the argument that the prohibition of sex discrimination in ECOA and Regulation B includes protection on the bases of gender identity and sexual orientation.¹⁰ H.R. 5, the Equality Act, which passed in the House of Representatives on February 25, 2021, would make explicit that discrimination based on sexual orientation and gender identity in areas including credit, employment and housing would be prohibited under the law.¹¹

Recent research show that there are an estimated 1.4 million LGBT-owned businesses in the U.S.¹² The 2015 U.S. Transgender Survey found that 15 percent of respondents reported self-employment in their own business, profession, trade, or farm.¹³ Many LGBT-owned businesses rely on certification programs to overcome historical barriers in access to capital and government procurement contracts.¹⁴ According one 2016 survey of LGBT-owned businesses with access to at least one form of certification, more than 66 percent identified as gay-owned, 29.1 percent as lesbian-owned, 2.3 percent as bisexual-owned, and two percent as transgender-owned.¹⁵

Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) amended ECOA to require financial institutions to collect, maintain, and submit to the CFPB data on applications for credit for women-owned, minority-owned, and small businesses, with the intent of facilitating the enforcement of fair lending laws, and enable communities, government agencies, and lenders to identify the community development needs as it relates to women-owned, minority-owned, and small businesses.¹⁶ Section 1071 does not explicitly require financial institutions to collect data on LGBTQ-owned businesses, and does not include a definition for a LGBTQ-owned business.

⁷ Hua Sun & Lei Gao, *Lending practices to same-sex borrowers*, Proceedings of the National Academy of Sciences (May 17, 2019); S. Goldberg et al., *LGBT People And Housing Affordability, Discrimination, and Homelessness*, UCLA School of Law, Williams Institute (Apr. 2020); National Community Reinvestment Coalition, *Same-Sex Couples and Mortgage Lending*, (Jun. 22, 2020).

⁸ See Hua Sun & Lei Gao, *Lending practices to same-sex borrowers*, Proceedings of the National Academy of Sciences (May 17, 2019).

⁹ Movement Advancement Project, *Equality Maps: State Nondiscrimination Laws*, (May 4, 2021).

¹⁰ Letter from CFPB Director Richard Cordray to Services and Advocacy for GLBT Elders (SAGE), (Aug. 30, 2016).

¹¹ H.R. 5, 117th Cong. (2021).

¹² National LGBT Chamber of Commerce, *America's LGBT Economy*, (Oct. 2016)

¹³ See S. E. James, et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality, (2016).

¹⁴ Justin Nelson, *The Equality Act Is Missing One Big Thing*, The Advocate (Sept. 23, 2015).

¹⁵ See National LGBT Chamber of Commerce, *America's LGBT Economy*, (Oct. 2016).

¹⁶ Public Law 111-203, 124 Stat. 1376 (2010).

The intent of H.R. 1443 is to reaffirm that the term “sex”, as used within ECOA, includes an individual’s sexual orientation and gender identity, and to clarify that the sex, sexual orientation, and gender identity of the principal owners of a business should be collected under section 704B of the Equal Credit Opportunity Act as three separate forms of information. Moreover, by creating a definition of LGBTQ-owned businesses in federal law, this, along with the bill’s data collection requirements, should help promote investment and fair lending to LGBTQ-owned businesses.

Relatedly, another purpose of this legislation is to encourage the CFPB to promptly finalize the rulemaking required by Section 1071 of Dodd-Frank, and in doing so, to be inclusive of LGBTQ-owned businesses with respect to promoting transparency and ensuring fair lending opportunities for these businesses.

This bill is supported by Center for American Progress, Center for LGBTQ Economic Advancement & Research, Equality Federation, Family Equality, Freedom for All Americans, Human Rights Campaign, National Center for Lesbian Rights, National Center for Transgender Equality, National Gay and Lesbian Chamber of Commerce, National Gay and Lesbian Chamber of Commerce, National LGBTQ Task Force Action Fund, the National Center for Transgender Equality, Out Leadership, PFLAG National, and SAGE.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states that the title of the bill is the LGBTQ Business Equal Credit Enforcement and Investment Act.

Section 2. Small business loan data collection

This section would amend Section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2) to require financial institutions to collect loan applicant data from LGBTQ-owned businesses, and clarifies the self-identified sex, sexual orientation, and gender identity of the principal owners of a business should be collected as three separate forms of information. This section would also add a definition of an LGBTQ-owned business to the ECOA statute and include a Sense of Congress confirming that sexual orientation and gender identity are already covered under ECOA.

HEARINGS

For the purposes of section 3(c)(6) of House Rule XIII, the following hearings considered issues that would be addressed by H.R. 1443:

- (1) On February 24, 2021 the Subcommittee on Oversight and Investigations held a hearing entitled, “How Invidious Discrimination Works and Hurts: An Examination of Lending Discrimination and Its Long-term Economic Impacts on Borrowers of Color,” which examined invidious discrimination in lending, its modern manifestations, and its lasting effects on growing wealth gaps. The witnesses at this subcommittee hearing were: William Darity, Jr., Professor of Public Policy, African and African American Studies,

and Economics, Duke University, Director; Samuel DuBois Cook Center on Social Equity; Lisa Rice, President & CEO, National Fair Housing Alliance (NFHA); Andre Perry, Senior Fellow, Metropolitan Policy Program, The Brookings Institution; Frances Espinoza, Executive Director, North Texas Fair Housing Center; and Cheryl Cooper, Analyst, Financial Economics Division, Congressional Research Service.

- (2) On March 10, 2021 the Full Committee held a hearing entitled, “Justice for All: Achieving Racial Equity Through Fair Access to Housing and Financial Services,” which examined the barriers and biases erected against people of color and individuals experiencing discrimination based on their gender identity and sexual orientation, the businesses they own, and the communities they live in that have been exacerbated by the COVID-19 pandemic, including challenges in accessing capital and banking services. The witnesses at this full committee hearing were: Paulina Gonzalez-Brito, Executive Director, California Reinvestment Coalition; Rashad Robinson, President, Color of Change; Dr. Keeanga-Yamahtta Taylor, Assistant Professor of African-American Studies, Princeton University; John C. Yang, President and Executive Director, Asian Americans Advancing Justice (AAJC); and Ian Rowe, President and Co-Founder of Vertex Partnership Academies.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 12, 2021, and ordered H.R. 1443 to be reported favorably to the House with an amendment in the nature of a substitute by a voice vote, a quorum being present.

COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee advises that no recorded votes were requested during consideration of H.R. 1443 and that H.R. 1443 was ordered to be reported favorably with an Amendment in the Nature of a Substitute by a voice vote.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of Rule XIII and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of Rule XIII of the Rules of the House of Representatives, the goals of H.R. 1443 are to clarify that financial institutions are required to collect and report the self-identified sexual orientation and gender identity of business loan applicants, and to ensure that LGBTQ-owned businesses have equal access to credit opportunities.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested an estimate from the Director of the Congressional Budget Office. CBO was unable to provide an estimate in a timely manner.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 1443. After careful review, including discussions with the Congressional Budget Office, the Committee estimates that H.R. 1443 would have an insignificant impact on spending.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104-4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 1443, as amended, prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104-1, H.R. 1443, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

EARMARK STATEMENT

In accordance with clause 9 of Rule XXI of the Rules of the House of Representatives, H.R. 1443 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of Rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of Rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 1443 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CHANGES TO EXISTING LAW

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 1443, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

EQUAL CREDIT OPPORTUNITY ACT

* * * * *

TITLE VII—EQUAL CREDIT OPPORTUNITY

* * * * *

SEC. 704B. SMALL BUSINESS LOAN DATA COLLECTION.

(a) **PURPOSE.**—The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, *LGBTQ-owned*, and small businesses.

(b) **INFORMATION GATHERING.**—Subject to the requirements of this section, in the case of any application to a financial institution for credit for women-owned, minority-owned, *LGBTQ-owned*, or small business, the financial institution shall—

(1) inquire whether the business is a women-owned, minority-owned, *LGBTQ-owned*, or small business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means, and whether or not such application is in response to a solicitation by the financial institution; and

(2) maintain a record of the responses to such inquiry, separate from the application and accompanying information.

(c) **RIGHT TO REFUSE.**—Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

(d) **NO ACCESS BY UNDERWRITERS.**—

(1) **LIMITATION.**—Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.

(2) **LIMITED ACCESS.**—If a financial institution determines that a loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the

financial institution shall provide notice to the applicant of the access of the underwriter to such information, along with notice that the financial institution may not discriminate on the basis of such information.

(e) FORM AND MANNER OF INFORMATION.—

(1) IN GENERAL.—Each financial institution shall compile and maintain, in accordance with regulations of the Bureau, a record of the information provided by any loan applicant pursuant to a request under subsection (b).

(2) ITEMIZATION.—Information compiled and maintained under paragraph (1) shall be itemized in order to clearly and conspicuously disclose—

(A) the number of the application and the date on which the application was received;

(B) the type and purpose of the loan or other credit being applied for;

(C) the amount of the credit or credit limit applied for, and the amount of the credit transaction or the credit limit approved for such applicant;

(D) the type of action taken with respect to such application, and the date of such action;

(E) the census tract in which is located the principal place of business of the women-owned, minority-owned, *LGBTQ-owned*, or small business loan applicant;

(F) the gross annual revenue of the business in the last fiscal year of the women-owned, minority-owned, *LGBTQ-owned*, or small business loan applicant preceding the date of the application;

(G) the race, sex, *sexual orientation*, *gender identity*, and ethnicity of the principal owners of the business; and

(H) any additional data that the Bureau determines would aid in fulfilling the purposes of this section.

(3) NO PERSONALLY IDENTIFIABLE INFORMATION.—In compiling and maintaining any record of information under this section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, or any other personally identifiable information concerning any individual who is, or is connected with, the women-owned, minority-owned, *LGBTQ-owned*, or small business loan applicant.

(4) DISCRETION TO DELETE OR MODIFY PUBLICLY AVAILABLE DATA.—The Bureau may, at its discretion, delete or modify data collected under this section which is or will be available to the public, if the Bureau determines that the deletion or modification of the data would advance a privacy interest.

(f) AVAILABILITY OF INFORMATION.—

(1) SUBMISSION TO BUREAU.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Bureau.

(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be—

- (A) retained for not less than 3 years after the date of preparation;
- (B) made available to any member of the public, upon request, in the form required under regulations prescribed by the Bureau;
- (C) annually made available to the public generally by the Bureau, in such form and in such manner as is determined by the Bureau, by regulation.
- (3) COMPILATION OF AGGREGATE DATA.—The Bureau may, at its discretion—
- (A) compile and aggregate data collected under this section for its own use; and
- (B) make public such compilations of aggregate data.
- (g) BUREAU ACTION.—
- (1) IN GENERAL.—The Bureau shall prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.
- (2) EXCEPTIONS.—The Bureau, by rule or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of financial institutions from the requirements of this section, as the Bureau deems necessary or appropriate to carry out the purposes of this section.
- (3) GUIDANCE.—The Bureau shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women-owned, minority-owned, *LGBTQ-owned*, or small businesses for purposes of this section.
- (h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:
- (1) FINANCIAL INSTITUTION.—The term “financial institution” means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.
- (2) SMALL BUSINESS.—The term “small business” has the same meaning as the term “small business concern” in section 3 of the Small Business Act (15 U.S.C. 632).
- (3) SMALL BUSINESS LOAN.—The term “small business loan” means a loan made to a small business.
- (4) MINORITY.—The term “minority” has the same meaning as in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
- (5) MINORITY-OWNED BUSINESS.—The term “minority-owned business” means a business—
- (A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and
- (B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.
- (6) WOMEN-OWNED BUSINESS.—The term “women-owned business” means a business—

(A) more than 50 percent of the ownership or control of which is held by 1 or more women; and

(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women.

(7) *LGBTQ-OWNED BUSINESS.*—*The term “LGBTQ-owned business” means a business—*

(A) more than 50 percent of the ownership or control of which is held by 1 or more individuals self-identifying as lesbian, gay, bisexual, transgender, or queer; and

(B) more than 50 percent of the net profit or loss of which accrues to 1 or more individuals self-identifying as lesbian, gay, bisexual, transgender, or queer.

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