

(G) the race, sex, 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)),<sup>1</sup> 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, 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, 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 632 of this title.

**(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.

(Pub. L. 90–321, title VII, §704B, as added Pub. L. 111–203, title X, §1071(a), July 21, 2010, 124 Stat. 2056.)

REFERENCES IN TEXT

Section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (h)(4), is section 1204(c)(3) of Pub. L. 101–73, which is set out as a note under section 1811 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1071(d) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1691 of this title.

**§ 1691d. Applicability of other laws**

**(a) Requests for signature of husband and wife for creation of valid lien, etc.**

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

<sup>1</sup> So in original. Probably should be “(2)(E)”,.

to property, or assigning earnings, shall not constitute discrimination under this subchapter: *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) State property laws affecting creditworthiness**

Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this subchapter.

**(c) State laws prohibiting separate extension of consumer credit to husband and wife**

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) Combining credit accounts of husband and wife with same creditor to determine permissible finance charges or loan ceilings under Federal or State laws**

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) Election of remedies under subchapter or State law; nature of relief determining applicability**

Where the same act or omission constitutes a violation of this subchapter and of applicable State law, a person aggrieved by such conduct may bring a legal action to recover monetary damages either under this subchapter 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.

**(f) Compliance with inconsistent State laws; determination of inconsistency**

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter 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 subchapter, and then only to the extent of the inconsistency. The Bureau is authorized to determine whether such inconsistencies exist. The Bureau may not determine that any State law is inconsistent with any provision of this subchapter if the Bureau determines that such law gives greater protection to the applicant.

**(g) Exemption by regulation of credit transactions covered by State law; failure to comply with State law**

The Bureau shall by regulation exempt from the requirements of sections 1691 and 1691a 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 subchapter 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 subchapter for the purposes of section 1691e of this title.

(Pub. L. 90-321, title VII, §705, as added Pub. L. 93-495, title V, §503, Oct. 28, 1974, 88 Stat. 1523; amended Pub. L. 94-239, §5, Mar. 23, 1976, 90 Stat. 253; Pub. L. 111-203, title X, §1085(1), July 21, 2010, 124 Stat. 2083.)

AMENDMENTS

2010—Subsecs. (f), (g). Pub. L. 111-203 substituted “Bureau” for “Board” wherever appearing.

1976—Subsec. (e). Pub. L. 94-239, §5(1), substituted provisions requiring an election of remedies in legal actions involving the recovery of monetary damages, for provisions specifying a general election of remedies.

Subsecs. (f), (g). Pub. L. 94-239, §5(2), added subsecs. (f) and (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-239 effective Mar. 23, 1976, see section 708 of Pub. L. 90-321, set out as an Effective Date note under section 1691 of this title.

**§ 1691e. Civil liability**

**(a) Individual or class action for actual damages**

Any creditor who fails to comply with any requirement imposed under this subchapter 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) Recovery of punitive damages in individual and class action for actual damages; exemptions; maximum amount of punitive damages in individual actions; limitation on total recovery in class actions; factors determining amount of award**

Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this subchapter 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.