



Comment Intake—Section 1071
Small Business Lending Data Collection
Bureau of Consumer Financial Protection
1700 G Street NW,
Washington, DC 20552

January 6, 2022

RE: Docket No. CFPB-2021-0015, Section 1071 Small Business Lending Data Collection

To Whom it May Concern:

On behalf of the members of the National Family Farm Coalition, we thank you for the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on its proposed rule on Small Business Lending Data Collection under the Equal Credit Opportunity Act (Reg. B) (Docket No. CFPB-2021-0015). We believe this Section 1071 proposed rule provides a strong framework for a data collection system for agricultural lending that is relevant to the agriculture sector and the livelihoods of the farmers and food producers that we serve.

National Family Farm Coalition (NFFC) is an alliance of grassroots farmer- and advocate-led groups across 42 states, representing the rights and interests of independent family farmers, ranchers, and fishermen in Washington, DC. NFFC's 32 state, national, and regional farm and rural organizations are bound by a common belief that communities have the right to determine how their food is grown and harvested; that everyone in the food system should receive fair prices or wages; that all producers have equitable access to credit, land, seeds, water, markets, and other resources; and, that our food and agriculture policy must support sustainable farming, ranching, and fishing practices.

Since the founding of NFFC in 1986, we have worked with Congress and Executive branch government agencies to ensure all farmers have equal access to agricultural credit, which for most food producers is an essential tool for starting, maintaining, and growing their farm businesses and seasonal production. Despite the important role that agricultural lending plays in our food system, there is a long and well documented history of discriminatory lending practices in the U.S., particularly impacting farmers of color, and socially disadvantaged farmers and ranchers. The CFPB's proposal accurately states that "the share of minority representation in farming, particularly that of Black Farmers, has declined sharply over the last 100 years...Based on the disposition of numerous lawsuits alleging discrimination against minority farmers, the Bureau believes that credit discrimination may play a role in this decline." For decades we have heard, and continue to hear in 2022, first-hand from our members how discrimination in agricultural lending undermines farmer livelihoods, weakens rural economies, exacerbates social and economic inequalities in rural communities, and in too many cases drives farmers from their land, businesses, and homes.



In response to these farmer testimonies, NFFC has repeatedly called on Congress, USDA, and now CFPB to collect more data and provide more oversight of agricultural lending practices to regulate a more fair and equal economic and institutional landscape for all farmers in the U.S. We believe that the systematic collection of more detailed, comprehensive, and publically accessible data on agricultural lending trends, as indicated in the proposed rule on Small Business Lending Data Collection under the Equal Credit Opportunity Act (ECOA), is an important step in this direction. As stated explicitly in the CFPB proposed rule, agricultural lending falls under the definition of credit in the ECOA and farming operations are correctly included in Section 1071's definition of small business, and therefore there is a clear legislative mandate for CFPB on this issue. As a national farmer advocacy organization, the need for improved data collection on agricultural lending to better identify and rectify trends in discriminatory practices is clear, and will help to strengthen the agricultural credit sector and our food system as a whole. Finally, we believe the financial resources needed to comply with these proposed rules will be small for lenders, as we believe that most or all of the data that would be collected under Section 1071 is already collected by lenders, or would require minor modifications to existing data collection processes. Data-driven evidence that can demonstrate equal treatment of all farmers regardless of who they are or how they farm should be a standard of transparency and oversight that all agricultural lenders and farmers should embrace, and we call on the CFPB to support this effort.

Identifying discriminatory agricultural lending practices

For decades NFFC has received reports from our national membership on a range of discriminatory practices by both public and private lenders, which are supported by recent media reports¹ and independent research. Some prominent examples include, but are not limited to:

- Denial of access to credit based on race, ethnicity, gender, and/or tribal affiliation of the farmer.
- Prioritization of some farmers over others regarding the timing of eligibility and availability of loan opportunities.
- Discriminatory provision of technical assistance to farmers in the loan application process.
- Discriminatory treatment in the processing of loan applications, based on the race, ethnicity, and/or gender of the farmer.
- Discriminatory treatment in the processing of loan applications, based on the scale or type of farming operation.
- Discriminatory treatment in the processing of loan applications, based on the business structure of the farm.
- Discriminatory documentation requirements for loan applications.
- Discriminatory collateral requirements for loan applications.
- In the case of public lenders, discriminatory provision of a Receipt for Service describing the services provided to the farmer by the loan officer.

¹ <https://www.cnn.com/2021/12/15/politics/black-farmers-debt-relief-disparities/index.html>



While some of these forms of discriminatory practices are straightforward, such as loan denial based on the race or gender of the applicant, many discriminatory practices in the agriculture sector are more subtle. For example, since most agricultural production is seasonal, most farmers' credit access needs are also based on their seasonal planting schedules. The narrow windows of time for planting to maximize yields are also a source of risk for farmers – missing an ideal planting period by even a few days can have major ramifications on farmers' yields and the farm business' economic bottom-line. Therefore the timing of when a farmer receives a loan can have significant impacts on when that farmer can buy production inputs like seed or machinery and start their planting schedule. A delayed loan thus can put the farmer at a market disadvantage compared to their neighbors, or miss the planting season altogether, resulting in a loss of farm revenue for potentially the entire year. With profit margins for most farmers, and particularly small and mid-scale producers, extremely thin even in good years, and farm debt in the U.S. being at historic levels, a lost or marginal year of production revenue can put farmers in a multiyear debt cycle and/or bankruptcy.

Delayed loan processing, which can manifest due to any number of actions by a lender, resulting in delayed planting is an all too common discriminatory lending practice that we hear about in our work serving family farmers, experienced particularly by farmers of color. Once a farmer has experienced a form of discriminatory lending that negatively impacts their planting schedule, they are often discouraged from seeking future agricultural credit entirely, putting the farmer at further financial risk and costing lenders who do not discriminate the loss of a potential future client. Basic data collection on loan application processing periods could be an important tool for identifying one kind of potential discriminatory prioritization (or de-prioritization) of some farmers and farm types over others, which has significant implications on farm financial sustainability. The U.S. agriculture sector needs a comprehensive data collection system for identifying the scope, prevalence, and severity of these kinds of potential discriminatory lending practices. Robust data collection will allow policymakers and the public to better understand gaps in lending, celebrate those lenders that best serving their customers and communities, and identify how lenders can most effectively serve those who are unable to secure affordable business loans.

Improving agricultural lending data collection

While NFFC supports the proposed categories of small business loan application and disposition data in the proposed rule, we believe that, specific to the agriculture sector, more comprehensive and detailed data collection would support the CFBP in fulfilling the statutory purposes of Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Equal Credit Opportunity Act. We believe this more comprehensive data collection could include, but not be limited to:



- **Farm type and production**

We have concerns that agricultural lenders may discriminate against certain kinds of farms (i.e. livestock production, specialty crops, forestry, etc.), namely smaller-scale diversified operations. While data collection on purpose of the loan, location of the loan applicant, and loan amount may infer the kind of farm linked to the loan application, targeted data collection on farm type would help to more definitively determine if all farm operations are treated equality in the lending process.

- **Farm production marketing**

We have concerns that agricultural lenders may discriminate against farm operations that market their production in certain ways (i.e. direct market, contract agriculture, cooperative marketing, etc.), namely smaller-scale diversified operations that do primarily direct market sales. While data collection on purpose of the loan, location of the loan applicant, and loan amount may infer the kind of marketing strategy used by the farmer applying for the loan, targeted data collection on farm marketing strategies, would help to more definitively determine if all farm operations, regardless of their marketing strategies, are treated equality in the lending process.

- **Non-binary sex/gender identification**

We urge CFBP to recognize the diversity of US farmers as it pertains to sex/gender, and avoid data collection that forces lenders, and therefore farmers applying for credit, to choose between a strict binary sex/gender identification. This could be resolved by simply allowing farmers to choose “other” as their sex/gender on a loan application. By moving beyond an exclusionary binary definition of sex/gender, CFBP would also be better positioned to analyze whether non-binary sex/gender conforming people are discriminated against by agricultural lenders.

- **Farming experience**

We have concerns that agricultural lenders may discriminate against farmers based on their years of farming experience, particularly impacting new and beginning farmers. While data collection on purpose of the loan, location of the loan applicant, and loan amount may infer the experience of the farmer receiving the loan, targeted data collection on farmer experience would help to more definitively determine if all farmers, regardless of experience, are treated equality in the lending process.



- **Farm certifications**

We have concerns that agricultural lenders may discriminate against farm operations with certain kinds of farm production certifications (i.e. USDA Organic, animal welfare, labor standard certification etc.), which may lead to the farm having higher labor costs (as well as more sustainable practices, which unfortunately are not typically recognized as an asset in formal lending programs). While data collection on purpose of the loan, location of the loan applicant, and loan amount may infer whether the farm operation has a certification or not, targeted data collection on farm certifications would help to more definitively determine if all farm operations and production practices are treated equality in the lending process.

Finally it is essential that the data that lenders collect and report to CFPB, as indicated in the proposed rule and suggested above, be made public in a timely, accessible manner. CFPB should, in the text of the final rule, commit to releasing the public data by a certain date after its submission. This public disclosure process will be essential for institutional transparency, accountability of lenders, and building farmer trust in the important work of CFPB.

National Family Farm Coalition generally supports the CFPB proposed rule on Section 1071 Small Business Lending Data Collection as it applies to the agriculture sector, with some suggested modifications to collect more precise data to detail the kinds of farmers (and the farms they operate) applying for agricultural credit in the U.S, and a clear commitment to disclosure and transparency by CFPB. Should you have any questions about this comment, please feel free to contact Jordan Treakle (Jordan@nffc.net), and thank you for the opportunity to comment and for your consideration of our views.

Sincerely

A handwritten signature in black ink, appearing to read 'Jordan Treakle', with a horizontal line underneath.

Jordan Treakle
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