



BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1002 [Docket No. CFPB–2021–0015]

RIN 3170–AA09

Small Business Lending Data Collection Under the Equal Credit Opportunity Act  
(Regulation B)

Proposed Rule<sup>1</sup>

January 6, 2022

Submitted electronically

The Institute for Agriculture and Trade Policy (IATP)<sup>2</sup> appreciates this opportunity to comment briefly on the above captioned rule. IATP is a member of the National Sustainable Agriculture Coalition (NSAC) and serves on three NSAC committees, including its credit policy committee. IATP supports NSAC’s comment on this Proposed Rule (PR).

IATP’s interest in this PR derives first from the fact that about 90% of U.S. agricultural enterprises are small businesses, as defined by the U.S. Department of Agriculture’s farm typology.<sup>3</sup> IATP agrees with the Bureau’s “agricultural purpose credit” analysis (Federal Reserve, Vol. 86, October 8, 2021, pp. 56406–56408) and its conclusion that agricultural lenders are “covered entities” under the PR. If the PR is finalized, these lenders would be required collect, aggregate and report demographic data in applications for credit and lender terms of credit extended to those borrowers. For agricultural enterprises to prosper, obtaining credit and borrower relevant technical assistance on fair, comparable and transparent terms is a necessary, if not sufficient, prerequisite.

As the “agricultural purpose credit” analysis summarizes, those terms of credit and technical assistance often have not been available to women and minority owned small businesses. The lack of data about credit applications denied or delayed to the point where agricultural enterprises became insolvent has specific consequences for “socially disadvantaged individuals” under agricultural credit law. According to the Agricultural Credit Act of 1987, Section 623, “Farm ownership outreach to socially disadvantaged individuals,”

The Secretary of Agriculture, in coordination with the limited resource farmers’ initiative in the office of the Director of the Office of Advocacy and Enterprise, shall establish a farm ownership outreach program for persons who are members of any group with respect to which an individual may be identified as a

IATP.ORG

2105 FIRST AVENUE SOUTH  
MINNEAPOLIS, MINNESOTA 55404  
(612) 870-0453

110 MARYLAND AVE NE, SUITE 307  
WASHINGTON, D.C. 20002  
(202) 543-8602

socially disadvantaged individual under section 8(a)(5) of the Small Business Act (15 U.S.C. 637(a)(5)) to encourage the acquisition of inventory farmland of the Farmers Home Administration by— (1) informing persons eligible for assistance under any other provision of this Act of— (A) the possibility of acquiring such inventory farmland; and (B) various farm ownership loan programs; and (2) providing technical assistance to such persons in the acquisition of such inventory farmland.<sup>4</sup>

The failure of successive Secretaries to implement successfully this statutory requirement has multiple causes, too complicated to discuss here. But one of these causes is the lack of demographic data to enable USDA officials and agricultural lenders to analyze where and why credit and/or loan relevant technical assistance appropriate to a small agricultural enterprise was not extended and used successfully. Of course, the uses of agricultural credit extend beyond acquisition of inventory farmland to include operational loans, agricultural machinery and building loans and loans to develop local markets for selling agricultural products, to name a few kinds of credit. However, for USDA, the Small Business Administration and other relevant government agencies to better understand the needs of small agricultural enterprises, the demographic data collected under the terms of the PR are indispensable tools. If the PR is finalized, it will create “first comprehensive database of small business credit applications in the United States” (Federal Register, p. 56356). This database will greatly assist provision of credit to these small-scale agricultural enterprises, as well as to a much broader array of small business credit applicants and borrowers.

Despite the clear statutory authority of the Dodd Frank Act Section 1071 amendment to the Equal Credit Opportunity Act for this rulemaking, there may be litigation to prevent finalization of the rule. Some lenders and borrowers may be concerned that requiring lenders to report demographic data in small business credit applications will in some way result in “reverse discrimination” against current beneficiaries of small business and agricultural credit. These concerns should be allayed by the non-discriminatory definitions and scope of this PR and of its well-delineated data privacy provisions (FR, 56358). Although a rule should not be written merely to anticipate and defend against possible litigation, the PR includes several provisions that should be emphasized to anticipate potential litigant objections to finalizing parts of or all the PR.

The summary of the PR outlines the Bureau’s intent to make the final rule coherent with other Bureau rulemakings to ensure fair treatment of consumers, including small businesses, by all financial service providers, not just providers of credit:

Just as the Bureau works in other ways to help foster fairness and opportunity in consumer financial services markets for all consumers, the proposed 1071 rule is structured to realize these same goals for the small business market—for all small businesses within the scope of the rule, including those that are owned by women and minorities. (FR 56356)

Demonstration of the final rule's coherence with other Bureau rules to enhance fairness and opportunity for small businesses and consumers should help the Bureau implement and enforce the final rule effectively, efficiently and fairly.

The extent of public outreach (FR, 56375-56377) to elicit ideas and feedback for the development of the PR is extraordinary and greater than for any rulemaking in IATP's more than 25 years of regulatory comments. The Bureau is to be commended for these public outreach meetings and other initiatives. Nevertheless, we expect that some commenters on the PR will accuse the Bureau of not having taken into consideration during public outreach and the drafting of the PR the costs to lenders of the data collection, record keeping and reporting under PR requirements.

In IATP's 12 years' experience of commenting on and reading comment letters on proposed financial regulations and guidance, we have observed a tendency for financial institutions to overestimate the costs of rule implementation and underestimate the benefits of financial rules, when those benefits are stated at all. Our anecdotal experience received well-researched quantification and analysis in the form of a 2020 Better Markets paper that we recommend to the Bureau.<sup>5</sup> In sum, we advise the Bureau to acknowledge costs to lenders of the data collection rule, but also to document benefits to the rule covered lenders of expanding credit and related financial services to the small businesses that are, as the PR discusses, the engines of a large portion of the U.S. economy.

Finally, the final or interim final rule should be prefaced by a table of contents, which this 251 pp. PR (in PDF form) lacks. A table of contents is likely to foster more of the extensive comments that this PR merits, but that IATP could not provide, due to other pressing deadlines. Nevertheless, we hope these brief comments will assist the Bureau in finalizing this very important rulemaking.

Respectfully,  
Steve Suppan, Ph.D.  
Senior Policy Analyst

---

<sup>1</sup> <https://www.govinfo.gov/content/pkg/FR-2021-10-08/pdf/2021-19274.pdf>

<sup>2</sup> The Institute for Agriculture and Trade Policy (IATP), founded in 1986, is a 501(C)3 organization, headquartered in Minneapolis, MN, with offices in Washington, DC, Hallowell, ME and Berlin, Germany. IATP is a member of Americans for Financial Reform, the Climate Financial Regulatory Working Group and the National Sustainable Agriculture Coalition's Credit Policy Working Group.

<sup>3</sup> "Farm Structure," Economic Research Service, U.S. Department of Agriculture, January 6, 2021. <https://www.ers.usda.gov/topics/farm-economy/farm-structure-and-organization/farm-structure/>

---

<sup>4</sup> <https://www.govinfo.gov/content/pkg/STATUTE-101/pdf/STATUTE-101-Pg1568.pdf>

<sup>5</sup> “Cost Benefit Analysis in Consumer and Investor Protection and Regulation: An Overview and Update,” Better Markets, December 8, 2020.  
[https://bettermarkets.org/sites/default/files/Better\\_Markets\\_WhitePaper\\_CBA\\_Consumer\\_Investor\\_Investor\\_Protection\\_Dec-2020.pdf](https://bettermarkets.org/sites/default/files/Better_Markets_WhitePaper_CBA_Consumer_Investor_Investor_Protection_Dec-2020.pdf)