

The Honorable Debbie Stabenow  
Chairwoman  
U.S. Senate Committee on Agriculture,  
Nutrition, and Forestry  
328A Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Sherrod Brown  
Chairman  
U.S. Senate Committee on Banking,  
Housing, and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable John Boozman  
Ranking Member  
U.S. Senate Committee on Agriculture,  
Nutrition, and Forestry  
328A Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Patrick J. Toomey  
Ranking Member  
U.S. Senate Committee on Banking,  
Housing, and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable David Scott  
Chairman  
U.S. House Agriculture Committee  
1301 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Maxine Waters  
Chairwoman  
U.S. House Committee on Financial  
Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Glenn "GT" Thompson  
U.S. House Agriculture Committee  
Ranking Member  
1301 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Patrick McHenry  
Ranking Member  
U.S. House Committee on Financial  
Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

September 14, 2022

**RE: Support for Proposed Section 1071 rule and Opposition to H.R.7768 - Farm Credit Administration Independent Authority Act (R. Davis)**

Dear Chairwoman Stabenow, Ranking Member Boozman, Chairman Scott, Ranking Member Thompson, Chairman Brown, Ranking Member Toomey, Chairwoman Waters, and Ranking Member McHenry,

We, HEAL (Health, Environment, Agriculture, Labor) Food Alliance, Rural Coalition, National Young Farmers Coalition, Center for Responsible Lending, and the additional undersigned organizations, write to express strong support for the Consumer Financial Protection Bureau (CFPB)'s proposed Section 1071 rule on Small Business Lending Data Collection under the Equal Credit Opportunity Act, and also to express strong opposition to H.R. 7768, the Farm Credit Administration Independent Authority Act, sponsored by Rep. Rodney Davis.

Our communities know firsthand how the rampant past and present discrimination against Black, Indigenous, and other farmers of color in agricultural lending has undermined these producers' ability to sustain their farms, and we want to underscore the need to include agricultural credit reporting in the CFPB's oversight responsibilities.

President Biden's *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* recognizes the need for more comprehensive data, stating "Many Federal datasets are not disaggregated by race, ethnicity, gender, disability, income, veteran status, or other key demographic variables. This lack of data has cascading effects and impedes efforts to measure and advance equity. A first step to promoting equity in Government action is to gather the data necessary to inform that effort."

These proposed regulatory updates help do exactly that. These are common sense efforts to enable the government to develop effective and equitable public policy. By including demographic reporting requirements, the CFPB will be able to better identify unmet credit needs in underserved communities and help identify discriminatory lending practices.

To advance the goal of collecting more robust data, it is critical that agricultural lenders, including those regulated by the Farm Credit Administration, whose mission is to "ensure that Farm Credit System institutions and Farmer Mac are safe, sound, and dependable sources of credit and related services for all creditworthy and eligible persons in agriculture and rural America"<sup>1</sup> participate in demographic reporting.

Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to compile, maintain, and submit to the Bureau certain data on applications for credit for all defined small businesses, including women and minority-owned small businesses. To be clear, Section 1071 is not optional – it is legally required by Dodd-Frank and is now ten years overdue. CFPB's proposed regulatory

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<sup>1</sup> *About Us*. Farm Credit Administration. <https://www.fca.gov/about/about-fca>

updates are designed to implement section 1071, and our organizations strongly support this effort.

The need to include agricultural lenders under Section 1071 is also supported in two Government Accountability Office's (GAO) reports: *AGRICULTURAL LENDING: Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers Is Limited*, and *Fair Lending: Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts*, which note that "Congress should consider requiring additional data collection and reporting for non-mortgage loans."<sup>2</sup>

However, HR 7768, which exempts institutions regulated by the Farm Credit Administration from the proposed Section 1071 rule, would exclude agriculture's single largest lending system from collecting critical demographic data. The need for this data is evidenced in government records:

- Federal Register announcement in Section 1002.104(A), "the share of minority representation in farming, particularly that of Black farmers, has declined sharply over the last 100 years." Such a decline is due in no small part to credit discrimination by agricultural lenders.
- 90% of land accumulated by Black Farmers has been lost, and even though BIPOC represent nearly one-quarter of the US population, they operate less than 5 percent of the nation's declining number of farms, and cultivate less than 1 percent of its farmland (Census Bureau 2019; USDA 2019).

## **Response to the Farm Credit Council's Objections**

The Farm Credit Council's Jan. 4, 2022 letter to the CFPB objects to the rulemaking for Section 1071, claiming a "significant burden on Farm Credit institutions that would ultimately impose additional costs on Farm Credit customers."

**To be clear, the proposed Section 1071 rule is pro-farmer.** Small farmers have consistently demanded more transparent and fair markets, and our members know that having an accurate and up-to-date picture of agricultural lending will help farmers and consumers, not hurt them. Additionally, it is important to recognize that collecting loan applicant demographics is not new to the Farm Credit Council: **The Farm Credit System already collects demographics for its home mortgage lending** under the Home Mortgage Disclosure Act.

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<sup>2</sup> United States Government Accountability Office. (2019, July) *AGRICULTURAL LENDING Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers Is Limited*. <https://www.gao.gov/assets/gao-19-539.pdf>

We provide the following responses to the Farm Credit Council's three primary objections to proposed Section 1071 rule:

*(1) The Farm Credit Council objects to the definition of "small farmer" being currently set to \$5 million gross revenue threshold, and proposes changing it to a gross annual revenue threshold equal to or less than \$250,000.*

We know discrimination does not only occur at farms with revenues equal to or less than \$250,000. To get a more complete picture of discrimination and to be able to meaningfully address it, the CFPB must be permitted to collect as much data as possible. By setting the \$5 million threshold, the CFPB will be able to collect more data on lending which then can be disaggregated to determine the amount of producers that are small farmers as defined by the USDA.

*(2) The Farm Credit Council requests the CFPB reconsider the firewall provision, which proposes "that certain data collected be shielded from underwriters and certain other persons." The Farm Credit Council claims that the firewall provision will increase costs on farmers and ranchers due to the need to hire more staff or update the IT infrastructure to separate the demographic data from the other information sent to the underwriter.*

Proposed Section 1071 rule accommodates small lenders in the firewall provision by not applying the prohibition to an "employee or officer if the financial institution determines that it is not feasible to limit that employee's or officer's access to an applicant's responses to the financial institution's inquiries regarding the applicant's protected demographic information, and the financial institution provides a notice to the applicant regarding that access."

Therefore, the smaller Farm Credit System institutions can simply send notice to the applicants explaining that the underwriter will have access to their demographic information.

*(3) The Farm Credit Council asks the CFPB reconsider its proposal to require lenders in some cases to report the ethnicity and race of "principal owners" based on visual observation or surname, claiming that the inherently subjective nature of identifying a person's ethnicity and race by visual observation or surname will distort the resulting data.*

Farm Credit's concern that 1071 would require lenders to determine borrower demographics via visual observation or surname misses the point. Removing mandatory reporting requirements will enable some lenders to avoid collecting data that may be

indicative of discriminatory lending practices. As CFPB proposed, requiring lenders to collect demographic information from borrowers will provide more accurate demographic lending data. CFPB should promulgate a rule that provides sufficient specificity for all lenders, including Farm Credit, to accurately determine borrower race and ethnicity. Regarding Farm Credit's concerns about the challenges of creating a new reporting system, many Farm Credit institutions already collect and publicly report home loan borrower demographics as required by the Home Mortgage Disclosure Act.

## **Conclusion**

At a time when independent farmers are struggling to survive in today's economy, and communities nationwide are struggling with food insecurity, we must ensure that racial equity is central to the financial support that producers receive. Nearly 97% of the \$9.2 billion pandemic recovery funds for agriculture went to white farmers, and BIPOC producers are still fighting for the debt relief they were promised in the American Rescue Act.

The CFPB's proposed regulatory updates are common sense efforts to improve our understanding of the on the ground impacts of agricultural lending, and ultimately advance policy that is good for farmers, consumers, and our food and farm systems.

The undersigned organizations ask that you support the Consumer Financial Protection Bureau's proposed Section 1071 rule, and actively oppose H.R. 7768.

Sincerely,

### National Organizations

20/20 Vision DC

Americans for Financial Reform Education Fund

Appleseed Foundation

Black Dirt Farm Collective

Campaign for Family Farms and the Environment

CDFI Coalition

Center for Responsible Lending

Consumer Action

Consumers for Auto Reliability and Safety

Environmental Working Group

Farm Action

Farm Aid

Food & Water Watch  
Food Animal Concerns Trust (FACT)  
Food Culture Collective  
Friends of the Earth  
HEAL Food Alliance  
Hispanic Federation  
Hope Policy Institute  
I-Collective  
Institute for Agriculture and Trade Policy  
Johns Hopkins Center for a Livable Future  
Land Stewardship Project  
National Black Food & Justice Alliance  
National Coalition for Asian Pacific American Community Development  
National Community Reinvestment Coalition (NCRC)  
National Consumer Law Center (on behalf of its low-income clients)  
National Family Farm Coalition  
National Latino Farmers and Ranchers  
National LGBTQ Task Force  
National Sustainable Agriculture Coalition  
National Young Farmers Coalition  
Natural Resources Defense Council  
Pesticide Action Network North America  
Public Justice  
Re:wild Your Campus  
Restaurant Opportunities Centers, ROC-United  
Rural Advancement Fund of the National Sharecroppers Fund, Inc.  
Rural Coalition  
Slow Food USA  
Small Business Majority  
Union of Concerned Scientists  
United States Hispanic Chamber of Commerce  
US Food Sovereignty Alliance  
Wallace Center at Winrock International  
Women Food and Agriculture Network (WFAN)

#### State/Regional Organizations

Alabama State Association of Cooperatives, AL  
Arkansas Appleseed Legal Justice Center, AR  
Southern Bankcorp, AR  
CAMEO - California Assoc for Micro Enterprise Opportunity, CA  
Kitchen Table Advisors, CA

Agricultural and Land-Based Training Association, CA  
Farms to Grow, Inc., CA  
California Reinvestment Coalition, CA  
California Hispanic Chambers of Commerce, CA  
Carbon Sink Farms, CA  
CoFED - Cooperative Food Empowerment Directive, CA  
Foodwise, CA  
Oakland Food Policy Council, CA  
Minnow, CA  
Real Food Media, IL, MN, CA  
Nourish Colorado, CO  
4th World Farm, CO  
Delaware Community Reinvestment Action Council, Inc, DE  
Warehouse Workers for Justice, IL  
Chicago Food Policy Action Council, IL  
Kansas Black Farmers Association, KS  
Farmworker Association of Florida, FL  
Georgia Organics, GA  
Midwest Farmers of Color Collective, Midwest  
World Farmers Inc., MA  
Springfield Food Policy Council, MA  
New Entry Sustainable Farming Project, MA  
Coastal Enterprises, Inc., ME  
Maine Organic Farmers and Gardeners Association, ME  
Maryland Consumer Rights Coalition, MD  
Fair Food Network, MI  
40 Acre Co-op, MN  
AFGE Local 3354, MO  
Northeast Farmers of Color Land Trust, Inc., Northeast  
Rural Advancement Foundation International-USA, NC  
American Indian Mothers Inc, NC  
Compañeras Campesinas, NC  
Operation Spring Plant. Inc., NC  
New Hampshire Community Loan Fund, NH  
Agrarian Trust, NH  
Agri-Cultura Cooperative Network, NM  
La Semilla Food Center, NM  
Farm School NYC, NY  
Empire Justice Center, NY  
Northeast Organic Farming Association of New York, NY  
Leviticus Fund, NY

Soul Fire Farm, NY

Brandworkers, NY, NJ

Ohio Ecological Food and Farm Association, OH

Oklahoma Black Historical Research Project, Inc., OK

Fair World Project, OR

Fresh Future Farm Inc., SC

Carolina Farm Stewardship Association, SC/NC

Cultivate Charlottesville, VA

New Hampshire Community Loan Partner Community Capital, Inc, WV