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June 14, 2023

The Honorable Sherrod Brown  
Chairman  
The Honorable Tim Scott  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Patrick McHenry  
Chairman  
The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
House of Representatives

Subject: *Consumer Financial Protection Bureau: Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Consumer Financial Protection Bureau (CFPB) titled “Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)” (RIN: 3170-AA09). We received the rule on June 1, 2023. It was published in the *Federal Register* as a final rule on May 31, 2023. 88 Fed. Reg. 35150. The effective date is August 29, 2023.

According to CFPB, this final rule amends 12 C.F.R. part 1002 (Regulation B) to implement changes to the Equal Credit Opportunity Act (ECOA) made by section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). See Dodd-Frank Act, Pub. L. No. 111-203, § 1071, 124 Stat. 1376, 2056–2059 (July 21, 2010). CFPB stated that covered financial institutions, consistent with section 1071, are required to collect and report to the CFPB data on applications for credit for small businesses, including those that are owned by women or minorities. CFPB also stated that this final rule addresses its approach to privacy interests and the publication of data; shielding certain demographic data from underwriters and other persons; recordkeeping requirements; enforcement provisions; and the rule’s effective and compliance dates.

Enclosed is our assessment of CFPB’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Edward J. Lovett  
Senior Congressional Liaison  
Consumer Financial Protection Bureau

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
CONSUMER FINANCIAL PROTECTION BUREAU  
TITLED  
“SMALL BUSINESS LENDING  
UNDER THE EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)”  
(RIN: 3170-AA09)

(i) Cost-benefit analysis

CFPB provided an analysis of the potential benefits, costs, and impacts of the final rule. The analysis includes 1) a statement of need; 2) the establishment of a baseline for the consideration of cost and benefits; 3) CFPB’s approach for considering benefits, costs, and data limitations; 4) coverage of the final rule; 5) methodology for generating cost estimates; 6) potential benefits and costs to covered financial institutions and small businesses; 7) potential impact on depository institutions and credit unions with \$10 billion or less in total assets; and 8) potential impact on small businesses in rural areas.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

CFPB stated that the final rule will have a significant economic impact on a substantial number of small entities. Accordingly, CFPB prepared a final RFA analysis for this final rule. The analysis included 1) a statement of the need for and objectives of the final rule; 2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule in the final rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply; 5) projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected; and for a covered agency, a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, CFPB is not subject to the Act. See 2 U.S.C. §§ 658(1), 1502(1).

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On October 8, 2021, CFPB's proposed rule was published in the *Federal Register*. 86 Fed. Reg. 56356. According to CFPB, it received approximately 2,100 comments on the proposal during the comment period. CFPB stated that these commenters included lenders such as banks and credit unions, community development financial institutions, community development companies, Farm Credit System lenders, online lenders, and others; national and regional industry trade associations; software vendors; business advocacy groups; community groups; research, academic, and other advocacy organizations; members of Congress; federal and state government offices/agencies; small businesses; and individuals. CFPB stated further that it considered comments received after the comment period closed via approximately 17 ex parte submissions and meetings. CFPB stated that it considered all the comments it received regarding the proposal and made certain modifications.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

CFPB determined that this final rule contains information collection requirements (ICRs) under PRA and submitted them to the Office of Management and Budget (OMB) for review. According to CFPB, the final rule amends 12 C.F.R. part 1002 (Regulation B), which implements the Equal Credit Opportunity Act (ECOA). CFPB stated that the OMB Control Number for Regulation B is 3170-0013. CFPB also stated that the final rule adds four ICRs to Regulation B under OMB Control Number 3170-0013. CFPB estimates the total annual burden hours of the ICRs imposed by this final rule to be 8,302,000 hours.

Statutory authorization for the rule

CFPB promulgated this final rule pursuant to sections 5512 and 5581 of title 12; and sections 1691b and 1691c-2 of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, CFPB is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, CFPB is not subject to the Order.