



May 15, 2018

Mr. Terence McGinnis
Commissioner
Massachusetts Division of Banks
1000 Washington St., 10th Fl.
Boston, MA 02118-6400

Re: Opinion 17-003

Dear Commissioner McGinnis:

I write on behalf of the members of the American Financial Services Association (“AFSA”)¹ to express our concerns with Opinion 17-003, relating to small loan licensing requirements for motor vehicle sales finance companies, issued by the Division of Banks (“the Division”) on January 8, 2018. We believe the Division’s position outlined in the opinion is inconsistent with the intent of the small loan license statute and would be unnecessarily burdensome, with no added consumer benefit.

Opinion 17-003 would require that companies engaged in the business of purchasing retail installment sales contracts (“RISCs”) with negative equity financing in the amount of \$6,000 or less with an annual percentage rate (APR) in excess of 12 percent, including licensed motor vehicle sales finance companies, obtain a small loan license from the Division. Opinion 17-003 indicates that the Division believes a creditor is required to hold a Massachusetts small loan license (in addition to the motor vehicle sales finance company license already held), pursuant to Massachusetts General Laws Ch. 140 § 96. Specifically, the Division cites the law’s provision providing that:

The buying or endorsing of notes or the furnishing of guarantee or security for compensation shall be considered to be engaging in the business of making small loans within said sections, but the foregoing provisions of this sentence shall not apply in the case of any transaction which involves any note or other instrument evidencing the indebtedness of a buyer to the seller of goods, services or insurance for a part or all of the purchase price; provided, however, that any advance of money by such seller or, by a person acting on his behalf for the purpose of paying an existing indebtedness of such buyer or for any other purpose shall constitute a loan of money subject to the provisions of this section.²

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

² Mass. Gen. Laws ch. 140, § 96 (2000)

We believe the Division's determination that a motor vehicle sales finance licensee is required to obtain a small loan license if the licensee takes assignment of RISCs involving trade-ins with negative equity is inconsistent with the statutory intent of small loan license statute, as sales finance companies are not the original creditors in such a transaction.

When a consumer finances a vehicle from a retail seller, and the retail seller later assigns the RISC to a licensed motor vehicle sales finance company, the vehicle dealer is the original creditor of the transaction and finances the purchase. The licensed sales finance company only takes assignment of the contract after the transaction is complete. This basic transaction structure does not change when the consumer elects to trade in an existing vehicle and finance the remaining balance owed to a previous creditor. In such a transaction, the vehicle dealer, not the sales finance company taking assignment of the RISC, is responsible for financing the negative equity and paying off the prior lienholder. As with transactions not involving negative equity, the sales finance company only takes assignment of the contract after the transaction is complete.

Further, the Division's determination incorrectly treats the negative equity balance as a loan separate from the larger balance of the overall RISC. This fails to account for the fact that the negative equity financing is only a small portion of a larger loan balance—nearly always in amounts greater than \$6,000. While these may be separate items, they are not separate loans. The negative equity is part of a single vehicle purchase transaction and would not exist without the underlying financing of the vehicle purchase; it is no more separable from the overall loan than the sales tax, service contract, or any other component of the transaction.

For all of these reasons, we respectfully request that the Division reconsider its opinion on this matter. Thank you in advance for your consideration of our concerns. If you have questions or would like to further discuss our perspective, please do not hesitate to contact me by phone at 952-922-6500 or email at dfagre@afsamail.org.

Respectfully,

A handwritten signature in black ink, appearing to read 'Danielle Fagre Arlowe', written in a cursive style.

Danielle Fagre Arlowe
Senior Vice President
American Financial Services Association
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Washington, DC 20006-5517