



STATE OF CONNECTICUT
DEPARTMENT OF BANKING
260 CONSTITUTION PLAZA • HARTFORD, CT 06103-1800



Jorge L. Perez
Commissioner

September 27, 2018

Ms. Kelly Cochran, Assistant Director
Office of Regulations
Division of Research, Markets and Regulations
Bureau of Consumer Financial Protection
1700 G Street, N.W.
Washington, DC 20006

Re: Section 97 of Connecticut Public Act 18-173 (“Section 97”)

Dear Ms. Cochran:

The Connecticut Department of Banking is the primary state regulator of persons engaged in consumer credit transactions in Connecticut, including sales finance companies. On June 14, 2018, Governor Malloy signed into law Connecticut Public Act 18-173, which amended several of the statutory requirements pertaining to sales finance companies, including Section 36a-547 of the 2018 Supplement to the General Statutes. This statute previously required that sales finance companies collect certain information pertaining to loan applicants for the retail sale of a motor vehicle, including, *if known*, the ethnicity, race and sex of the applicants. However, the legislative change, set forth in Section 97, removed the “if known” language and made it a *requirement* that sales finance companies acquire and maintain records concerning the ethnicity, race and sex of applicants effective October 1, 2018.

Since the passage of Section 97, this department has received several inquiries raising concerns that the new record collection requirements may conflict with the mandates of Regulation B (12 C.F.R. § 1002 *et al*). As a result, I respectfully request your agency’s Official Interpretation whether Section 97, which amends Section 36a-547 of the 2018 Supplement to the General Statutes, and requires sales finance companies to acquire and maintain records concerning the ethnicity, race and sex of loan applicants, is inconsistent with the mandates of Regulation B (12 C.F.R. § 1002 *et al*).

Section 97 states that:

On and after October 1, 2018, a sales finance company, as defined in section 36a-535, shall acquire and maintain adequate records in the form and manner as the commissioner shall direct in each retail installment contract acquired by purchase, discount, pledge, loan, advance or otherwise, and any application for a retail installment contract, covering the retail sale of a motor vehicle in the state that has been reviewed by the sales finance company or relates to a retail installment contract acquired by the sales finance company, including, but not limited to, the:

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(1) Name, address, income, credit score, ethnicity, race and sex of the applicant and any coapplicants; (2) type, amount and annual percentage rate of the loan; and (3) disposition of the application. Such records shall be made available to the Banking Commissioner not later than five business days after a request for such records by the commissioner. Each sales finance company shall retain such records for not less than two years after the date of the application for applications that were denied or, for any retail installment contract that was acquired, for not less than two years after the date of final payment or sale or assignment of such contract, whichever occurs first, or such longer period as may be required by any other provision of law. On or before July 1, 2019, each licensee shall provide to the commissioner the records collected between October 1, 2018, to June 30, 2019, inclusive.

As background, pursuant to Section 36a-535 of the 2018 Supplement to the General Statutes, as amended by Section 23 of Public Act 18-173, effective October 1, 2018, a sales finance company is defined, in pertinent part, as “any person engaging in this state in the business, in whole or in part, of (A) acquiring retail installment contracts or installment loan contracts from the holders thereof, by purchase, discount or pledge, or by loan or advance to the holder of either on the security thereof, or otherwise, or (B) receiving payments of principal and interest from a retail buyer under a retail installment contract or installment loan contract whether such owns such contract or has conveyed, assigned or otherwise transferred any interest in such contract to another person”.

In practice, sales finance companies covered by Section 97 will often be acquiring the retail installment contracts from motor vehicle dealers, who act as the initial party to the credit transaction with the consumer. This department is aware that Regulation B defines the term “creditor”¹ broadly, to likely include both motor vehicle dealers and sales finance companies, and aside from limited exceptions, Regulation B generally prohibits a creditor from inquiring about the race, color, religion, national origin or sex of an applicant or any other person in connection with a credit transaction.

This department is also aware that one of the exceptions provided in Regulation B is for a creditor to obtain information if “required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the Act, this part, or other Federal or state statutes or regulations” (12 C.F.R. § 1002.5(a)(2)) and that an Official Interpretation under 12 C.F.R. § 1002.5(a)(2) further provides that:

Persons such as loan brokers and correspondents do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home

¹ Regulation B provides, in pertinent part, that, “[c]reditor means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. The term creditor includes a creditor’s assignee, transferee, or subrogee who so participates. For purposes of §§ 1002.4(a) and (b), the term creditor also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made”. 12 C.F.R. 1002.2(l)

Mortgage Disclosure Act or another Federal or state statute or regulation requiring data collection.

Based on the foregoing, it is unclear whether the activities contemplated by Section 97 would satisfy this exception and otherwise be considered permissible under Regulation B. Accordingly, this department hereby requests an Official Interpretation from your agency as to whether the mandates places on sales finance companies by Section 97 to acquire and maintain records concerning ethnicity, race and sex of loan applicants are inconsistent with the requirements of Regulation B. For your reference, I have attached the legislative history of Section 97 and the various inquiries received by this department requesting further clarification of this issue.

Should you require further information, please feel free to contact Stacey L. Serrano, Staff Attorney, at (860) 240-8202 or at Stacey.Serrano@ct.gov.

Very truly yours,



Jorge L. Perez
Banking Commissioner

JLP/SLS/ag

Enclosures