

March 27, 2023

The Honorable Roger Williams
Chairman
Committee on Small Business
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the American Financial Services Association,¹ I am writing to thank you for holding the hearing, “The End of Relationship Banking? Examining the CFPB’s ‘Small Business Lending Data Collection’ Rule.” In particular, the Bureau’s rule could have significant consequences for the automotive industry, and it is imperative that the CFPB’s Section 1071 rulemaking over vehicle finance companies and banks not infringe on the Federal Reserve’s authority over auto dealers.

The Consumer Financial Protection Bureau’s (CFPB) rule for indirect vehicle finance companies and banks will conflict with the Federal Reserve’s current Sec. 1071 rule for auto dealers, as well as with the Equal Credit Opportunity Act (specifically Regulation B), and Dodd-Frank’s exclusion for auto dealers. These conflicts would create an impossible compliance situation for vehicle finance companies, and we encourage Congress to address this issue with the Bureau.

As a car dealer, you are aware of the role that indirect vehicle financing plays in the marketplace. In short, to comply with a Sec. 1071 rulemaking, indirect auto finance companies and banks will need auto dealers to collect information about an applicant’s race, color, religion, national origin, or sex. However, dealers are prohibited from gathering that information by ECOA’s Regulation B and the Federal Reserve’s 2011 rule.

Auto dealers, being completely exempt from Bureau rulemaking, are not required to assist financial institutions who are obligated to make Sec. 1071 inquiries. As dealers take the application first in many such transactions, the dealer is well-placed to gather Sec. 1071 information, but collection of some critical data elements by dealers is impermissible under ECOA and Regulation B. The CFPB lacks the power to either authorize collection of uncollectible data or compel dealers to do anything. While Congress intended the Bureau to require financial institutions to make inquiries for certain data elements in connection with applications for credit by women-owned, minority-owned, or small business applicants, the Bureau is limited in its authority to effectuate those requirements to the extent they affect dealers.

Although the CFPB has the authority to issue rules to implement Sec. 1071 for most entities (including vehicle finance companies and banks), the Federal Reserve retains authority to issue rules for certain motor vehicle dealers. In fact, the Federal Reserve issued a rule on Sept. 26, 2011, exempting motor vehicle dealers from the

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

requirements of Sec. 1071 until the Fed issues a specific rulemaking; therefore, auto dealers do not have to comply with Sec. 1071 until the Fed acts.

Furthermore, Regulation B of ECOA provides that financial institutions and auto dealers are specifically prohibited from inquiring about protected class status including “the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction...”² The CFPB’s rulemaking would permit financial institutions to make Sec. 1071 inquiries that are currently prohibited, but because of the limitation in the Bureau’s authority, that permission will not extend to dealers. The Bureau has no authority to impose mandates relating to the small business loan data collection provisions of Dodd-Frank and the present rulemaking upon dealers because Dodd-Frank Act Sec. 1029 excludes dealers from the CFPB’s jurisdiction.

In short, to comply with a Sec. 1071 rulemaking, indirect auto finance companies and banks will need auto dealers to collect information about an applicant’s race, color, religion, national origin, or sex. Auto dealers are prohibited from gathering that information by Regulation B and the Federal Reserve’s 2011 rule. Therefore, Congress should weigh in with the Bureau to ensure that vehicle finance companies are not placed in a position in which compliance with CFPB rules is impossible.

Thank you for your attention to this matter. Should you have any questions, please contact me at aharter@afsamail.org or 202-466-8606.

Sincerely,

Ann Harter
American Financial Services Association

² 12 C.F.R. §1002.5(b).