



July 29, 2011

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

***Re: Regulation B; Equal Credit Opportunity  
(Docket No. R-1426 and RIN No. 7100-AD-78)***

Dear Ms. Johnson:

The American Financial Services Association (“AFSA”)<sup>1</sup> appreciates the opportunity to comment on this proposed rule issued by the Board of Governors of the Federal Reserve System (the “Board”) under Regulation B (“Proposed Rule”). In motor vehicle financing transactions that take the form of retail installment sales, if the dealer elects to sell the retail installment sale contract (“RISC”) to a sales finance company or bank, the sale of the RISC is a separate transaction between the dealership and the assignee that occurs *after* the dealership has entered into the RISC with the customer. Given that fact, we believe that it is essential that the data requirements of the Board and the Consumer Financial Protection Bureau (the “CFPB” or “Bureau”) be consistent and harmonious.

#### **Summary of Applicable Law**

The Proposed Rule relates to Section 704B of the Equal Credit Opportunity Act (“ECOA”), as added by Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). This addition to ECOA requires that financial institutions collect and report information regarding credit applications made to the institutions by businesses that are women-owned, minority-owned, or small businesses. While the CFPB has the authority to issue rules to implement Section 704B for most entities, the Board retains authority to issue rules for certain motor vehicle dealers.

On April 11, 2011, Leonard J. Kennedy, the CFPB’s General Counsel, issued guidance explaining that “financial institutions’ obligations under section 1071 do not go into effect until the Bureau issues necessary implementing regulations.”<sup>2</sup> Mr. Kennedy stated that this approach would “ensure that data is collected in a consistent, standardized fashion” and would “conserve the resources of both the users of the data and of financial institutions.”<sup>3</sup> Taking an approach that is consistent with the views of the CFPB, the Board has issued this Proposed Rule to except

<sup>1</sup> AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, motor vehicle sales finance and leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

<sup>2</sup> See <http://www.consumerfinance.gov/wp-content/uploads/2011/04/GC-letter-re-1071.pdf>.

<sup>3</sup> *Ibid.*

motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act from any obligation to comply with Section 704B until the Board issues final regulations to implement that provision and they become effective.

### **Recommendation**

AFSA supports the Board's action in temporarily exempting motor vehicle dealers that are subject to its jurisdiction from these requirements because it is consistent with the approach taken by the CFPB. Furthermore, we would like to take this opportunity to request that the Board and the CFPB coordinate their implementation of the requirements under ECOA Section 704B. Data collected pursuant to Section 704B would be more useful if the data elements to be collected and the rules for collecting them are consistent across the spectrum of creditors to whom Section 704B applies.

In the case of a retail installment sale of a motor vehicle, a vehicle purchaser applies to and contracts with the dealer, and the dealer is the entity to which the RISC obligation is initially payable. If the dealer elects to sell the RISC to a sales finance company or bank, the sales finance company or bank deals directly with the vehicle purchaser only after: (i) the dealer submits information on the installment sale transaction, including information bearing on the vehicle purchaser's creditworthiness, to the sales finance company or bank; (ii) the sales finance company or bank agrees to buy the executed RISC; and (iii) the dealer sells and assigns that RISC to the sales finance company or bank.

The credit application information that a financial institution must report under Section 704B with respect to an installment sale would be collected by the dealer and not the assignee of the RISC (if any). As many assignees of RISCs will be subject to the reporting rules of the CFPB across the spectrum of their financing businesses, it is crucial that the Board and the CFPB coordinate the simultaneous implementation of these requirements to ensure that each entity can meet its obligations. AFSA is concerned that the Board and the Bureau could respectively require dealers and sales finance companies or banks to collect certain data points that are not uniform and consistent. A lack of coordination would hinder the ability of financial institutions to "comply with the statutory requirements in a manner that effectuates the legislative purposes" of Section 704B.

AFSA thanks the Board for the opportunity to comment on the Proposed Rule. Please feel free to contact me with any questions at 202-296-5544, ext. 616, or [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org).

Sincerely,



Bill Himpler  
Executive Vice President  
American Financial Services Association

CC: Mr. Leonard J. Kennedy, General Counsel, Consumer Financial Protection Bureau