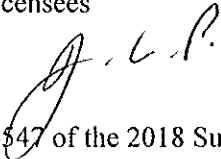


MEMORANDUM

TO: All Connecticut Sales Finance Company Licensees

FROM: Jorge L. Perez, Banking Commissioner 

RE: No Action Position Regarding Section 36a-547 of the 2018 Supplement to the General Statutes, as Amended by Section 97 of Public Act 18-173

DATE: September 28, 2018

Last session, the Connecticut Legislature passed Public Act 18-173, which amends 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.

Recently, this Department has received several inquiries raising concerns that the statutory change enacted to Section 36a-547 by Section 97 of Public Act 18-173 (“Section 97”) may be inconsistent with the requirements of federal Regulation B, 12 C.F.R. § 1002, *et.al.* (“Regulation B”). Generally, Regulation B bars creditors from inquiring about such information. As further explained below, this Department temporarily takes a no-action position with respect to the requirement that sales finance companies acquire and/or maintain the information as to an applicant’s ethnicity, race and sex pursuant to Section 97.

Section 36a-547. Retail Installment Contract Records

Section 36a-547 of the 2018 Supplement to the General Statutes currently states that: “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: (1) Name, address, income and credit score of the applicant and any coapplicants and, *if known*, the ethnicity, race and sex of such individuals . . .”. (*Emphasis added.*)

Effective October 1, 2018, Section 97 has repealed and substituted that language as follows: “On and after October 1, [2016] 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: (1) Name, address, income, [and] credit score, ethnicity, race and sex of the applicant and any co-applicants; [and, if known, the ethnicity, race and sex of such individuals;]”.

While Regulation B provides for certain limited exceptions to the prohibition of inquiring about ethnicity, race and sex, it is unclear whether the inquiries contemplated by Section 97 would be permitted pursuant to those exceptions.

No Action Position

As a result of the issues raised herein, this Department has made a formal written request to the Bureau of Consumer Financial Protection (“BCFP”) for an Official Interpretation as to whether the amendment set forth in Section 97 is inconsistent with the mandates of Regulation B. Due to the need for further guidance as to whether the state requirement of acquiring and maintaining the aforesaid records is inconsistent with the mandates of Regulation B, and until this Department receives additional guidance on that issue from the BCFP, this Department takes a no-action position as to the enforcement of the new requirement set forth in Section 97. Further, this Department considers this no-action position necessary to provide this Department additional time to undertake a review of the appropriate manner and form for which such records shall be acquired, maintained and reported to this Department.