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FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-1426]

RIN 7100 AD 78

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule amending Regulation B (Equal Credit Opportunity). 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 or Act), requires that financial institutions collect and report information concerning credit applications made by women or minority-owned businesses and by small businesses. ECOA Section 704B became effective on the date that general rulemaking authority for ECOA was transferred to the Consumer Financial Protection Bureau (CFPB or Bureau), which was July 21, 2011. Although the CFPB has the authority to issue rules to implement ECOA Section 704B for most entities, the Board retains authority to issue rules for certain motor vehicle dealers. This final rule excepts motor vehicle dealers subject to the Board's jurisdiction from the requirements of ECOA Section 704B until the effective date of final rules issued by the Board to implement that provision.

DATES: This final rule is effective September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Lorna Neill or Nikita Pastor, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667. For users of

Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

Section 704B of ECOA, as added by Section 1071 of the Dodd-Frank Act, requires that financial institutions collect and report information concerning credit applications made by women or minority-owned businesses and by small businesses. 15 U.S.C. 1691c-2. The statute directs financial institutions to compile and maintain the data "in accordance with regulations of the Bureau." ECOA Section 704B(e)(1), 15 U.S.C. 1691c-2(e)(1). The purpose of Section 704B is "to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses." ECOA Section 704B became effective on the date that rulemaking authority for ECOA transferred to the CFPB, which was July 21, 2011.

On April 11, 2011, the CFPB issued a letter concluding that financial institutions have no obligations under Section 704B until the CFPB issues regulations to implement the requirements.¹ The CFPB letter notes that Congress intended Section 704B to produce reliable and consistent data that can be analyzed by the CFPB, other government agencies, and members of the public to facilitate enforcement of fair lending laws and to identify business and community development needs. Based on the statutory text, purpose, and legislative history, the CFPB letter concludes that implementing regulations are necessary to ensure that data are collected and reported in a consistent, standardized fashion that allows for sound analysis by the CFPB and other users of the data.

Although the CFPB has authority to issue rules to implement ECOA (including data collection under Section 704B) for most entities, the Board retains authority to issue rules under ECOA for motor vehicle dealers covered

by Section 1029(a) of the Dodd-Frank Act.² Thus, the Board is responsible for issuing regulations to implement the amendments made by Section 704B for motor vehicle dealers covered by Section 1029(a). Consequently, the Board has received inquiries as to whether motor vehicle dealers must comply with the requirements of ECOA Section 704B before implementing regulations are issued.

The Board believes that detailed rules to implement ECOA Section 704B are necessary to ensure that data collected and reported under that provision are useful. As noted, the purposes of the statute are to facilitate fair lending enforcement and to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses. To support sound analysis by users of the data, the data should be collected and reported by motor vehicle dealers in a consistent and standardized way. To achieve this, implementing rules can provide motor vehicle dealers with uniform definitions and standards that they can follow in collecting and reporting data.

For these reasons, on June 23, 2011, the Board published for public comment a proposed rule to except motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act from any obligation to comply with ECOA Section 704B until the Board issues final regulations to implement that provision and those regulations become effective. The proposed rule was consistent with the views expressed by the CFPB, and was

² Section 1029(a) of the Dodd-Frank Act states: "Except as permitted in subsection (b), the Bureau may not exercise any rulemaking * * * authority * * * over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both." 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act states: "Subsection (a) shall not apply to any person, to the extent such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transaction involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are [sic] provided directly to consumers and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service." 12 U.S.C. 5519(b).

¹ See Letter from Leonard J. Kennedy, General Counsel, CFPB, to Chief Executive Officers of Financial Institutions under Section 1071 of the Dodd-Frank Act, <http://www.consumerfinance.gov/wp-content/uploads/2011/04/GC-letter-re-1071.pdf> (Apr. 11, 2011).

supported by the text and purpose of Section 1071 of the Dodd-Frank Act. The applicability of the proposed rule was limited to Section 1071 and would not affect the implementation date of any other provision of the Dodd-Frank Act.

The Board received five comment letters in response to the June 2011 proposal. All of the commenters generally supported the proposed rule. For the reasons discussed below, the Board is adopting the June 2011 proposal as a final rule without changes.

II. Legal Authority

ECOA Section 703, as amended by Section 1085 of the Dodd-Frank Act, directs the Board to prescribe regulations to carry out ECOA's purposes for motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act. *See* 15 U.S.C. 1691b(f). In addition, the Board's general rulemaking under ECOA includes authority to issue regulations that contain such classifications, differentiation, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion of ECOA, or to facilitate or substantiate compliance with ECOA. *Id.* Finally, ECOA Section 704B(g)(2) contains authority for exceptions or exemptions for any class of financial institutions as deemed necessary or appropriate to carry out the purposes of Section 704B. 15 U.S.C. 1691c-2(g)(2).

Pursuant to this authority, the final rule excepts motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act from the requirement to comply with ECOA Section 704B until the effective date of final rules issued by the Board to implement Section 704B. The Board believes that this exception is necessary to effectuate the purposes of ECOA and facilitate compliance. First, as noted, ECOA Section 704B states that its purpose is "to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses." 15 U.S.C. 1691c-2(a). The Board believes that this purpose is better served if detailed rules prescribe the method for collecting and reporting data under Section 704B. The collection of data in a uniform manner under a final regulation will enhance data analysis and enforcement capabilities. Second, in directing that financial

institutions compile and maintain the data "in accordance with regulations of the Bureau," the text of ECOA Section 704B clearly contemplates that regulations are necessary to implement this provision.³ Finally, delaying data collection until there are implementing regulations will facilitate compliance by providing guidance on how motor vehicle dealers can comply with the statutory requirements in a manner that effectuates the legislative purposes.

Effective Date

This final rule is effective upon publication in the **Federal Register**. The Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq.*, generally requires that rules be published not less than 30 days before their effective date. *See* 5 U.S.C. 553(d). However, the APA provides exceptions to this timing requirement for certain rules. For the reasons discussed below, the Board believes that the final rule meets the requirements for an exception to the APA's general 30-day notice requirement.

Specifically, the APA's 30-day notice requirement does not apply to "a substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1). As explained above, the final rule temporarily relieves motor vehicle dealers covered under Section 1029(a) of the Dodd-Frank Act from the statutory obligation under ECOA Section 704B to collect and report data on credit applications made by women- and minority-owned businesses and small businesses. The rule therefore grants a temporary exemption from a statutory obligation that might otherwise apply.

In addition, the APA's 30-day notice rule does not apply when "otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The Board finds that there is good cause to make this final rule effective immediately because Section 704B has already become effective and the text of the statute clearly contemplates that regulations are necessary to implement the law's requirements. For the reasons discussed above, the Board believes that regulations are necessary to effectuate the purposes of Section 704B and that motor vehicle dealers should be excepted from the statutory requirements until such rules are in effect.

³ See ECOA Section 704B(e)(1), 15 U.S.C. 1691c-2(e)(1) ("Each financial institution shall compile and maintain, in accordance with regulations of the Bureau, a record of the information provided by any loan applicant * * *").

III. Summary of Comments Received

The Board received five comment letters in response to the proposed rule. Two letters were received from trade associations that represent motor vehicle dealers, vehicle manufacturers and other automotive-related companies. One letter was received from a trade association that represents finance companies and other financial institutions that provide consumer and commercial credit. Comment letters were also received from a public policy advocacy organization and a research and consulting firm that focuses on women- and minority-owned financial institutions and investments in minority businesses.

All of the comment letters generally supported the Board's proposal to except motor vehicle dealers from the requirements of Section 704B until the effective date of final rules issued by the Board to implement that provision. Three commenters expressly urged the Board to consult and coordinate with the CFPB in developing substantive rules under Section 704B so that the rules issued by both agencies will be uniform and consistent. The consumer advocacy organization that commented also urged the Board to issue rules implementing the data collection requirements as quickly as possible so that motor vehicle dealers can comply as soon as the CFPB's rules for other creditors become effective.

IV. Section-by-Section Analysis

Section 202.17 Data Collection for Credit Applications by Women-Owned, Minority-Owned, or Small Businesses

17(a) Effective Date for Motor Vehicle Dealers

Section 704B of ECOA requires that financial institutions collect and report information concerning credit applications made by women or minority-owned businesses and by small businesses. 15 U.S.C. 1691c-2. This section of ECOA became effective on the designated transfer date, which was July 21, 2011. The term "financial institution" includes any entity that engages in any financial activity. 15 U.S.C. 1691c-2(h)(1). The term "financial activity" is not defined in ECOA or the Dodd-Frank Act, but motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act might be engaged in "financial activity" and therefore might be financial institutions subject to the requirements of ECOA Section 704B.

For the reasons discussed above, the Board is adopting Section 202.17(a) as proposed to provide that no motor

vehicle dealer covered by Section 1029(a) of the Dodd-Frank Act is required to comply with the requirements of Section 704B of ECOA until the effective date of final rules issued by the Board to implement Section 704B. In addition, the final rule specifies that Section 202.17(a) shall not be construed to affect the effective date of ECOA Section 704B for any person other than a motor vehicle dealer covered by Section 1029(a) of the Dodd-Frank Act.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3506, 5 CFR part 1320 Appendix A.1, the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information under the PRA. *See* 44 U.S.C. 3502(3). Accordingly, no paperwork burden is associated with the rule.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires an agency to perform an initial and final regulatory flexibility analysis on the impact a rule is expected to have on small entities. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.⁴ For example, to be considered a small business under the SBA size standard, a new car dealer must have 200 or fewer employees and a used car dealer must have \$23 million or less in annual revenues.

Under Section 605(b) of the RFA, 5 U.S.C. 605(b), the initial regulatory flexibility analysis otherwise required under Section 603 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its initial and final analysis and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.

A. Statement of Reasons, Objectives, and Legal Basis for the Final Rule

Section 704B of ECOA, as added by Section 1071 of the Dodd-Frank Act, requires that financial institutions

collect and report information concerning credit applications made by women or minority-owned businesses and by small businesses. ECOA Section 704B became effective on the date that rulemaking authority for ECOA was transferred to the CFPB, which was July 21, 2011. Although the CFPB has the authority to issue rules to implement ECOA Section 704B for most entities, the Board retains authority to issue rules for certain motor vehicle dealers. This final rule excepts motor vehicle dealers that are subject to the Board's jurisdiction from the requirements of ECOA Section 704B temporarily, until the effective date of final rules that will be issued by the Board to implement that provision. The **SUPPLEMENTARY INFORMATION** above contains information on the reasons, objectives and legal basis for the proposed rule.

B. Summary of the Significant Issues Raised by Public Comment on the Board's Initial Analysis of Issues, and a Statement of Any Changes Made as a Result

No public comments on the proposed rule addressed matters relating to the Board's initial regulatory flexibility analysis.

C. Small Entities Affected by the Final Rule

The final rule applies to motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act. The total number of small entities covered by the final rules is unknown, because the Board does not have data on the number of small entities that are motor vehicle dealers covered by Section 1029(a). Furthermore, it is unclear how many motor vehicle dealers covered by Section 1029(a) receive credit applications from women- or minority-owned businesses or small businesses. Nevertheless, no small entities are likely to be affected by the final rule because the rule merely preserves the status quo by granting a temporary exemption from the requirement to comply with the statute, which took effect on July 21, 2011.

D. Recordkeeping, Reporting, and Compliance Requirements

The final rule will not impose any new recordkeeping, reporting, or compliance requirements. Instead, the final rule temporarily will delay these requirements until the Board issues final implementing regulations and the regulations become effective.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the final rule.

F. Significant Alternatives to the Regulatory Revisions

The Board is not aware of any significant alternatives that would minimize any significant economic impact of the final rule on small entities. Commenters did not suggest any alternatives.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation B, 12 CFR part 202, as follows:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

- 1. The authority citation for part 202 is revised to read as follows:

Authority: 15 U.S.C. 1691–1691f; Pub. L. 111–203, 124 Stat. 1376.

- 2. Add § 202.17 to read as follows:

§ 202.17 Data collection for credit applications by women-owned, minority-owned, or small businesses.

No motor vehicle dealer covered by section 1029(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5519(a), shall be required to comply with the requirements of section 704B of the Equal Credit Opportunity Act, 15 U.S.C. 1691c-2, until the effective date of final rules issued by the Board to implement section 704B of the Act, 15 U.S.C. 1691c-2. This paragraph shall not be construed to affect the effective date of section 704B of the Act for any person other than a motor vehicle dealer covered by section 1029(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

By order of the Board of Governors of the Federal Reserve System, September 16, 2011.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 2011–24300 Filed 9–23–11; 8:45 am]

BILLING CODE 6210-01-P

⁴ U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.