

March 10, 2014

Chief FOIA Officer  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

**Re: Freedom of Information Act Request**

To Whom it May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, filed on behalf of the American Financial Services Association (hereinafter “AFSA”).<sup>1</sup>

**Statement of Interest**

The gravamen of this request stems from the publication by your agency of *CFPB Bulletin 2013-02* (March 21, 2013) entitled *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act* (hereinafter “the Bulletin”) which states:

An additional consideration for auto lenders covered as creditors under the ECOA is whether and under what circumstances they are liable for pricing disparities on a prohibited basis. When such disparities exist within an indirect auto lender’s portfolio, lenders may be liable under the legal doctrines of both disparate treatment and disparate impact.<sup>2</sup>

This section, in turn, refers to CFPB Bulletin 2012-14 (April 18, 2012), which outlines the use of the legal doctrine of disparate impact by your agency in the context of ECOA and Regulation B.

**Information Requested**

I request that a copy of the following be provided to me:

Any documents describing and relating to statistical disparate impact methodology, including:

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<sup>1</sup> Founded in 1916, AFSA is the national trade association for the consumer credit industry protecting access to credit and consumer choice. Our 350 members include consumer and commercial finance companies, auto finance and leasing companies, mortgage lenders, credit card issuers, industrial banks and industry suppliers. These companies are licensed and comprehensively regulated by state laws—many of which have been in place for nearly a century and predate the enactment of most federal banking laws.


<sup>2</sup> Bulletin at page 3.

- (1) the proxy methodology, including statistical code, used to determine the background of consumer credit applicants;
- (2) the standards and indicia used to determine who are similarly situated persons to support a claim of disparate impact in lending;
- (3) the standards that support a claim of inferential disparate treatment, including the facts required to infer that a lender based his/her decision on a prohibited factor, including what constitutes sufficient evidence that must be produced to infer a lender intended to discriminate;
- (4) a description of the threshold for determination that an applicant is "likely" a member of a protected class (e.g. 70% Hispanic)
- (5) a description of the standard deviation that would statistically support a conclusion that disparate impact on prohibited basis exists, including a description of the number of and types of standard deviations sufficient to raise an inference of discrimination;
- (6) the type and form of supporting non-statistical evidence necessary to support a finding of discrimination;
- (7) the standards for statistical disparate treatment analysis, including the formulae and statistical coding used for determining statistical significance among a class of consumers;
- (8) any metric or formulae used to measure whether pricing disparity exists (e.g., basis points, the dollar amount of the finance charge); and
- (9) the threshold at which the Bureau will determine that a pricing disparity on a prohibited basis constitutes an ECOA violation.

In order to help you determine my status for the applicability of any fees, I am requesting these documents in AFSA's role as the trade association for the automobile finance companies, which includes assisting our members in compliance education with federal statutes and regulations. As drafted, the Bulletin fails to provide specific guidance or standards that our members may use to determine whether they are in compliance with fair lending.

If you have any questions about processing this request, please contact me by phone, 202-466-8616, or e-mail, [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org).

Sincerely,



Bill Himpler

Executive Vice President

American Financial Services Association