March 21, 2014

The Honorable David F. Gantt
Chair
Committee on Transportation
New York State Assembly
Legislative Office Building 830
Albany, NY 12248

Re: A. 3649 and its negative effect on vehicle financing in New York

Dear Assemblymember Gantt:

I am writing on behalf of the members of the American Financial Services Association (AFSA)[1] to raise our very serious concerns with New York Assembly Bill 3649, the Vehicle Lienholder Accountability Act, which is pending in the Committee on Transportation. We believe this bill, if enacted, would lead to a significant reduction in the availability of vehicle financing in New York and a substantial increase in the cost of credit that remains to the detriment of New York consumers and dealers without any corresponding benefit.

If enacted, this bill would impose great risk and cost in the "securitization" of vehicle financing contracts involving New York-titled vehicles. Many vehicle financing providers "securitize" consumer vehicle financing contracts to obtain new funds to provide additional vehicle financing. They do so by bundling the contracts and selling them to a securitization trust, which sells securities to investors that represent ownership of a piece of the payment stream due under the bundles of contracts bought by the trust. This process is a critically important source of funds for vehicle financing providers. The shortage of vehicle financing in recent years that adversely affected consumers and dealers across the country from 2008-2010 was directly linked to the inability to securitize these financing contracts. This bill would again devastate the securitization market for financing contracts originated in New York with no benefit to New York consumers.

The bill states that a lienholder may assign its security interest in a vehicle to another person without affecting the validity of the security interest, but only if such lienholder notifies the owner of the vehicle of such assignment and executes a release of its security interest within ten days. The stated justification is to ensure customers are able to obtain a clean certificate of title when all payments have been made. We believe this concern is unfounded as it relates to vehicle financing. First, New York law is absolutely clear that if the assignee fails to notify the customer of the assignment, the customer is 100 percent protected if they continue to pay the assignor. Additionally, if the assignor fails to record the assignment on the certificate of title, the assignor will be bound by any release provided by the assignee. Further, in most securitization

[1] The American Financial Services Association is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA member companies offer vehicle financing, cards, personal installment loans and mortgage loans. The Association encourages and maintains ethical business practices and supports financial education for consumers of all ages.

transactions, the parties intend for the customer to continue to deal with the assignor (usually a captive finance company like Ford Motor Credit, Toyota Financial Services, etc., or a bank) because the assignor acts as servicer with full legal authority to act on the assignee's behalf. (The assignee is usually a trust with no capacity to service the assets on its own.) As a result, the party identified on the title as lienholder is also the servicer that handles payments and completes the lien release on behalf of the assignee once the obligations of the customer are satisfied. Thus, the notice of the assignment required by this bill would only serve to confuse customers about who they need to make their payments to or deal with to obtain a release of lien and will needlessly raise the cost and difficulty of accomplishing the assignment. Further, in any transaction, where the parties intend the payments to be made to the assignee, the assignee will have every motivation to notify the customer to pay it instead, because as stated above, the law is absolutely clear that payments made to the assignor cannot be subsequently collected by the assignee.

In addition, Section 2120(a) of the Vehicle and Traffic Law states, "the lienholder remains liable for any obligations as lienholder until the assignee is named as lienholder on the certificate." Section 2121(a) of the Vehicle and Traffic Law requires a lienholder to release its security interest upon satisfaction of the customer's obligation. Therefore, under existing law, assignment of the lien does not extinguish the obligation of the lienholder to release the lien upon satisfaction of the customer's obligation. So again, the articulated purpose of the bill to allow customers who have satisfied their obligation to obtain clear titles upon payment of their obligations is already addressed in New York law.

The meaning and purpose of the requirement for the assignor to "release" the security interest is unclear because it is at odds with the normal legal effect of "assigning" a security interest. Security interests are typically assigned in connection with the assignment of rights in the debt the security interest supports. The right to enforce the security interest passes with the debt to the assignee. The assignor's interest is not "released"; it is transferred directly to the assignee. The use of the term "release" in the bill suggests the security interest of the assignor must be extinguished and presumably that a new security interest must be created in favor of the assignee. Interpreted in this way, it exposes the assignee to significantly greater risk of loss in a consumer bankruptcy. If the idea is to require the assignee to record its security interest on the certificate of title by requiring a new title to be issued, it is a bad one for the following reasons:

- As discussed above, it is unnecessary to protect consumers, because the consumer may continue to deal with the assignor in obtaining a release of the security interest unless the assignee records its interest on the title, which is what the assignee intends in most securitization transactions.
- It would greatly increase the cost, administrative burden, and delay in securitization or other financing transactions (which can involve hundreds of thousands of vehicle titles) so as to make these transactions impractical.
- If companies attempted to transfer hundreds of thousands of titles simultaneously, it might overwhelm the New York title authorities and adversely affect their ability to handle routine title transfers for vehicle dealers and consumers.
- New York would be the only state to impose such a requirement on the securitization transactions described above and the resulting increase in cost and reduction in

availability of credit in New York may prompt New York customers to abandon New York dealers for dealers in other states.

- New York is one of only a few states in which the vehicle owner, rather than the lienholder, has possession of the vehicle title. Since New York is a title-holding state, New York customers would have to return the title back to the original lienholder, or somehow provide it to the new lienholder, so that the interest of the assignee could be recorded.

We also note that the language in subsection (a) of Section 2120 contradicts the existing language of paragraph (b) of Section 2120, which acknowledges that an assignee is not required to take any affirmative steps to receive a perfected security interest. Thus, the proposed changes render the existing provision internally inconsistent.

If passed as written, the unintended consequences of A. 3649 would likely to be far-reaching for New York consumers, financial institutions, dealers and even the state economy. We respectfully request that you reconsider this bill in light of the significant risk it poses to the New York vehicle financing market. We would be pleased to provide any further assistance that you should require in this matter. Please do not hesitate to contact me by phone at 952-922-6500 or email at dfagre@afsamail.org.

Thank you for your time and consideration.

Respectfully,

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