



September 15, 2014

Ms. Lau-Kam Tsang
Senior Bank Examiner
New York Department of Financial Services
One State Street
New York, NY 10004-1511

RE: Suggestion & Comment on New York Banking Laws, Article IX-Licensed Lenders and Article XI-B-Sales Finance Companies

Dear Ms. Tsang:

On behalf of the members of the American Financial Services Association (AFSA),¹ thank you for the opportunity to provide comments on the New York Banking Laws, in particular, Article IX-Licensed Lenders and XI-B-Sales Finance Companies. We appreciate the Department's efforts to streamline and modernize regulations governing the financial services industry and appreciate the opportunity to provide input. We have gathered feedback from our membership which we have outlined below. Thank you for your consideration of the following concerns and suggestions.

- New York should raise its maximum interest rate from 25 percent to provide access to installment credit for consumers who are currently forced to borrow from out of state lenders, in many cases, illegally. The state should also provide for a reasonable loan origination fee to be charged in connection with the loan, so that financial institutions not currently operating in New York can become licensed to operate, supervised by the state and able to offer small-dollar fully amortized, traditional installment loans.
- The state of New York currently operates on the theory that the Fair Lending Plan Guidelines are enforceable against lenders, though we believe this position is not supported by law.² In particular, we disagree with the requirement that "The Plan should provide for an automatic and timely review by a higher level supervisor of all applications that are rejected or withdrawn." We respectfully suggest that the necessity for review is wasteful. When underwriting and processing of withdrawn applications is done correctly, there is no need for supervisor review of documents, as this needlessly wastes time and money for the state and its consumers. We are currently unaware of any other state that imposes such a requirement.
- Section 351 of the Licensed Lender law provides that the banking board shall adopt regulations including but not limited to "(ii) providing for disclosure to the borrower by the licensee of a history of the fluctuations of the index over a reasonable period of time; and (iii) providing for notice to the borrower from the licensee prior to any rate increase

¹ AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members are important sources of credit to the American consumer. AFSA member companies offer vehicle financing, payment cards, personal installment loans and mortgage loans.

² Fair Lending Guidelines, State of New York. February 18, 2000
http://www.dfs.ny.gov/legal/industry_circular/banking/il000218.htm

or change in the terms of payment.”³ New York requires a separate notice, outside of the credit agreement terms, when an open-end account variable interest rate changes.⁴ We are not aware of another state that requires duplicate disclosure of this nature and believe they should be consolidated.

- It is our impression that New York requires a separate credit bureau notice in all consumer applications, as opposed to a standard disclosure provided by the company.⁵ Nationwide lenders struggle with different and unique state requirements like these, and we’re unaware of what benefit stems from the separate notification.
- The \$25,000 aggregate contract threshold in the Sales Finance Company law which triggers the need for a retail seller to obtain a license if they hold contracts should be increased. The \$25,000 figure has existed for a long time and essentially requires the license for one contract. The law should be expanded to provide an entity obtaining a license with same relief for loans between \$25,000 (\$50,000 for business purpose loans) and \$250,000 as it does for the smaller dollar loans.
- The sales finance licensing process in New York is very complex in terms of paperwork required of companies. If the application process was more electronic, a great deal of time and effort on both the business and state side would be saved. We respectfully recommend providing editable PDF application documents (as opposed to the non-editable ones available currently) on the state website, allowing companies to fill out the forms electronically, instead of by hand.
- The state of New York should also consider to what extent personal information is required (or may require in the future) for a sales finance company licensee’s Directors and Officers to provide and how much is necessary for effective supervision, particularly for large national companies.

Thank you in advance for your consideration of these concerns and suggestions. If you have any questions or would like further clarification, please do not hesitate to contact me at 952-922-6500 or dfagre@afsamail.org.

Respectfully,



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³ See Art. 9 NYBL § 351 ii, iii

⁴ See 3 NY Ch. 1 Part 90.3(f) of Superintendent’s Regulations.

⁵ See Art. 25 BSN § 380