



October 14, 2016

Gordon M. Cooley
Commissioner of Financial Regulation
Office of the Commissioner of Financial Regulation
500 North Calvert Street
Suite 402
Baltimore, MD 21202

Re: Regulations affecting sales finance licensees

Dear Commissioner Cooley:

On behalf of the American Financial Services Association (“AFSA”)¹ and the Mid-Atlantic Financial Services Association (“MFSA”) thank you for the opportunity to participate in the in-person forum and to provide comment on current regulations and policies affecting sales finance licensees. AFSA and MFSA members licensed in the State of Maryland engage in both direct and indirect vehicle financing and include captive vehicle finance companies, banks, and non-bank finance companies.

We request that the Office of the Commissioner of Financial Regulation (the “Commissioner”) consider changes to policies and practices in the following areas: sales finance company licensing; the Credit Grantor Law; and retail installment sales.

Sales Finance Company Licensing

Adopt uniform renewal periods instead of a renewal period based on two years from the date the license application is first approved and issued. Renewals based on a uniform period, i.e., calendar year, would allow entities with more than one renewal to coordinate renewals for all related companies at the same time.

Require a consistent list of supplemental licensing documentation. After licensing applications are submitted online, they are assigned to a state employee. Once the application is reviewed, the employee: (i) approves the application, sending a web link to print out the renewed license; or (ii) requests supplemental back-up information. The supplemental information requested is not always consistent. In addition, when a certificate of good standing is requested, none can be produced for Securitization Entities.

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

Assign a state employee as a contact person for each licensed entity. Sometimes, applicants have questions prior to submitting license applications. If there were a consistent person to contact for questions, applicants could obtain clarification on license application questions thereby reducing the need for follow up by the state after the application was submitted. For example, the assignment may be made when an applicant reaches out to the state with questions, or a specific contact person may be assigned to related entities that file renewals or new related entities.

Exclude entities formed solely to support funding transactions (“Securitization Entities”) as entities that must be licensed under the definition of “sales finance company” under the Maryland Code Annotated, Financial Institutions, section 11-401(j). Securitization Entities are formed solely to support the bulk purchase and sale of retail installment sale agreements (Securitization Transactions) to facilitate the ability of banks and finance companies to borrow money to conduct their financing business. The transactions take place outside of Maryland and, as such, Securitization Entities are not required to be qualified/registered with the SOS in order to conduct Securitization Transactions. Maryland is one of only two states that require this type of entity to be licensed.

It appears that the Commissioner may not intend to require Securitization Entities to be licensed. For example, the Commissioner changed the requirements for Certificates of Good Standing to require that they be from the State of Maryland rather than allowing them to be from the state where the organization is chartered. This requirement seems to indicate the Commissioner is focusing on companies like sales finance companies, which maintain Maryland sales finance company licenses, and are in the business of purchasing retail contracts in Maryland. It is not consistent with the funding transactions conducted by the Securitization Entities, which are outside of Maryland.

The issue that arises in Maryland is that the definition of a "sales finance company" in Maryland Code Annotated, Financial Institutions, section 11-401(j) arguably does not differentiate between situations in which retail installment sale agreements are purchased within the State of Maryland (such as those purchased by a finance company from Maryland automobile dealerships) and those in which retail installment sale agreements are purchased through bulk sale transactions with no connection to the State of Maryland (such as those purchased by the Securitization Entities from finance companies). Because of this anomaly in Maryland law, there is uncertainty related to licensing requirements for Securitization Entities.

If Securitization Entities are not excluded from the licensing requirement, eliminate the Maryland Certificate of Good Standing requirement for Securitization Entities.

Securitization Entities do not hold these certificates and cannot meet this requirement if the Commissioner continues to require Securitization Entities to be licensed in the state.

Credit Grantor Closed End Credit Provisions

Eliminate the dollar thresholds in Md. Commercial Law § 12-1003 to allow balloon financing for motor vehicles under \$30K. Strike § 12-1003(ii)(2) as follows:

(ii) A credit grantor may require a schedule of repayment under which a consumer borrower may be required to pay a balloon payment at maturity if:

1. The installment loan is secured by a lien on a motor vehicle that is a motorcycle or passenger car; ~~and~~

2. ~~The amount of the installment loan exceeds:~~

A. ~~\$10,000, if the motor vehicle is a motorcycle; and~~

B. ~~\$30,000, if the motor vehicle is a passenger car.~~

Retail Installment Sales

Eliminate the public sales requirement under MD Code, Commercial Law § 12-626.

Treating buyers who have paid more than 50% of the balance differently than those who have not requires holders under the statute to have two different courses of analysis, documentation, and action upon the repossession of personal goods. We recommend removing the public sale requirement and allowing private sales of all repossessed goods. This would make holders' processes more consistent throughout the country, as most states do not require public sales. More nationally-uniform collateral sale requirements would create consistency in auction practices and still allow for the sale of goods in a commercially reasonable manner. It would also alleviate the method of sale conflict where the contract originated in a private sale state or the goods or co-buyer is located in a private sale state. In addition, the public sale provides little benefit to the buyer, as most goods are sold to dealerships anyway in a similar manner as the commercially reasonable private sale process.

Remove the certified mail requirement for pre-repossession notices under MD Code, Commercial Law § 12-624. The pre-repossession notice is optional and is sent so the holder may recover repossession expenses. Sending this optional notice by certified mail is an unnecessary added requirement, as buyers are responsible for maintaining current addresses with the holders, so it may be presumed that the buyer receives the notice when it is sent to the buyer's address of record by U.S. Mail. If the buyer has not updated the address of record with the holder, the notice will still have been sent. In addition, the buyer will receive a post repossession notice by registered or certified mail.

Allow additional reasons for denial of reinstatement under MD Code, Commercial Law § 12-625(e)(1)(ii). Remove the requirement that reinstatement may only be denied if the reason for the repossession was that the buyer was found guilty of fraudulent conduct, intentionally and wrongfully concealing, removing, damaging, or destroying the goods, or attempting to do so. Most repossessions are based on non-payment, but the other factors referenced in the statute may also be part of the reason the account went into default. AFSA recommends adding "misrepresentation in credit application," and "threatening violence" to a revised requirement, amending § 12-625(e)(1)(ii) to read as follows (*additions underlined*):

"The buyer engaged in fraudulent conduct, misrepresented any material information in the credit application or contract, intentionally and wrongfully concealed, removed, damaged, or destroyed the goods, or attempted to do so, or threatened violence against the holder or its representatives or contractors."

Thank you in advance for your consideration and for taking the time to meet with AFSA's representative, Matt Kownacki, at the in-person forum. We appreciate the opportunity to work with the Commissioner throughout the review process. If you have any questions or would like to discuss this further, please do not hesitate to contact us or Matt Kownacki at 202-469-3181 or mkownacki@afsamail.org.

Sincerely,



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