AFSA
Protecting Credit Since 1916
American Financial Services Association

April 15, 2020

The Honorable Nellie Pou
125 West State Street
State House
Trenton, NJ 08625-1101

Re: Senate Bill 2330 - COVID-19 Financial Security for Consumers Act

Dear Senator Pou:

I write on behalf of the American Financial Services Association (AFSA)[1] to express our serious concerns with SB 2330, the COVID-19 Financial Security for Consumers Act, which would create substantial new requirements for creditors working with consumers in New Jersey. AFSA members share the legislature's goal of providing relief to borrowers facing financial hardship due to the spread of COVID-19 and continue to take steps to work with borrowers to help them stay current on their accounts and keep their vehicles and homes during this emergency. As drafted, SB 2330's proposed requirements will likely disrupt markets and would create significant compliance challenges for creditors at a time when resources should be most focused on providing direct consumer relief.

We understand that your office is working on amended bill text that would remove Section 3 of the bill and the related definitions in Section 1. We applaud these changes, as Section 3's requirements were particularly problematic, and appreciate your continued efforts to work with stakeholders on this legislation.

Covered coronavirus period

While we have concerns about enforcement of the bill's provisions retroactive to a time period before it passed, we believe extending its provisions to 120 days following the end of the public health emergency and state of emergency would make New Jersey an outlier relative to other states, which have imposed similar regulations with periods of 30, 60, or 90 days following the emergency regulation, and create implementation problems for creditors and consumers. For instance, generally accepted accounting principles (GAAP) require unpaid debt be charged off

[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.

following 120 days of nonpayment, and any debt charge off has servicing implications for both creditors and consumers.

Consumer Reporting

Section 2 of the bill, in part, prohibits a consumer report user from considering "any adverse information that is a result of the coronavirus disease 2019 pandemic in a consumer report," and further, allows individual affected persons to provide notice to users to disregard adverse information related to such person with respect to the covered coronavirus period. The credit underwriting process assesses a prospective borrower based on a number of different factors, including their overall credit profile, income, and ability to repay the loan. Credit decisions are not made solely based on the status of any single credit account, making it difficult, if not impossible, to isolate or disregard the specific effect of coronavirus-related adverse information at the consumer report user level.

Developing a credit model that disregards certain adverse information in compliance with the bill's requirements would not be feasible given the constraints of existing credit reporting systems. While creditors do work closely with prospective borrowers to tailor the credit offered based specifically on each borrower's financial needs and individual credit profile, blanket restrictions on considering certain credit information, like the restriction in the bill, would preclude creditors from offering credit narrowly tailored to meet certain borrowers' needs. Further, to the extent that any adverse information provides an indication of the borrower's ability to repay new credit, requiring creditors to disregard such information would create safety and soundness concerns for the new loan by interfering with creditors' means of fully assessing the borrower's ability to repay the loan.

The information required to be disregarded could affect individual tradelines, delinquencies, or other information that is provided as part of a consumer report obtained by a user. Because creditors do not have the ability to remove or dissect information from a consumer report, or to identify how that information included in a consumer report may have affected an individual's credit score, this provision could limit the ability of creditors to use consumer reports overall and thus affect the availability of credit for New Jersey consumers.

The federal CARES Act provides protections and relief for consumers from adverse credit reporting due to the coronavirus outbreak, and creditors are already taking steps to implement these changes. Any New Jersey-specific changes to the credit reporting systems and processes, and development of new or revised credit models, would require significant time to implement, test, and validate, and thus could not be implemented in the time period contemplated by the bill.

Finally, Section 2 of the bill would also require consumer report users to respond to a request to disregard adverse information within five days to both the affected person and the Director of the Division of Consumer Affairs, but it is not clear from the bill text what such a response to the Division would look like, particularly in such a short time frame. The nature of the response would have privacy implications for the affected person and any sensitive account information required by the State to be shared. If the intent is to provide the State with information indicating the number of affected consumers, such information could be more easily shared upon request by the Division in aggregate, without sensitive account information.

Thank you for your attention to this matter. If you have any questions or if AFSA can be of any further assistance to you as you move forward, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org.

Sincerely,

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919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517

cc:
Senators Cryan, Oroho, and Vitale