

July 23, 2020

The Honorable Carl Heastie, Speaker
New York Assembly
Legislative Office Building, Room 932
Albany, NY 12248

Re: Assembly Bill 10118

Dear Speaker Heastie:

I write on behalf of the American Financial Services Association (“AFSA”)¹ to express our concerns with Assembly Bill 10118. This bill would create a new set of disclosures that commercial lenders would be required to provide borrowers at the time credit is initially offered. AFSA members provide consumer vehicle and automobile dealer “floorplan” lending, necessary to enable these dealers to acquire their inventories of vehicles. AFSA is concerned that AB 10118, as currently drafted, does not adequately consider floorplan lending, and as a result, could inject unnecessary confusion and potential liability into standard transactions that are already well-understood by both sophisticated business parties and increase the cost of or reduce availability of commercial credit for New York automobile dealers. The bill, as currently drafted, could also create the inefficient result of providing separate disclosures for each individual vehicle on a dealer’s lot, which would lead to a significant compliance burden for lenders and limited additional protection for an automobile dealer overwhelmed with disclosures.

Automobile dealers must purchase the cars that they hold for sale. Acquiring cars to stock a dealership lot requires a significant capital outlay. Dealers either do not have the funds on hand to purchase these cars or do not wish to tie up their working capital in inventory, which can take months to sell. As a result, dealers turn to floorplan lenders to finance their inventory. Most floorplan lenders are not banks.

Floorplan lenders are financial institutions that provide floorplan inventory financing to automotive vehicle dealers through revolving or open-end credit lines. Under the terms of this financing, floorplan lenders finance vehicles as they are acquired by dealers. In addition, a floorplan lender may advance against vehicles already existing in a dealer’s inventory. Generally, an advance is an interest-only loan until the dealer sells the particular vehicle for which the advance was made. Within a specified number of days following the sale of a vehicle, the dealer must remit the principal amount advanced for that vehicle to the floorplan lender. As a result, there is no traditional payment schedule. In addition, some lenders do not provide explicit credit limits to dealers. And for lenders that do provide explicit credit limits, these limits may be subject to change based on factors such as: the borrower’s business strategy, the borrower’s creditworthiness, seasonality, automobile manufacturers’ production schedules, etc.

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.

Interest accrues through the date of repayment of that advance. The interest rate on floorplan financing is a floating rate, generally tied to a base rate, such as LIBOR or prime, and often with an additional increment assessed above the base rate. Accordingly, as base rates change, a dealer's interest rate also will change.

Finally, these facilities frequently do not contain a term. Instead, a floorplan financing credit line will remain open and available until either the floorplan lender or the dealer borrower elects to terminate it.

The revolving and floating rate nature of the product would make a disclosure that requires absolute dollar calculations misleading, as the only way to make such disclosures is to base them on a number of assumptions about the dollar amount of principal that will be borrowed under the revolving facility, rate of interest, and term of financing. Ultimately, this does not provide any informational benefits to a borrower.

The following comments to AB 10118 are based on the contextual background provided above.

Section 802. Exemptions

Section 802(g) exempts “an individual commercial financing transaction in an amount over five hundred thousand dollars (\$500,000).” While the \$500,000 threshold may be intended to exclude more sophisticated borrowers who have larger credit facilities and who may not benefit from the disclosures, the definition would broadly capture smaller transactions arranged as part of an overall credit line that is larger than \$500,000, even if the particular lender and borrower already have multi-million dollar financing accommodations and annual revenues in the millions or even billions of dollars.

This \$500,000 restriction may unintentionally cause lenders to halt providing these ‘smaller’ financing offers for fear of non-compliance. Such stoppage would result in dealers being unable to obtain needed financing or over-borrowing to avoid the restriction while incurring additional interest charges.

Section 805. Open-end commercial financing disclosure requirements

Section 805(c) outlines the required disclosures for open-end financing and requires that a lender disclose the APR “based on the maximum amount of credit available to the recipient and the term resulting from making the minimum required payments term as disclosed.” Floorplan loans are often floating rate loans, meaning that the rate of interest charged the borrower may change as benchmark rates change. It is not clear what assumptions regarding interest rates a lender should make in order to satisfy the assumption, but presumably, the assumption would necessitate disclosing the rate as if it were fixed, which could mislead a borrower and would necessitate countervailing disclosures by the lender. Additionally, Section 805(f) would require a lender to include a payment schedule based on the assumptions outlined in 805(c), but because of the variable nature of the credit line, floorplan agreements do not follow a typical payment schedule, and such a disclosure would be of little use to the borrower.

Suggested amendment

For these reasons, **we respectfully urge you to add an amendment to Section 802:**

- (h) A commercial financing transaction in which the recipient is an automobile dealer, or a vehicle rental company, or an affiliate of such a company pursuant to a specific commercial financing offer or commercial open-end credit plan, including any commercial loan made pursuant to such a commercial financing transaction.

Summary

If passed into law, Assembly Bill 10118 would be difficult or impossible for floorplan lenders to comply with, and the required disclosures are likely to be confusing or outright misleading to borrowers. In complying with this law, floorplan lenders would be forced to create disclosures governing their disclosures. Floorplan financing and other open-end credit arrangements are structured in ways that are a bad fit for the approach taken in this bill. The proposed disclosures will have a tendency to mislead borrowers when the credit facility involves a floating interest rate, and indeterminate term, an adjustable credit limit, an unpredictable timetable for advances, and no repayment “schedule” at all. In order to comply with this provision, a floorplan lender may have to provide a separate disclosure for each vehicle financed, and would be forced to make numerous assumptions that would be inconsistent with the methodology actually used by the floorplan lender to calculate interest, leading to misinformation and confusion.

We respectfully request an amendment to Section 802 exempting transactions with New York’s automobile dealers or an exemption threshold based on the size of the overall commercial financing offer or open-end credit plan—rather than the individual transaction—with a threshold no higher than fifty thousand dollars (\$50,000).

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org at your convenience.

Sincerely,



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cc:

Assemblyman Kenneth Zebrowski