

## Testimony in opposition to AB 2501

**Testimony of Danielle Fagre Arlowe  
Senior Vice President  
American Financial Services Association**

Thank you, Chair Limón and the entire Committee for the opportunity to submit written testimony. My name is Danielle Fagre Arlowe, and I am Senior Vice President for the American Financial Services Association, known as AFSA.<sup>1</sup> Our members provide many types of credit in California, but this testimony is limited to the vehicle finance and mortgage implications of AB 2501.

### **Auto-Specific Considerations**

Most auto credit is not bank credit. The majority of this type of credit is not funded by deposits. The ability to offer new credit at all (and pay our own existing credit obligations) is premised on most consumers repaying us every month. Many of our members' portfolios are already extended at **500% the usual rate**. At some point if large numbers of people across the entire country don't make their car payments, the whole system collapses. This is especially true for auto credit compared to mortgages, for two reasons: **these are depreciating assets** (compared to an appreciating home) and the payback period is only a few years (compared to a 30 year mortgage).

So non-payment of a car for two months on a five year contract is proportionally akin to non-payment of a mortgage for 14 months on a 30 year mortgage. Non-payment of a car for 180 days is akin to non-payment of a mortgage for three years. **Non-payment of a car for a year** (which this could easily get to be since our members have already been extending people for two months) is **akin to not paying a mortgage for SIX YEARS**. AND it's a depreciating asset instead of an appreciating one.

### **Secured Credit & Unprecedented Relief**

We share your goal of providing relief to borrowers facing financial hardship due to COVID-19 and its consequences. Since this emergency began, creditors have offered unprecedented relief to borrowers, including deferring monthly payments, waiving late fees, and temporarily self-imposing moratoriums on

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<sup>1</sup> 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 does not represent credit unions, payday lenders, or title lenders.

foreclosure of mortgages and repossession of vehicles. The relief available to consumers is based on each creditor's assessment of its own portfolio and offered within the constraints of existing master credit agreements and business models.

AB 2501 raises grave concerns for secured creditors that provide credit to consumers on agreed upon terms based on the **fundamental assumption that payment of the obligation is secured by collateral**. The extensions contemplated by AB 2501, both for mortgages and retail installment sales contracts, are so long and so extreme that it is a serious threat to our members' operations and business model.

### **Already at a Breaking Point**

We emphasize that most if not all of our members have already been voluntarily refraining from repossession and foreclosure for approximately 60 days. Many of our members' portfolios are extended at 500% the usual rate, and in some cases our members are **already experiencing 200% the cost of funds** they had three months ago, due to the pandemic. If California waives our customers' contractual obligations to us, we still have to pay our employees, our employees' health insurance, our corporate infrastructure costs, and our own creditors and ABS investors.

Funding our members' operations—including paying employees and preventing default of our own credit obligations—depends on customer payments. Under GAAP, many of our vehicle finance members must charge off an account and accelerate the debt at 120 days. This means that someone who was behind in payments prior to the pandemic may already be approaching the mandatory charge-off period in our own credit obligations. Forcing acceleration and charge-off of receivables, without allowing for repossession of the collateral to be sold to offset the charged off amount, will actually hurt consumers by increasing the charge-off severity.

### **Unconstitutional Taking and Ex-post Facto Law**

The U.S. Constitution prohibits states from passing ex-post facto laws and laws impairing legally valid contracts. Sales finance contracts and mortgage loans are based on the premise that they are secured by collateral. AB 2501's provisions would fundamentally compromise our members' retail installment sales contracts and mortgage contracts by effectively severing the contract from the secured collateral for an indefinite period of time. Leaving creditors without the ability to secure collateral as necessary would fundamentally impair their ability to stay in business and enter into future contracts. Further, the disruption of existing contracts and prohibition on accrual of interest creditors are legally due would be an

unconstitutional taking in violation of the U.S. Constitution's and California's own Takings Clauses, and is impermissible without just compensation.

Without significant changes, we believe AB 2501 would prevent AFSA's members from continuing to focus on providing direct relief to those consumers facing hardship and lead to significant disruption to credit markets.

Please let us know if we can provide further information that would be useful as you consider this bill.

Thank you again for the opportunity to submit written testimony.

Submitted by:

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