AMERICAN FINANCIAL SERVICES ASSOCIATION

April 5, 2021

Councilmember Phil Mendelson
Chairman, District of Columbia Council
1350 Pennsylvania Avenue, NW
Suite 504
Washington, DC 20004

Re: District of Columbia B24-0140

Dear Chairman Mendelson:

I write on behalf of the American Financial Services Association (AFSA)[1] to express our serious concerns with Temporary Bill B24-0140, which, among other provisions, would extend the District's strict restrictions on the use of consumer reports and vehicle repossessions. Our members share your goal of providing relief to borrowers facing financial hardship and have taken tremendous steps to help borrowers throughout this emergency. While our members are committed to continuing to work with borrowers to provide assistance where possible, we believe it is time for the District to reconsider its existing restrictions that, if extended, will have been in place for well over a year and pose a continued risk for secured creditors that provide credit to consumers on agreed upon terms and based on the fundamental assumption that payment of the obligation is secured by collateral.

Repossession

The District first prohibited vehicle repossession nearly a year ago in April 2020 and extended that prohibition several times through various temporary and emergency legislation, most recently B24-0139 / Act A24-0030. With each extension, the District remains the only jurisdiction across the country that continues to prohibit repossession of a vehicle. While several states had previously enacted repossession moratoriums through legislation or executive orders, every other prohibition has since expired, as state policymakers, governors, and attorneys general recognized the harm a lengthy moratorium would cause.

Vehicle sales finance contracts are based on the premise that they are secured by collateral. The District's repossession moratorium—now in place for more than a year—fundamentally compromises our members' retail installment sales 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 fundamentally impairs their ability to stay in business and enter into future contracts. These loans carry short terms of no more than a few years, and the extended repossession moratorium already

[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.

covers a significant portion of the contract term. For example, on a loan with a typical five-year term, the moratorium, first enacted in April 2020 and in effect for 60 days past the emergency declaration (currently extended through May 2021), would stretch for nearly one quarter of the original contract term.

Motor vehicle prices are determined by the market and depreciate in value over time, meaning collateral prices will continue to drop throughout the lengthy repossession moratorium. For a depreciating asset, this extended period of time without payment or repossession is likely to unfortunately leave borrowers responsible for covering any resulting higher deficiency balances. The best way to prevent such a market disruption is to allow creditors to work directly with borrowers based on individual assessments of borrowers' needs.

Additionally, while the moratorium does include an exception for voluntary surrenders of a vehicle, it is not clear that creditors may recover vehicles at risk due to mechanics' liens, fraud, vehicles in impound lots in jeopardy of being sold, abandoned vehicles, seized vehicles, or in other instances where the collateral may be in jeopardy. Leaving creditors without the clear ability to recover their collateral in instances where it may be at risk for reasons other than the COVID-19 emergency could cause additional disruption in the vehicle finance market, with implications for larger financial markets due to securitizations and existing master credit agreements.

Emergency Credit Alert

The bill would also extend the existing prohibition on users of a consumer report using or considering "any adverse information in a report that was the result of an action or inaction by a consumer" if the consumer's file contains the COVID-19 emergency alert. While this restriction has also been in place for nearly a year, these provisions continue to cause a significant compliance burden for creditors who must work within the constraints of existing credit reporting systems. 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.

Moreover, developing a credit model that disregards certain adverse information in compliance with the bill's requirements would not be feasible given that control over credit reporting processes largely rests with consumer reporting agencies. 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 these, 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 District of Columbia consumers as the prohibition stretches on.

Further problematic is that the legislation results in a two-tiered credit market by excluding national banks and credit unions from the credit alert information restrictions but including state-chartered banks and other non-depository financial institutions. Leaving certain segments of the market subject to significant restrictions creates an uneven playing field with the rest of the market. These restrictions would limit competition in the state by raising compliance costs for certain companies and leave consumers with fewer choices and worse off as a result. Additionally, the difference could prove confusing for consumers who have relationships with multiple types of financial institutions.

We urge you to consider the effects these restrictions have on the District's credit markets and remove them from the temporary legislation now in front of the Council. 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,

Matthew Kownacki
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American Financial Services Association
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cc: Members of the District of Columbia Council