May 3, 2021

The Honorable Kevin Thomas
Chairman, Committee on Consumer Protection
Legislative Office Building, Room 947
Albany, NY 12247

Re: Senate Bill 2849

Dear Chairman Thomas:

We write on behalf of the American Financial Services Association (AFSA)[1] to express our serious concerns with Senate Bill 2849 which, among other provisions, would prohibit 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 the worst of this emergency is behind us, and now is not the time to impose sweeping new restrictions that will have disastrous effects for borrowers and creditors alike. As drafted, these restrictions would extend into next 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

Vehicle sales finance contracts are based on the premise that they are secured by collateral. The proposed repossession moratorium, which would extend at least into next year, would fundamentally compromise 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 an extended repossession moratorium would cover a significant portion of the contract term. For example, on a loan with a typical five-year term, a moratorium enacted this month and extending into next year would stretch for more than 10 percent of the original contract term—the equivalent of more than three years of a 30-year mortgage.

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

[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.

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, it is not clear whether the bill would limit voluntary surrenders—which provide borrowers with the ability to voluntarily turn over a vehicle based on their own assessment of their financial situation and vehicle needs—or whether 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. While de do not believe that the legislature intends to prohibit voluntary surrender or recovery of vehicles at risk, 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.

If SB 2849 passed as drafted, New York would be the only state in the nation that prohibits repossession of a vehicle. While a few other states had repossession moratoriums through legislation or executive orders, every other state prohibition has since expired, as state policymakers, governors, and attorneys general recognized the harm a lengthy moratorium would cause and decided against extensions.

Adverse Credit Information

The bill would also broadly prohibit a holder of a vehicle-secured credit obligation from reporting to a credit reporting agency any adverse information resulting from the pandemic. The federal Fair Credit Reporting Act (FCRA) requires furnishers—those entities that report information to credit reporting agencies—to report only accurate information. This duty for accurate reporting does not distinguish between negative or positive consumer information, meaning all accurate information must be reported, whether positive or negative. Because of this duty, compliance with a wholesale prohibition on reporting negative consumer information would necessarily require the suspension of all credit reporting. The harm from such a suspension would be felt by those consumers across New York fortunate enough to be able to stay current on their accounts, but now unable to reap the benefits of favorable credit reporting.

Additionally, the lack of a clear standard for what qualifies as "adverse information" and how a creditor would be expected to determine if such information is the result of the pandemic create additional significant challenges. For example, a borrower seeking financing for a new vehicle purchase or to refinance an existing loan would likely have their credit report checked; if the credit check marginally lowers the borrower's credit score, would the check be considered "adverse information" under the bill? Further, there are no means for a creditor to discern between late payments, for instance, due to forgetfulness and those due to financial hardship from the pandemic. The suppression of all negative information would have the unintended effect of increasing the cost of credit for all New Yorkers to cover the increased risk associated with hundreds of millions of dollars of unreported debt and should not be included in any legislation.

Fees, Penalties and Interest

SB 2849 would also prohibit fees, penalties, or additional interest during the covered period for ANY vehicle-secured credit obligation during the covered period. Many creditors have already voluntarily

waived late fees and deferment fees and continue to work directly with borrowers to provide relief to keep accounts current and adjust payment schedules to meet each borrower's financial situation. Conversely, the proposed prohibition on interest would represent an extreme interference by effectively dissolving valid contractual obligations and could create far-reaching unintended consequences.

New York has a vital interest in permitting the enforcement of reasonable, valid obligations to ensure the existence of a robust credit market. Waiving interest accrual for all consumer accounts for an indefinite period of time as this emergency continues will inject immense amounts of uncertainty and risk into broader financial markets. Further, implementation of any interest prohibition for existing accounts would be near impossible given the major changes to existing systems that would be required immediately. The time needed to modify and test systems to implement this type of change would not be possible in time to address the COVID risk. Given the size of creditors and portfolios, making these adjustments manually would also not be possible.

We urge you to consider the effects these restrictions would have on New York's credit markets and not move forward with this legislation. 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 us.

Sincerely,

Danielle Fagre Arlowe
Senior Vice President
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517
(952) 922-6500
dfagre@afsamail.org

Matthew Kownacki
Director, State Research and Policy
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517
(202) 469-3181
mkownacki@afsamail.org

cc: Members of the Committee on Consumer Protection