June 28, 2021

Department of Financial and Professional Regulation
Attention: Craig Cellini
320 West Washington, 2nd Floor
Springfield IL 62786

Re: Proposed rulemaking implementing the Predatory Loan Prevention Act

Dear Mr. Cellini:

On behalf of the American Financial Services Association ("AFSA"),[1] thank you for the opportunity to provide comments on the Department of Financial and Professional Regulation's (Department) May 14, 2021, proposed rules to implement provisions of the Predatory Loan Prevention Act (PLPA). AFSA represents financial institutions of all sizes across many of the industries the Department oversees, including consumer installment lenders and sales finance companies. We believe clear rules that take into account existing laws benefit consumers and financial institutions alike, and we look forward to engaging with the Department throughout the rulemaking process. While we understand these rules implement changes enacted by the legislature via SB 1792, we believe the rules will likely leave consumers worse off overall, as the rate restrictions will limit access to credit and the excessive disclosure requirements are likely to confuse rather than inform consumers. Further, many of the requirements exceed the authority granted to the Department in the PLPA.

Rate Cap Disclosure Notices

The proposed rule amendments for the Consumer Installment Loan Act (CILA), Retail Installment Sales Act (RISA), and Motor Vehicle Retail Installment Sales Act (MVRISA) all include extensive rate cap disclosures notifying a consumer of the 36 percent PLPA annual percentage rate (APR). These requirements include a signed disclosure in the contract, prominent postings in physical locations, websites and mobile applications, and prominent disclosure in every solicitation or advertisement. These extensive disclosures are impractical, if not impossible, to implement in practice, particularly on mobile compliant websites, and create more consumer confusion and harm than they mitigate. For instance, the font requirements for contracts and electronic media far exceed what is considered a reasonable size for certain disclosures in other states, and the advertising disclosure is far too lengthy to be practically included in any print or television media in such a way that the consumer could understand it.

Of major concern is the impossibility of the applying a single, state-specific disclosure requirement to advertising promoted nationally. Websites, mobile device applications and electronic media are not set up for a disclosure of that length, font size, and specificity. Moreover, the above disclosure within national advertising will not achieve its intended objective of informing and protecting consumers, as it conveys inapplicable information if implemented on a national scale to consumers outside of Illinois.

[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.

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Accordingly, the disclosure requirements should not be applied to national advertising, particularly websites, mobile device applications, and electronic media. While a disclosure could more easily be implemented in print form and in the context of loan applications or made available at physical retail locations in print form, the numerous requirements and specificities regarding font make these proposed disclosures far too onerous to implement. For ease of implementation, the proposed rules should moreover specify that electronic signature in the customer's acknowledgement requirement is permitted.

Further, such notices would do nothing to enhance consumer understanding of the transaction, as lenders are required under federal law to disclose the Truth in Lending Act APR, but the rate cap and disclosure notices regulate PLPA APR, which is likely an entirely different rate from that disclosed in the contract. Notifying consumers about multiple rate calculations and a cap on a rate that is unknown to them will only lead to more confusion and undermines the core purpose of the Truth in Lending Act. Additionally, because lenders are prohibited from making loans exceeding the cap, and the penalty for exceeding the cap is nullification of the loan contract, these disclosures are an unnecessary compliance burden.

For these reasons, the disclosure notices exceed the Department's rulemaking authority granted in the PLPA. The PLPA itself does not require any such disclosure of the rate cap to consumers and only empowers the Department to "adopt and enforce reasonable rules, directions, orders, decisions, and findings necessary to execute and enforce the Act and protect consumers" in the state. Since these requirements cannot be practically implemented and would confuse, rather than inform, consumers about credit transactions, they are not reasonable nor do they protect consumers, as required by the PLPA to be adopted in rulemaking. While notifying consumers of two separate APRs is a recipe for confusion, if the Department seeks a more reasonable rule for disclosure of the rate cap, we recommend limiting the disclosure notices to only printed materials at the location in Illinois where loans are made; allowing for electronic signature of such a notice, if the customer's signature acknowledging disclosure is required; adopting font standards consistent with existing disclosure requirements (e.g., size 8 or 12 pt. as in FCRA prescreen notices); and removing all other disclosure requirements from the rules.

Consumer Installment Loan Act

Definitions

We do not believe it is the Department's, or the Legislature's, intent for the requirements of Section 110—including the database reporting provisions of Section 110.290—to apply more broadly than the Consumer Installment Loan Act, but we believe the current language leaves some confusion. For this reason, we request clarification defining "Loan" to mean only a loan made pursuant to the CILA.

Additionally, we request that the definition of "Missed Payment" be amended to mean failure to make a payment within 30 days of the due date rather than ten. A longer timeframe will give lenders additional flexibility to work with customers rather than having to immediately report a payment as having been missed. Importantly, this shorter time period conflicts with generally accepted rules regarding when late fees can be charged and also with accepted reporting Metro II guidelines used in supplying data to the major credit reporting agencies under the guidance from the Consumer Data Industry Association ("CDIA") that is the norm. This will only lead to additional confusion.

Consumer Reporting Service

The rules would require input of the borrower's social security number or alien identification number into the certified database. This proposed requirement would limit available credit to underserved segments of borrowers who may not have a SSN or Alien ID and may only hold a foreign passport or other foreign form of identification. To ensure credit remains available to these individuals, we request this input be removed from the requirements, expanded to include other forms of identification, or allow licensees to use "NA" where the customer's identity is verified using other means.

We also request increased time to report information into the verified database. A 30-day reporting requirement will require updates more frequently than monthly in certain cases and this will create significant compliance burden. Moreover, such a short time frame does not allow for any correction of reporting errors to be made *prior to* the actual reporting. We recommend moving back to a 90-day timeframe as was previously in place for small loan lenders.

Title-Secured Lending Limits and Refinancing

The proposed rules would expand the definition of what constitutes a title-secured loan and cap such loans at $4,000. Previously, a title-secured loan only included those with rates exceeding 36 percent. This $4,000 requirement is not created by the PLPA, and the entire section of proposed rules for title-secured lending is a vestige of previous restrictions for traditional title loans that are no longer legal due to the PLPA's 36 percent rate cap. This expanded definition would lump in traditional CILA loans—despite the fact that such loans have little in common with traditional title loans when it comes to affordability and consumer risk—and fails to distinguish between title-lenders and CILA lenders who obtain a security interest in a motor vehicle as collateral.

For over 100 years, traditional installment lenders have consistently provided consumers with reliable, community-based small-dollar credit that is accessible and affordable, giving borrowers a tried-and-tested mechanism to safely manage their household credit. Traditional installment loans are widely acknowledged by consumer groups and others as a safe and affordable form of credit, carrying with them significant socio-economic benefits for individuals, families, and communities. This appreciation for traditional installment loans as tools of financial capability and even mobility, hinges on the fact that they are repaid in regularly scheduled, equal payments of principal and interest. Furthermore, unlike title loans, these loans require an underwriting process that includes a calculation of the borrower's ability to repay a loan out of their monthly budget and also report loan performance directly to credit bureaus, which is vital for Illinois borrowers looking to build a credit history and increase their financial mobility.

In fact, traditional installment loans have repeatedly been recognized as safe title loan alternatives by government officials at both the federal and state levels. For instance, the National Black Caucus of State Legislators (NBCSL) passed a resolution in 2016 that stated:

> NBCSL supports the expansion of Traditional Installment Loans as an affordable means for borrowers to establish and secure small dollar closed end credit while preventing cycle of debt issues inherent with non-amortizing balloon payment loans.[2]

This was also demonstrated by the decision of the federal Consumer Financial Protection Bureau (CFPB) to exclude traditional installment loans from the provisions of its Payday Lending Rule.

We respectfully request that the Department amend the definition of a "title-secured loan" to distinguish between traditional title lenders who do not underwrite loans, or report payment history to credit bureaus, from traditional CILA lenders who do underwrite loans, assess a borrower's ability to repay, and report payment history to credit bureaus.

Importantly, while the definition of title-secured loan excludes loans expressly intended to finance the purchase of a motor vehicle, these restrictions would limit the availability of credit to borrowers looking to refinance their existing purchase-money loans. The inability of CILA licensees to offer secured loans greater than $4,000 will prevent Illinois customers from receiving more favorable terms and will severely reduce credit availability to Illinois customers.

Additionally, multiple restrictive provisions have no statutory basis in the PLPA and should be removed from the rules for title-secured consumer installment loans, including the provisions: limiting principal and interest to only 22.5 percent of the borrower's gross monthly income; restricting new loans, other than refinancing, for existing borrowers of a title-secured loan; limiting refinancing of title-secured loans only when paid down 20 percent; requiring that the amount of the refinanced loan cannot exceed the amount financed of the original loan also; and restricting repossession of a vehicle. All of these changes needlessly limit the availability of credit to certain borrowers based on arbitrary percentages, rather than assessment of the individual consumer's needs and ability to repay.

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.

Sincerely,

Matthew Kownacki
Director, State Research and Policy
American Financial Services Association

[2] NBCSL Resolution BED-16-21, *A Resolution Promoting Safe and Affordable Lending Practices*, available at https://nbcsl.org/public-policy/docs/file/56-resolution-bed-16-21.html