December 13, 2021

The Honorable Troy Singleton
125 West State Street
State House
Trenton, NJ 08625-1101

Re: New Jersey Senate Bill 233

Dear Senator Singleton:

I write on behalf of the American Financial Services Association ("AFSA")[1] to express our concerns with Senate Bill 233, which would create a new set of disclosures that commercial lenders would be required to provide borrowers at the time credit is initially offered. Though AFSA members primarily offer consumer credit, our members also provide financing to commercial entities. In particular, AFSA members regularly engage with New Jersey's motor vehicle dealers to provide them with "floorplan" lending, necessary to enable these dealers to acquire their inventories of vehicles. AFSA is concerned that SB 233, as currently drafted, does not adequately consider the wide range of commercial transactions, such as floorplan lending, and as a result, it 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 Jersey motor vehicle dealers. For these reasons, AFSA must oppose SB 233 in its current form.

Motor vehicle dealers must purchase the vehicles that they hold for sale. Acquiring vehicles to stock a dealership lot requires a significant capital outlay. Dealers either do not have the funds on hand to purchase these vehicles 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.

Floorplan lenders 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 acquired by dealers for resale. Generally, an advance accrues interest and other charges until the dealer pays for the particular vehicle for which the advance was made. In addition to other repayment obligations, 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, motor vehicle 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.

The interest rate and other charges on floorplan financing can change depending on a number of factors that cannot be predetermined, such as how much the vehicle cost, where they purchased the vehicle, how long the advance remains outstanding, etc.

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 variable nature of the product and its related costs make disclosures that require 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 terms of financing. Ultimately, this does not provide any informational benefits to a borrower.

If passed into law, SB 233 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, indeterminate term, variable charges, an adjustable credit limit, an unpredictable timetable for advances, and a variable repayment "schedule." In order to comply with this provision, a floorplan lender would be forced to make numerous assumptions that will be inconsistent with the methodology actually used by the floorplan lender to calculate interest and other charges, leading to confusion by the borrower.

SB 233 excludes "an individual commercial financing transaction in an amount over $500,000 dollars." While the $500,000 restriction may be intended to exclude more sophisticated borrowers who have larger credit facilities and who may not benefit from the disclosures, the definition does not take into account that many lenders and borrowers already have multi-million dollar financing accommodations and annual revenues in the millions or even billions of dollars, while individual transactions may be smaller than $500,000. 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 borrowers being unable to obtain needed financing or over-borrowing to avoid the restriction while incurring additional interest charges.

The bill would also require that providers of open-end financing disclose the "annual percentage rate… based on the maximum amount of credit available to the recipient and the term resulting from making the minimum required payments term as disclosed." As stated previously, the interest rate and other charges on floorplan financing can change depending on a number of factors that cannot be predetermined. As such, it is not clear what assumptions regarding interest rates and other charges a floorplan lender should make in order to satisfy the requirement, but presumably, the assumption would necessitate disclosing the rate and charges as if they were fixed, which could mislead a borrower and would necessitate countervailing disclosures by the lender. The bill states that an error in disclosure shall not be a violation if the actual annual percentage rate to vary from the disclosed rate by ¼ of 1 percentage in an "irregular transaction," which includes transactions with irregular pay periods or irregular payment amounts, among other factors. Given the nature of floorplan financing, the actual annual percentage rate may vary more than the allotted amount.

In addition, the bill would require providers of open-end financing to disclose "the term of the plan, if applicable, or the period over which a draw is amortized" as well as "the payment frequency and amounts…including a description of payment amount requirements such as a minimum payment amount, and if the payment frequency is other than monthly, the amount of the average projected payments per month. Due to the indeterminate nature of floorplan financing, lenders do not have estimated terms. The relationship is maintained as long as the parties agree to mutually maintain it. Many floorplan lenders have financing relationships that have been in place for decades. Relying on an assumed term may mislead a dealer borrower into believing that the borrower will have financing for the duration of the term. This will necessitate further clarifying disclosures to avoid misleading the borrower.

This legislation would require that lenders disclose the finance charge. As noted, floorplan financing is generally of an indeterminate term and with variable interest rates and other charges. Assuming a set payment term and charges may result in a disclosed finance charge that varies greatly from the actual interest rate and terms and ultimately mislead the borrower about the true cost of credit.

For these reasons, we respectfully urge you not to move forward with this legislation as proposed and request you amend the bill to better reflect the specifics of floorplan financing. Accordingly, we propose the following amendment to SB 233 to exclude inventory financing. In Section 15, Part a, add a seventh bullet reading:

> *(7) any inventory loan financing agreements or transactions entered into pursuant to Chapter 9 of Title 12A of the New Jersey Statutes.*

New York recently adopted similar legislation relating to commercial financing that recognized the unique nature of floorplan financing and included an exemption from the law's requirements for such transactions. An approach similar to the exemption in New York's law would also accomplish the legislature's goal of protecting borrowers, while still taking into account sophisticated relationship between vehicle dealers and floorplan lenders. As an alternative to the proposed amendment above, we propose an additional bullet to Section 15, Part a, reading:

> *(7) a commercial financing transaction in which the recipient is a dealer or used motor vehicle dealer as defined in N.J.S.A. 39:10-2, or an affiliate of such a dealer, or a used motor vehicle dealer, or an affiliate of such a company pursuant to a commercial financing agreement or commercial open-end credit plan of at least fifty thousand dollars, including any commercial loan made pursuant to such a commercial financing transaction.*

Additionally, we also request clarification regarding the exemption in Section 15, Part a (1) for financial institutions (generally defined in the bill as depository institutions), specifically with regard to affiliates of depository institutions. The bill would exempt depository institutions from the disclosure requirements, but it is not clear whether the exclusion would also apply to affiliates and subsidiaries of those institutions. Under the bill as drafted, a financial institution would not need to make the required disclosures, but, if the financial institution has certain commercial activities performed by an affiliate or subsidiary, then the disclosure requirements may apply. A financial institution's structure should not be the factor that ultimately determines whether its activities subject it to additional disclosure requirements. Accordingly, we request that Section 15, Part a (1) be amended to include a financial institution *or its affiliates*.

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

cc: Senator Nellie Pou