

February 15, 2022

Joint Committee on Administrative Rules
700 Stratton Office Building
Springfield, Illinois 62706

Re: R-02 Implementing P.A. 101-658

Dear Joint Committee on Administrative Rules:

On behalf of the American Financial Services Association (“AFSA”),¹ thank you for the opportunity to provide comments to the Joint Committee on Administrative Rules (“JCAR”) regarding the Department of Financial and Professional Regulation’s (“IDFPR”) proposed rule as amended implementing certain provisions of Public Act 101 658, including the Predatory Loan Prevention Act (“PLPA”). AFSA represents financial institutions of all sizes across many of the industries affected by the proposed rules, including consumer installment lenders and sales finance companies. We believe clear rules that take into account existing laws benefit consumers and financial institutions alike; however, the amended proposed rules include requirements that do not reflect the differences in various types of credit that IDFPR oversees, making them difficult to implement, and the rules will likely leave consumers worse off overall. For these reasons, we urge JCAR to delay consideration of the rules until these issues have been corrected.

The Rules Fail to Distinguish Between Traditional Title Loans and Consumer Installment Loans Secured by a Motor Vehicle

The amended rules still include an expanded definition of what constitutes a title-secured loan. Previously, a title-secured loan only included those with rates exceeding 36 percent, so 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. The expanded definition would lump in traditional Consumer Installment Loan Act (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

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.

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 definition of a "title-secured loan" 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.

The Amended Rules Fail to Clarify That Only CILA Loans Must be Reported to the Database

While the proposed rules under CILA have been amended to narrow the definition of loan, we are still concerned about a lack of clarity regarding database reporting. Retail installment contracts that finance the purchase of a good, a vehicle for example, are not loans, and we do not believe it was the legislature's intent for such transactions to be reported into the database. For these reasons, we request that the rules explicitly exclude transactions under the Sales Finance Agency Act (205 ILCS 660 et seq), Motor Vehicle Retail Installment Sales Act (815 ILCS 375 et seq) and the Retail Installment Sales Act (815 ILCS 405 et seq) from the database reporting requirements.

The Required Disclosure in the Amended Rules Cannot Feasibly be Made in a Sales Finance Transaction

The amended proposed rules in Section 110.2 include extensive rate cap disclosures notifying a consumer of the 36 percent PLPA annual percentage rate (APR). The amended rules require that such a disclosure be included in *all applications* for a retail installment contract. Applications for a retail installment contract are provided to the consumer by the retail seller—the auto dealer, for instance, in the case of a motor vehicle—and the retailer may facilitate financing from a number of different sources. Once financing is arranged based on the consumer's preference, the selected financial institution then takes assignment of the retail installment contract from the retail seller and services the account over the term of the contract. Because of the nature of the indirect financing arrangement, financial institutions are not present at the time of application and do not have control over the retail seller to ensure a

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>

disclosure is made. For this reason, we recommend that the rules be amended to instead require that the disclosure be made “prior to the execution of a retail installment contract” itself, rather than with each application for financing.

The Rules Should Include a Delayed Effective Date to Provide Time to Comply

The proposed rules would require numerous updates to existing operational systems, including changes to contracts to include the required disclosures. Therefore, we request that the final rules include a delayed effective date, at least 180 days after adoption of the final rule, which will allow affected financial institutions adequate time to implement the required changes.

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,

A handwritten signature in blue ink that reads "Matthew Kownacki".

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