March 23, 2022

The Honorable Jason Doucette
Chair, Joint Banking Committee
300 Capitol Avenue
Legislative Office Building, Room 2403
Hartford, CT 06106-1591

The Honorable Patricia Miller
Chair, Joint Banking Committee
300 Capitol Avenue
Legislative Office Building, Room 2300
Hartford, CT 06106-1591

Re: Senate Bill 272

Dear Chairs Doucette and Miller:

I write on behalf of the American Financial Services Association ("AFSA")[1] to express our concerns with Senate Bill 272. This bill would create a new set of disclosures that commercial lenders would be required to provide borrowers at the time credit is initially offered. AFSA members provide consumer vehicle and automobile dealer "floorplan" lending, necessary to enable these dealers to acquire their inventories of vehicles. AFSA is concerned that SB 272, as currently drafted, does not adequately consider floorplan lending, and as a result, 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 Connecticut automobile dealers. The bill, as currently drafted, could also create the inefficient result of providing separate disclosures for each individual vehicle on a dealer's lot, which would lead to a significant compliance burden for lenders and limited additional protection for an automobile dealer overwhelmed with disclosures.

Automobile dealers must purchase the cars that they hold for sale. Acquiring cars to stock a dealership lot requires a significant capital outlay. Dealers either do not have the funds on hand to purchase these cars 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. Most floorplan lenders are not banks.

Floorplan lenders are financial institutions that 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 as they are acquired by dealers. In addition, a floorplan lender may advance against vehicles already existing in a dealer's inventory. Generally, an advance is an interest-only loan until the dealer sells the particular vehicle for which the advance was made. Within a specified number of days following the sale of a vehicle, the dealer must remit the principal amount advanced for that

[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.

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, automobile manufacturers' production schedules, etc.

Interest accrues through the date of repayment of that advance. The interest rate on floorplan financing is a floating rate, generally tied to a base rate, such as the prime rate, and often with an additional increment assessed above the base rate. Accordingly, as base rates change, a dealer's interest rate also will change.

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 floating rate nature of the product would make a disclosure that requires 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 term of financing. Ultimately, this does not provide any informational benefits to a borrower.

The following comments on SB 272 are based on the contextual background provided above.

Section 1 Exemptions

Section 1, Part (8)(G) exempts "an individual commercial financing transaction in an amount over five hundred thousand dollars." While the $500,000 threshold may be intended to exclude more sophisticated borrowers who have larger credit facilities and who may not benefit from the disclosures, the definition would broadly capture smaller transactions arranged as part of an overall credit line that is larger than $500,000, even if the particular lender and borrower already have multi-million dollar financing accommodations and annual revenues in the millions or even billions of dollars.

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 dealers being unable to obtain needed financing, or over-borrowing to avoid the restriction while incurring additional interest charges.

Additionally, we also request clarification regarding the exemption in Section 1, Part (8)(A) 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.

Section 3. Disclosures for open-end financing

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 several 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.

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.

Suggested amendments

For these reasons, **we respectfully urge you to make the following amendment to Section 1, Part 8:**

> (8) "Provider" means a person who extends a specific offer of commercial financing to a recipient and includes, unless otherwise exempt, a person who and presents specific offers of commercial financing on behalf of a third party, but does not include any: (A) Financial institution <u>*or its affiliates*</u>.

We also request that you add a new subpart (H) to Section 1, Part 8, reading:

> *(H) any inventory loan financing agreements or transactions entered into pursuant to Article 9 of Title 42A of the Connecticut General 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 1 (8), (H), reading:

> *(H) a commercial financing transaction in which the recipient is a dealer as defined in C.G.S.A. Section 14-1, or an affiliate of such a dealer, or a rental company, 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.

Summary

If passed into law, Senate Bill 272 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 <u>disclosures governing their disclosures</u>. 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, and indeterminate term, an adjustable credit limit, an unpredictable timetable for advances, and no repayment "schedule" at all. In order to comply with this provision, a floorplan lender may have to provide a separate disclosure for each vehicle financed and would be forced to make numerous assumptions that would be inconsistent with the methodology actually used by the floorplan lender to calculate interest, leading to misinformation and confusion.

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,

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cc: Members of the Joint Banking Committee