

May 6, 2024

Assemblymember Helene Weinstein
Committee on Banks
New York Assembly
Albany, NY

Re: NY A9585 - to amend the general obligations law and the banking law

Dear Assemblymember Weinstein,

I write on behalf of the American Financial Services Association (AFSA)¹ to express the concerns of our members about Assembly Bill A9585, currently before the Committee on Banks. We understand and support the bill’s intent to stop loan sharks from operating in the state; however, as written the bill is overly broad and would reach far beyond its intent.

If enacted, A9585 would effectively eliminate the only safe, affordable, credit-building loans available to many New Yorkers, as well as place unnecessary and damaging limitations on the commercial lending operations of AFSA members operating in New York. For decades, New York’s licensed lenders have filled a niche in the state’s credit markets by serving residents who have less than perfect credit scores with fair and affordable loan options. AFSA members make commercial loans in the state and lend to New Yorkers who have difficulty accessing traditional banking services. This bill would prevent these lenders, who run brick and mortar operations and play by New York state rules, from operating in the state. By doing so, this bill would negatively impact the very communities it attempts to help, including low- and moderate-income families, underserved communities, and communities of color.

Unprecedented Scope of State Legislation

Assembly Bill A9585 amends the definition of “financing arrangement” to cover a wide-ranging series of disparate forms of credit, from Buy-Now-Pay-Later, via Earned Wage Access, invoice financing and lease-to-own, to installment loans, retail installment sales contracts, and commercial loans provided by our members. By doing so, the bill would result in a sea-change in

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 traditional installment loans, direct and indirect vehicle financing, mortgages, and payment cards. AFSA members include national banks and non-bank state licensed financial institutions. AFSA does not represent payday lenders, title lenders, or credit unions.

the way New York approaches the regulation of consumer finance, affecting financial service providers that are already licensed and well-regulated to a degree unseen elsewhere. There are key differences between these products and how they should be properly regulated, and we are concerned the bill approaches dissimilar forms of credit in a one-size-fits all manner.

The Effect on B2B/Commercial Lending

The over-broad focus of A9585 is starkly illustrated by the inclusion of Business-to-Business (B2B) commercial loans under the definition of “financing arrangement.” Though the bill appears to be squarely focused on consumer loans (primarily for personal, family, or household purposes) and, indeed, has the declared intent of stopping “loan sharks” in the state, it will also apply to the B2B lending operations of certain AFSA members. In doing so, it will impose consumer lending-type restrictions that are unnecessary for commercial loans.

Commercial B2B lenders extend credit to a more sophisticated borrower – another business (e.g., a motor vehicle dealer). Commercial borrowers routinely offer complex financing options to their customers and are clearly familiar with financing arrangements. For this reason, commercial B2B lenders do not require, and historically, have not been subject to, the levels of oversight and protections imposed upon retail lenders i.e. businesses that lend to consumers. This bill would ignore this precedent and in doing so, diminish the ability of commercial B2B lenders to recoup their costs of doing business. This will affect the appetite for risk and undermine the commercial lending business model for lending. Higher risk and higher costs will affect the credit availability to commercial borrowers and ultimately affect the prices of goods and services available to consumers.

The Dangers of Deviating from TILA APR

A9585 mirrors disastrous policies seen in other states, by incorporating elements such as credit insurance that are unrelated to the cost of credit, into the calculation of Annual Percentage Rate (APR) and using that calculation for price cap purposes. Even more worrying is that it goes further, with the unprecedented incorporation of elements such as taxes into this calculation. The effect is to artificially increase the “APR” that a form of credit can be said to carry, so that it exceeds the Truth-in-Lending Act (TILA) definition, which has regulated the consumer credit industry since 1968. Altering the longstanding industry practices outlined in TILA would undermine its underlying consumer protections while severely limiting access to credit in New York State.

Other states have experimented with a similar “all-in” approach to APR calculation, which has had a disastrous impact on consumers. For example, a 2021 Illinois law requiring ancillary products to be included in the rate calculation has had a major impact on credit accessibility in that state with three particularly noteworthy consequences:

368,916 Borrowers Lost Access to Credit²

The total number of borrowers who got some kind of state reported loan went from 431,018 people in 2019 down to 62,102 people in 2021. This 85% decrease in credit availability has had a real impact on the financial capabilities of more than 368,916 people who no longer qualify for many state-regulated and reported loan products.

The Number of Licensed Lenders in the State Halved³

The number of state license lenders went from 1813 entities at the end of 2020 to 900 entities at the end of 2021. This affects the state economy, on employment and in communities.

The Few Who Could Qualify for Credit were Forced into Larger Loans for Longer Terms⁴

For the lucky subprime consumers who still have access to credit in Illinois, average loan size increased by 40 percent. According to the *Illinois Trend* report issued by the state, loans for larger amounts longer paid repayment terms have increased by 226%. In short, the artificial APR limit forced people that need small loans to borrow more money for longer-terms.

The scope of the “all-in” requirements in Assembly Bill A9585, which, as noted, goes beyond other initiatives and includes mandatory fees like government lien fees in the rate calculation, would likely have an even more detrimental effect than the Illinois law, if enacted.

The Effect on Valuable Protection Products

A secondary effect of A9585 would be to act as a ban on credit insurance and other optional protection products – essential in building consumer financial resilience and protecting them against financial shock. This is unnecessary; AFSA members’ insurance and other non-loan financial services are entirely voluntary for customers and loan terms, and conditions are offered without regard to whether credit insurance is purchased. For more than 60 years, federal law has stipulated only mandatory fees required for loan closing should be included in the APR calculation, and including the cost of optional products would have a major impact on industry

² [Credit for Me but Not for Thee: The effects of the Illinois Rate Cap \(2023\)](#)

³ *ibid*

⁴ *ibid*

practices and consequently, access to credit for consumers. Additionally, altering the APR calculation in NY will hamper consumers' ability to compare and shop for credit.

For AFSA members, optional protection products complement loans, helping customers to build financial stability, security, and resilience. Credit insurance is accessible, affordable, and popular with customers, who understand that it plays an important role in limiting their exposure to financial risk and the consequences of financial shock.

Data on financial shocks, provided by The Pew Charitable Trust, found that 60 percent of households had experienced a financial shock in the past 12 months.⁵ Similar research carried out by the Consumer Credit Industry Association (CCIA) demonstrates that 59 percent of individuals have experienced an unexpected repair or expense costing between \$500 and \$2,000 in the past five years, and 28 percent have had one costing more than \$2,000.⁶

The Need for Safe and Affordable Consumer Credit in New York

The consequence of enacting Assembly Bill A9585 would be an all-encompassing overhaul of the way New York regulates financial services. This would bring with it radically reduced financial capability for hardworking New Yorkers and their families, disproportionately affecting low-income communities and communities of color.⁷ Reducing the supply of credit through regulations will not impact consumer demand for it and has the associated effect of denying potential borrowers the ability to build their credit and become financially mobile. 40 percent of Americans lack savings of \$400⁸ and rely on safe credit sources during financial emergencies. Auto-finance is the most common route to ownership of the vehicles essential to get to work, school or the doctor's office. This go-to financing option for many New Yorkers would be dramatically limited if the cost of optional products is included in the APR calculation.

Unfortunately, individuals with poor credit scores – perhaps those starting out in careers and family life - have difficulty accessing traditional banking services. These consumers need the opportunity to build their credit so they can improve their access to financial services and lower its cost to them. In the absence of the safe and affordable alternatives provided by licensed and regulated AFSA members, consumers will have limited options and may seek out-of-state,

⁵ [The Role of Emergency Savings in Family Financial Security \(Pew\) \(2016\)](#)

⁶ [Credit Insurance Delivers Peace of Mind \(CCIA\)](#)

⁷ The 2022 [Congressional Black Caucus Institute Annual Report](#) highlights the harm of 36 percent rate caps, saying “...they cause more harm than help by limiting consumer access to credit.”

⁸ Source: [Federal Reserve Economic Well-being of U.S. Households in 2022](#), p. 32

unregulated sources of credit, which would have broad, unintended socioeconomic implications for New York.

In conclusion, we respectfully ask you to vote no on Assembly Bill A9585, in support of the more than a million New Yorkers with credit scores that make it more difficult to secure loans from traditional banking service. The alternative would result in a dramatic increase of consumers without anywhere to turn for the credit they need to smooth their finances, meet emergencies, and become financially mobile. Thank you for your consideration of our comments. If you have questions or would like to discuss this further, please do not hesitate to contact me at 805-501-8873 or erayhan@afsamail.org.

Sincerely,



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