

December 27, 2024

Assemblywoman Reynolds-Jackson
New Jersey State Assembly
15th District
144 West State Street
Trenton, New Jersey 08608

Re: A865 – Request for Exemptions for Floorplan and Inventory Financing

Dear Assemblywoman Reynolds-Jackson,

I am writing on behalf of the American Financial Services Association (“AFSA”)¹ to express our strong concerns with Assembly Bill 865, which would require commercial lenders to provide a new set of disclosures to borrowers at the time credit is initially offered. While AFSA members primarily offer consumer credit, they also provide critical financing to commercial entities. Our members regularly partner with New Jersey’s motor vehicle dealers to provide “floorplan” financing, which enables dealers to acquire their vehicle inventory.

Without the carveout as currently drafted or the exemption language that we propose in the alternative, A865 would not adequately account for the wide range of commercial transactions, such as floorplan financing. If enacted in its current form, the bill could create unnecessary confusion, increase compliance burdens, and inadvertently reduce access to credit for New Jersey motor vehicle dealers. This reduction in credit availability would have significant downstream effects, harming both dealerships and the general public. For these reasons, AFSA respectfully requests the current carveout remain in the bill or the alternative language be adopted in the bill in its place.

Floorplan Financing and Trade Credit

Floorplan financing is a critical lifeline for motor vehicle dealers, allowing them to finance the purchase of inventory for their dealerships. Under a typical floorplan arrangement, a lender provides a revolving or open-ended line of credit, which the dealer uses to acquire vehicles for resale. Dealers typically repay the lender after a vehicle is sold, with interest and other charges accruing during the interim. These charges are tied to numerous factors, many driven solely by dealer behavior including the amount financed, where the vehicle is purchased and when the dealer pays off the vehicle.

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.

This type of financing is inherently flexible, with key terms such as credit limits, interest rates, and repayment schedules varying based on a dealer's specific circumstances. For example, credit limits may fluctuate depending on the dealer's financial health, business strategy, or seasonal inventory needs. Similarly, the cost of credit is influenced by factors such as the timing of repayments, the type of vehicle financed, and applicable promotional rates.

In addition to floorplan financing, AFSA members also extend trade credit to auction customers. Like floorplan loans, trade credit operates on flexible terms and is adjusted in real time based on the borrower's business behavior and needs. Both forms of credit are vital to maintaining inventory flow in New Jersey's automotive industry.

Concerns

While the goal of enhancing transparency in commercial financing is commendable, A865 must continue to address the unique characteristics of floorplan financing and trade credit. Without the current carveout or the exemption language that we offer in the alternative, the following provisions are particularly problematic, resulting in unattainable compliance requirements for floorplan financing and trade credit:

1. **Rigid Disclosure Requirements:**

The bill requires lenders to provide disclosures such as the total cost of credit, annual percentage rate (APR), finance charges, repayment schedules, and total repayment amounts at the time the contract is offered. This approach is incompatible with the dynamic nature of floorplan financing and trade credit.

- **Discretionary Usage:** Borrowers may not utilize their full credit line, or lenders may decline certain advances, making it impossible to predict the total cost of credit.
- **Variable Costs:** Floorplan loans often include promotional pricing, ancillary fees (e.g., collateral protection fees, audit reconciliation charges), and flexible repayment terms, all of which are adjusted in real time.
- **Floating Interest Rates:** Rates are often tied to an adjustable base rate, which fluctuates with market conditions. Disclosing a fixed rate would mislead borrowers and fail to reflect the actual terms of the financing.

2. **Effect on Borrowers:**

These disclosure requirements would force floorplan lenders to make speculative assumptions about key terms, resulting in disclosures that are either confusing or outright inaccurate. Misleading information could erode trust and deter borrowers from pursuing financing altogether, disrupting dealership operations and reducing vehicle availability for consumers.

3. **Potential Harm to Trade Credit:**

The bill's definition of "commercial financing" may unintentionally encompass trade credit arrangements, imposing the same unworkable disclosure requirements. This could

threaten the functionality of wholesale auctions, which depend on trade credit to facilitate transactions.

Proposed Amendments

In previous legislative sessions, A865 included a carveout for inventory financing under Section 15.a(7) of the Uniform Commercial Code (UCC). This carveout remains in the current version of the bill in the Assembly. However, the carveout was removed in the Senate version of the bill, which has raised significant concerns about the practical challenges of applying standard disclosure requirements to floorplan and inventory financing. Comparable exemptions exist in other states, including New York, where legislation enacted in 2021 recognized the unique nature of floorplan financing and exempted such transactions from similar disclosure requirements.

To address these concerns, AFSA respectfully proposes the following regarding A865:

1. Retain the Existing Carveout for Inventory Financing:

It is critical that a carveout is included in Section 15.a(7) of the Assembly bill be preserved. This carveout ensures that inventory financing agreements remain exempt from the standard disclosure requirements that apply to other types of commercial financing transactions. Removing this carveout, as seen in the Senate version, would introduce undue compliance burdens that would be both impractical and potentially misleading for both dealers and lenders. The language is as follows:

“This act shall not apply to inventory loan financing agreements or transactions entered into pursuant to Chapter 9 of Title 12A of the New Jersey Statutes.”

2. In the alternative, introduce a Floorplan Exemption Modeled on New York Law:

Amend Section 15.a to include an exemption for floorplan loans exceeding \$50,000, similar to New York’s Financial Services Law.² For example:

“This act shall not apply to a commercial financing transaction in which the recipient is a new motor vehicle dealer, a used motor vehicle dealer as defined in N.J.S.A. 39:10-2, a leasing dealer as defined in N.J.S.A. 56:12-61, a rental company, or an affiliate of any of the foregoing entities 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.”

These amendments would preserve the bill’s intent to protect borrowers while recognizing the distinct nature of floorplan financing and trade credit.

² Many states, including **California, Florida, Georgia, Kansas, Missouri,** and **Utah** have adopted exemptions for floorplan financing in their commercial finance disclosure laws, underscoring its status as a national standard. These exemptions recognize the unique characteristics of floorplan financing and the need for distinct treatment compared to other forms of commercial financing.

Nine states, including California, Florida, Georgia, Kansas, Missouri, New York, Utah, and Virginia, have adopted commercial disclosure laws similar to the one proposed in New Jersey. However, eight of these states include dealer-specific carveouts recognizing the practical challenges of applying standard disclosure requirements to floorplan and inventory financing. Only one state—Connecticut—does not have such a carveout, but its law applies exclusively to sales-based financing, making it inapplicable to New Jersey’s motor vehicle dealers. The absence of a carveout in New Jersey’s proposal would place undue burdens on lenders and dealers, making compliance impractical and potentially misleading.

Additionally, we must emphasize that without the carveout, the disclosure becomes ineffective or misleading to dealers, who are highly sophisticated in finance matters and deal with these complexities daily in their interactions with customers. This level of sophistication makes it crucial that the disclosure is clear, accurate, and useful rather than creating confusion.

Conclusion

AFSA fully supports the legislature’s efforts to enhance transparency and consumer protection in commercial financing. However, without these targeted amendments, A865 risks disrupting essential financing arrangements for motor vehicle dealers, with far-reaching consequences for dealerships and consumers alike.

Thank you 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 805-501-8873 or erayhan@afsamail.org.

Sincerely,



Elora Rayhan
State Government Affairs Analyst
American Financial Services Association
1750 H Street, NW, Suite 650
Washington, DC 20006-5517