

December 4, 2024

Senator Troy Singleton
Attn: Kemani Scott, Policy Director
New Jersey State Senate
7th District
400 North Church Street, Suite 260
Moorestown, NJ 08057

Re: Senate Bill 1397 – Request for Exemptions for Floorplan and Inventory Financing

Dear Senator Singleton,

I am writing on behalf of the American Financial Services Association (“AFSA”)¹ to express our strong concerns with Senate Bill 1397, 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.

We are concerned that S 1397, as currently drafted, does 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 targeted amendments to the bill.

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, S 1397 does not adequately address the unique characteristics of floorplan financing and trade credit. 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. **Impact on Borrowers:**

These disclosure requirements would force 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, S 1397 included a carveout for inventory financing under Section 15.a(7) of the Uniform Commercial Code (UCC). However, this exemption was removed in recent drafts of the bill. 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 amendments to S 1397:

1. **Restore the Prior Carveout for Inventory Financing:**

Reinstate the language previously included in Section 15.a(7):

“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. **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.

Conclusion

AFSA fully supports the legislature’s efforts to enhance transparency and consumer protection in commercial financing. However, without these targeted amendments, S 1397 risks disrupting essential financing arrangements for motor vehicle dealers, with far-reaching consequences for dealerships and consumers alike.

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.

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,

A handwritten signature in black ink that reads 'Elora Rayhan'. The signature is written in a cursive, flowing style with a large initial 'E' and 'R'.

Elora Rayhan
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