September 14, 2026

Ms. Vivian Connor
New York State Department of Financial Services
1 Commerce Plaza
Albany, NY 12210

Re: Comments on Proposed New 3 NYCRR Part 423 and Proposed Amendment to 23 NYCRR Part 101

Dear Ms. Connor:

We write on behalf of the American Financial Services Association[1] (AFSA) and the Card Coalition[2] to respectfully comment on the Department of Financial Services' ("Department") proposed new 3 NYCRR Part 423 and corresponding amendment to 23 NYCRR Part 101 (collectively, the "Proposed Rule"), relating to Buy-Now-Pay-Later (BNPL) lenders.

We appreciate the opportunity to share our views with the Department and support the Department's goal of promoting consumer protection in this emerging space. However, AFSA is concerned that, as drafted, the Proposed Rule would create significant unintended consequences for consumers and providers of consumer credit. AFSA respectfully urges the Department to revise the Proposed Rule by narrowing overly broad definitions and tailoring the regulatory framework to the products the BNPL Act (the "Act") was intended to address, while preserving consumer access to responsible and varied forms of credit.

Tailoring the Definition of Buy-Now-Pay-Later Loan

While New York's leadership in addressing this emerging product space is commendable, the Department should ensure that its definition of "BNPL loan" reflects the product as it is commonly understood in the market. The Department should instead adopt the definition used in Illinois's recently enacted BNPL law, in which the market understanding

[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.
[2] Card Coalition identifies, tracks and responds to state legislative and regulatory activities relating to the payment card industry to assist public officials in crafting sound policy on matters impacting payment card operations, consumer protection and other issues of concern. We are the only national organization devoted solely to the payment card industry and related legislative and regulatory activities in all 50 states, the District of Columbia, Puerto Rico, Guam, and the US Virgin Islands.

appropriately aligns with the definition. Accordingly, AFSA urges the Department to define a BNPL loan as "**closed-end credit provided to a consumer at the time of a transaction in connection with the consumer's purchase of specific goods or services, where the credit is payable in four or fewer installments or has a term of 120 days or less.**" Beyond the definition, Illinois, a state politically similar to New York, considered how to best regulate a BNPL loan through extensive engagement with consumer advocates and industry stakeholders. That process produced a more refined definition that accurately reflects the product as it is commonly understood in the market.

This proposed definition will appropriately apply to closed-end credit that falls within the regulatory gap the Act and Proposed Rules seek to fill. As drafted, the BNPL loan definition applies to a broad range of traditional credit products that are already subject to robust federal regulatory regimes and have not previously been considered BNPL loans. A more streamlined definition will achieve the Department's consumer protection goals while maintaining clarity for products already subject to the Truth-in-Lending Act and its implementing Regulation Z.

State and National Banks

We note that the vast majority of the provisions in the Proposed Rule would not apply to national banks or federal savings associations. For example, some provisions (*e.g.*, licensing) do not apply by their terms to such institutions. However, other provisions, such as those in sections 423.9, 423.12, and 423.13, would be inapplicable due to the ability of national banks to export interest rates or to broader preemption theories, as recently articulated by the Supreme Court and the Second Circuit. AFSA asks the Department to amend the Proposed Rule to recognize the inapplicability of these sections to national banks and federal savings associations.

Consistent with the Department's recognition that federally chartered banks should be exempt from the Proposed Rule, AFSA respectfully urges the Department to extend the same treatment to New York state-chartered banks, as well as banks s organized under the laws of any other state. Providing an exemption for federally chartered institutions while subjecting similarly situated state-chartered banks to the Proposed Rule would create an uneven regulatory framework and place state-chartered institutions at a competitive disadvantage. Such disparate treatment would undermine the principles of the dual banking system and could discourage the use of state charters.

Strict Payment Allocation

The Proposed Rule takes an unusually prescriptive approach to the allocation of payments received by a lender—an approach not contemplated by the Act and not reflected in any comparable jurisdiction. By departing from existing payment-allocation standards, the Proposed Rule would impose requirements that may conflict with, or substantially diverge from, established state and federal credit laws. Requiring excess payments to be allocated to other BNPL loans facilitated by the same lender would create serious operational challenges when a consumer has multiple BNPL loans outstanding.

Beyond the operational burden, this requirement could also undermine consumer expectations regarding how payments will be applied. Consumers may intend a payment to satisfy a specific obligation, and reallocating excess amounts across unrelated loans could create confusion, disputes, and servicing complications. Such a substantial change in lender-borrower payment practices should not be imposed absent clear statutory direction. The payment-allocation provisions therefore appear to apply a one-size-fits-all solution to products with materially different structures, repayment schedules, and consumer expectations.

Periodic Statement Requirements

The Proposed Rule would also create operational challenges by requiring all BNPL products to appear on periodic statements, regardless of the underlying product structure. For example, pay-in-four products often involve short repayment periods and varying due dates, making it difficult to capture those obligations accurately within the traditional periodic-statement framework contemplated by the Proposed Rule. By imposing a uniform statement requirement across materially different BNPL products, the Proposed Rule fails to account for the practical differences among product types and would be difficult to implement consistently. If the Department retains this requirement, AFSA respectfully recommends that it provide model forms or other clear guidance showing how it expects statements to be formatted and delivered to consumers.

Spanish Language Disclosure Requirements

AFSA recognizes the Department's interest in expanding language access, and requiring certain disclosures in Spanish is a laudable policy objective. However, mandating Spanish translations for a wide range of BNPL disclosures would impose substantial burdens on lenders of all sizes and should instead be adopted as a permissive standard. Lenders that lack the operational resources or capacity to translate extensive disclosures for all New

York-based accounts would face significant compliance challenges, including translation costs, ongoing maintenance of translated materials, and the need to update servicing and compliance documents as requirements change. While lenders continue to explore ways to improve language accessibility for customers, implementing a broad mandatory translation regime at scale would present serious operational and compliance obstacles.

Application of Reg Z Billing-Error Rules to BNPL Products

The Proposed Rule's recurring one-size-fits-all treatment of consumer credit is especially problematic in the Department's proposal to import Regulation Z's billing-error resolution requirements into the BNPL framework. Those requirements were designed for open-end credit, which differs materially from BNPL loans that are closed-end, short-term obligations typically repaid in four payments. Because BNPL products do not operate like open-end credit accounts, applying Regulation Z's billing-error framework wholesale would create requirements that are ill-suited to the product's structure and would risk imposing compliance obligations without corresponding consumer benefit. AFSA respectfully urges the Department to tailor any error-resolution requirements to the distinct features of BNPL products rather than importing a federal framework developed for a different form of credit.

Data Privacy

AFSA members take the protection of customer data seriously and maintain rigorous data privacy and information-security standards. However, those protections should not be implemented in a manner that disrupts established norms, creates unnecessary operational burdens, or produces a patchwork of state requirements that vary in scope and application. States that have enacted comprehensive data privacy laws have consistently recognized the unique role financial institutions play in the financial services ecosystem by including either an entity-level or data-level exemption for information subject to the Gramm-Leach-Bliley Act.

AFSA respectfully urges the Department to take a similar approach and, at a minimum, include a tested limiting provision in section 423.12(e) as follows: **"This subdivision shall not apply to personal information collected, processed, sold, or disclosed subject to the federal Gramm-Leach-Bliley Act (Public Law 106-102), and implementing regulations, as amended from time to time."** Without this reasonable limitation, the Proposed Rule would create significant operational complexity, impose overlapping compliance obligations, and risk diminishing the consumer experience without providing meaningful additional privacy protection.

AFSA also requests that the Department narrow the definition of "covered data" in section 423.12(e)(1)(ii) to information a BNPL lender collects or maintains in connection with the making of a particular BNPL loan. As drafted, the definition reaches any non-public information of a consumer, including information a member collects in the course of a separate, ongoing relationship with that consumer for goods or services unrelated to credit. Applying the consent, deletion, and use restrictions of section 423.12(e) to information collected outside the credit transaction would extend the Proposed Rule beyond the products Article 14-B was enacted to address, conflict with the notice-and-opt-out framework of comprehensive state privacy laws, and interrupt communications that consumers expect from providers with whom they already do business.

Treatment of Licensed Sales Finance Companies Under the Proposed Rule

The Proposed Rule defines "BNPL lender" to include "a person to whom ownership of a BNPL loan is transferred," while the definitions of "Banking Law entity" and "exempt organization" omit sales finance companies licensed under Article XI-B of the Banking Law (Banking Law sections 491 through 507). The combined effect is that an entity already licensed and examined by the Department as a sales finance company—whose business consists of acquiring retail installment contracts by assignment from third-party originating sellers—would be required to obtain a second, duplicative license under Article 14-B for conduct that the Department already supervises. AFSA respectfully submits that this result is a drafting oversight rather than a considered policy choice, and requests that the Department amend the Proposed Rule to exclude, or in the alternative to treat as "Banking Law entities" eligible for authorization, entities licensed as sales finance companies that acquire closed-end retail installment obligations by assignment from third-party originating sellers.

In these transactions, a third-party retailer—for example, a national general merchandise retailer—sells a wireless device to a consumer and itself extends closed-end credit to that consumer under a retail installment agreement. The retailer is both the seller of the device and the originating creditor. The same structure arises where the device is sold by an authorized agent, dealer, or retailer operating under a written agency, dealer, or franchise agreement with the assignee. The consumer separately contracts with a wireless carrier for wireless service, so that the wireless carrier stands in direct contractual privity with the same consumer. Following origination, the retailer assigns the retail installment agreement to the wireless carrier, which thereafter holds and services the obligation and is the consumer's first and only biller for the installment payments, which are presented on the same statement as the consumer's service charges.

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CardCoalition

Proposed section 423.1(f)(1) excludes from the definition of "BNPL loan" any "credit extended where the creditor is the seller of such goods and/or services." That exclusion is framed at the moment of extension. Where the retailer both sells the device and extends the credit, the resulting obligation is not a BNPL loan when it comes into existence. Because it is not a BNPL loan, there is no BNPL loan capable of being "transferred" within the meaning of proposed section 423.1(d)(2), and the assignee prong should have no application.

The contrary reading—under which "creditor" is construed dynamically to mean the current holder, so that an exclusion available at origination lapses upon assignment—produces an anomalous result. Identical consumer obligations would be classified differently depending solely on whether the originating retailer retained or sold the paper, notwithstanding that the consumer's rights, disclosures, payment terms, and remedies are unchanged. Nothing in Article 14-B or in the Proposed Rule suggests that the Department intended the regulatory character of an obligation to turn on a secondary-market transfer that is invisible to the consumer.

Proposed section 423.1(c) extends "Banking Law entity" status—and with it eligibility for authorization under section 423.3 rather than a new license—to banking organizations, foreign banking corporations, and lenders licensed under Article IX of the Banking Law. Sales finance companies licensed under Article XI-B are omitted, even though they are licensed by the same Superintendent, examined by the same Department, assessed within the same industry group under 23 NYCRR section 101.2(b)(3), and engaged in precisely the activity that Banking Law section 491(7) defines as the business of "purchasing or otherwise acquiring retail installment contracts, obligations or credit agreements made by and between other parties." We are aware of no policy rationale that would justify affording authorization treatment to an Article IX licensed lender while requiring a wholly separate license from an Article XI-B sales finance company engaged in assignee activity that the Department already supervises. The Banking Law itself reflects a consistent pattern of declining to require a second license where adequate supervision already exists: Banking Law section 492 exempts banks, savings banks, trust companies, credit unions, national banking associations, federal savings associations, federal credit unions, out-of-state state banks, and Article IX licensed lenders from the sales finance company licensing requirement. The companion amendment to 23 NYCRR section 101.2(g)(3) reinforces the point by assigning sales finance companies and BNPL lenders separate industry financial bases, which indicates that the Department itself treats them as distinct lines of business. Additionally, pursuant to Banking Law section 747(3), when promulgating rules and regulations under Article XIV-B, the Superintendent must consider the applicability of other articles of the Banking Law to BNPL lenders and BNPL loans to avoid conflicting requirements.

Principles of statutory construction support the same result. New York courts require that statutory language be analyzed in context and in a manner that harmonizes related provisions and renders them compatible. Construing Part 423 to require a separate license from an entity already licensed under Article XI-B for the identical activity would render the Article XI-B supervisory framework superfluous as to those obligations. Here Article XI-B of the Banking Law, Part 300 of Title 3 of the Official Compilation of Codes, Rules and Regulations, and Article 10 of the Personal Property Law already govern the acquisition and servicing of these obligations.

The Proposed Rule elsewhere reflects the Department's intent to avoid duplication. Section 423.7(i) permits the Superintendent to exempt an authorized BNPL lender from any reporting requirement that duplicates a report the entity already makes to the Superintendent under another article of the Banking Law. Extending comparable treatment to Article XI-B licensees is consistent with that stated approach and would avoid imposing parallel licensing, bonding, capital, reporting, and examination regimes on the same book of business. AFSA further requests that the non-duplication principle in section 423.7(i) be extended to licensees as well as authorized BNPL lenders, so that a report prepared under another article of the Banking Law may be submitted in satisfaction of the corresponding requirement of section 423.7.

The consumer protection concerns that animate Article 14-B—opaque loan stacking, absent underwriting, fragmented servicing, and consumers who cannot identify their creditor—are not present here. AFSA members who are licensed by the Department under Article XI-B maintain direct, continuing, disclosed contractual relationships with the same consumers through wireless service agreements. Consumers know the identity of the entity holding the obligation, have established billing and customer-service channels with it, and receive Truth in Lending Act and Regulation Z disclosures at origination, together with the protections afforded by Article XI-B of the Banking Law and Article 10 of the Personal Property Law. Applying a second licensing regime to these relationships would add cost and complexity without adding consumer protection. The requested clarification would not diminish the Department's oversight, which is preserved in full by the Superintendent's examination authority under Banking Law section 36 and by the licensing, financial, bonding, recordkeeping, and reporting requirements that already apply to Article XI-B licensees under Article XI-B and Part 300 of Title 3 of the Official Compilation of Codes, Rules and Regulations.

Recommended Amendments for Licensed Sales Finance Companies

AFSA respectfully requests that the Department adopt one of the following, which are presented in order of preference:

First, amend proposed section 423.1(f)(1) to confirm that credit excluded from the definition of "BNPL loan" at the time it is extended does not become a BNPL loan by reason of a subsequent transfer, by adding at the end of that paragraph: "***and such credit shall not become a BNPL loan by reason of any subsequent assignment, sale, or other transfer of the obligation***."

Second, and in the alternative, amend proposed section 423.1(c) to include within "Banking Law entity" any sales finance company licensed by the Superintendent under Article XI-B of the Banking Law, so that such an entity may proceed by authorization and category permission under section 423.3 rather than by separate license.

Third, and in the further alternative, add an express exclusion from the definition of "BNPL lender" in proposed section 423.1(d) for a person licensed as a sales finance company under Article XI-B of the Banking Law whose only relevant activity is acquiring, holding, or servicing closed-end retail installment obligations assigned by a third-party originating seller, provided that such person does not originate BNPL loans, does not operate a platform, software, or system through which consumers obtain BNPL loans from third parties, serves as the consumer's first biller with respect to such obligations, and acquires such obligations on a non-defaulted basis.

Separately, and not as an alternative to the foregoing, AFSA requests that the Department confirm in section 423.1(f)(1) that credit is extended by "the seller of such goods and/or services" where the goods or products are owned and sold to the consumer by an authorized agent, dealer, or retailer of the creditor under a written agency, dealer, franchise, or similar authorization. The availability of the exclusion should not turn on whether a creditor sells through its own locations or through an authorized channel, where the consumer's terms, disclosures, and servicing relationship are similar or identical in either case. Conditioning the clarification on a written authorization agreement confines it to bona fide authorized-channel arrangements.

AFSA further requests that the Department confirm, whether in the adopting release or in guidance, that a person does not "offer" BNPL loans within the meaning of proposed section 423.1(d) solely because it sells goods or services to a consumer who separately obtains credit from a third-party originating seller, or solely because it maintains customerfacing systems for the ease of administration of its own goods or services.

We note that the timing considerations are material. Under proposed section 423.14, a covered entity must apply for a license and for category permission within 45 days of the effective date, and acting as a BNPL lender without having filed is itself a violation of Banking Law section 737. In the absence of clarification, licensed sales finance companies will be required to file protectively to preserve their ability to continue lawful operations, and the Department will receive applications that its own framework does not appear to have intended to require. AFSA therefore requests that, if the Department adopts any of the foregoing clarifications, it toll or extend the section 423.14 deadline for entities that in good faith qualify, and that, pending adoption, it confirm the intended reach of the assignee prong by industry letter or other guidance.

Clarity for Exemption of Motor Vehicle Service Contracts

Many of our members provide closed-end credit not otherwise governed by Article XI-B of the Banking Law to finance motor vehicle purchases, and we appreciate that the Proposed Rule incorporates N.Y. Banking Law section 736(3)'s exclusion of motor vehicle purchases from the definition of a "BNPL loan" in section 423.1(f). However, one of the Proposed Rule's key operative terms, "services," is not defined in either the Proposed Rule or Article 14-B of the Banking Law. As a result, our members are concerned that, absent a clear definition, the term "BNPL loan" could be interpreted to encompass financing for services closely related to a motor vehicle purchase, such as vehicle service contracts.

We do not believe the New York Legislature intended Article 14-B to regulate financing for services ancillary to a motor vehicle purchase while expressly excluding financing for the motor vehicle purchase itself. To provide clarity and certainty to market participants that reasonably understand the financing of such services to fall outside the scope of Article 14-B, we urge the Department to amend section 423.1 to define "services" in a manner that excludes services sold in connection with motor vehicle purchases. We respectfully propose the following definition: **"Services" shall not mean or include any services sold in connection with closed-end credit provided to a consumer in connection with such consumer's purchase of a motor vehicle, as defined in section 125 of the Vehicle and Traffic Law.**

This proposed definition is consistent with the treatment of "services" under the New York Retail Installment Sales Act, which similarly excludes services sold in connection with motor vehicle financing transactions. Specifically, N.Y. Personal Property Law section

401(2)(a) provides (*emphasis* added): *In the case of a retail installment contract, work, labor and services furnished, or agreed to be furnished, for other than a commercial or business use, in the delivery, installation, servicing, repair or improvement of goods or repairs, alterations or improvements upon or in connection with real property, except that such services shall not mean or include any services sold in connection with the sale or lease of a motor vehicle which is evidenced by a retail installment contract governed by article nine of this chapter or a retail lease agreement governed by article nine-A of this chapter;*

By adopting a similar definition here, the Department would align the Proposed Rule with an established New York statutory framework and provide needed certainty regarding the scope of Article 14-B.

Additional Operational Provisions

AFSA requests targeted revisions to four provisions that, as drafted, would impose ambiguous, duplicative, or security-adverse obligations without corresponding consumer benefit. First, section 423.6(b) should confirm that records must be retained in a manner readily retrievable for examination rather than filed with the Department, that the retention period is three years from final payment, charge-off, or account closure, and that "records relating to" a BNPL loan means records of the credit application, credit decision, loan terms, payment history, and related material consumer communications, rather than all records of a broader customer relationship maintained for unrelated purposes. Second, section 423.7 should permit a licensee to satisfy subdivisions (a) through (c) by submitting audited and unaudited financial statements, compliance assessments, and periodic reports prepared for purposes of another article of the Banking Law or of federal securities reporting requirements covering the same period. Third, section 423.12(f)(2)(iii) should permit a lender to satisfy the electronic contact requirement through a monitored electronic channel, such as a secure online contact form, an authenticated in-application messaging function, or a customer service portal, which preserves the consumer's digital access to assistance while avoiding the phishing and automated abuse risks created by a publicly displayed mailbox. Fourth, section 423.13(c) should require reporting of material changes to complaint policies or procedures applicable to BNPL loans within 30 days, rather than any change within seven days, so that filings are limited to changes with supervisory significance.

Delay of the Effective Date

Finally, AFSA urges the Department to provide a sufficient implementation period before the Proposed Rule takes effect. The proposed 180-day timeline would require lenders to make substantial operational, compliance, technology, servicing, and disclosure changes in an unreasonably compressed period. Rushing implementation could reduce the availability of credit options for consumers at a time of continued economic uncertainty. New York should instead follow a more prudent approach, such as Illinois' recently enacted BNPL law, which provides an 18-month implementation period after enactment. AFSA therefore respectfully requests that the Department adopt an effective date of at least 548 days, or 18 months, rather than 180 days.

Conclusion

AFSA respectfully urges the Department to revise the Proposed Rule to better align with the Act's intended scope, avoid duplicative or conflicting regulatory obligations, and provide sufficient clarity and implementation time for affected entities. These targeted revisions would preserve the Department's consumer-protection objectives while helping ensure that responsible credit products remain available to New York consumers.

Thank you for considering our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 585-953-9624 or coconnor@afsamail.org.

Sincerely,

Joseph S. Testa

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State Legislative and Regulatory Counsel
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