March 4, 2020

The Honorable Dereck Davis
Chair, House Economic Matters Committee
231 House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: Maryland House Bill 655

Dear Chairman Davis:

I write on behalf of the American Financial Services Association ("AFSA")[1] to express our opposition to House Bill 655, which would create new disclosures from a vehicle dealer who participates in finance charges associated with the contract for a vehicle sale. This bill as written would cause significant negative effects for the vehicle finance industry operating in Maryland and will do this without any significant accompanying consumer benefit.

Vehicle financing comes in two forms: direct—a consumer comes into a dealership with pre-arranged financing from a finance source— and indirect—a dealer arranges financing based on the dealer's existing relationships with finance sources. Indirect financing is the more prevalent type of vehicle financing and allows dealers to use their existing relationships with financial institutions to provide borrowers access to credit that would not otherwise be available to them directly. Because of competition and the access to otherwise-inaccessible sources of credit, indirect financing is most often the cheapest for the consumer.

This legislation would impose rate restrictions and a disclosure model on the indirect finance model that does not apply to the direct finance model, creating an uneven playing field between the two parts of the vehicle finance industry. This is significant, and we ask Maryland to seriously consider the risk of favoring direct financing without studying the market impact of such a change. If Maryland were to study consumer results, we are confident you would find that consumers pay less on average for indirect financing and, additionally, even pay less overall for direct financing *because of* the highly competitive environment created by the indirect financing model.

Though the size and scope of this legislation is a cause for concern in itself, our primary focus is on the new section, §14-1906.1, under the Maryland Credit Services Businesses Act. The provisions here require automobile dealers to provide to the consumer a written disclosure, separate from the financing agreement, detailing offers for which the buyer was approved, including the buy rate and term of months in each offer; whether the dealer is being compensated for increasing the contract rate to a higher rate than the buy rate; and a significant number of additional disclosures including buy rate, contract rate, and total dealer compensation.

All of these disclosures must be signed prior to the execution of the financing agreement and the dealer is prohibited from participating in finance charges that would result in a difference between the buy rate and the

[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.

contract rate more than 2 APR points for a term of up to 60 months, or 1.5 APR points for a contract that has an original scheduled term of *more* than 60 monthly payments.

For vehicle finance companies, this creates layers of disclosures we have no means of evaluating. We request explicit release of any and all liability attached to these disclosures, the original source of which we have no means of accessing.

Disclosures of this type and caps on dealer participation would not offer the consumer any added protection because the financing is already available at a discount and would likely only create confusion at the time of the sale. In some cases, the multiple rates and offers disclosed may be the same, but in many cases, the details will be different, forcing a consumer to interpret and understand different rates for the same transaction, which may leave a consumer with the impression that the contract APR is higher or lower than it actually is. Such confusion would not benefit consumers and undermines the federal Truth in Lending Act, which sought to provide consumers with a clear understanding of the cost of credit.

In fact, the Federal Reserve Board previously considered and specifically decided against requiring a similar disclosure of fees for dealer participation due to the minimal consumer benefit, noting:

> The portion of the finance charge which represents the dealer's participation is not an amount which the consumer could save by obtaining a direct loan from a lending institution….The addition of another disclosure requirement to Regulation Z would result in more complex disclosure statements and could lead to confusion or misunderstanding by consumers.[2]

No other industry is required to disclose its wholesale rate relative to retail costs to consumers. If this standard were applied to consumer retail, for example, it would be akin to disclosing the wholesale cost of a sweater at the point-of-sale, indicating whether other cheaper sweaters were available to the retailer at a wholesale rate, and most significantly—disclosing the retail profit realized on that sweater. As with a sweater, in purchasing a vehicle there are other value considerations that a consumer must weigh, which are likely to be more useful and pertinent in a purchasing decision. We also again note the different treatment of the direct vs. indirect credit models to point out that a credit union that provided direct financing would not be required to report its margin in making a direct loan for the same vehicle.

We are aware that the vehicle dealer industry have serious concerns about the legislation which extend even further than ours. We are concerned that this legislation—the scope and type of which we have not seen in another state—would do significantly more inadvertent harm than good. 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.

Sincerely,

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[2] See *42 Fed. Reg. 19124, 19125 (April 12, 1977).*