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February 20, 2025

The Honorable Pamela Beidle
Chair of Senate Finance Committee
Maryland Senate
3 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: Opposition to SB 0754 – Small Business Truth In Lending Act

Chair Beidle, Vice Chair Hayes, and Distinguished Members of the Committee,

On behalf of the Electronic Transactions Association ("ETA"), the leading trade association representing the payments industry, I appreciate the opportunity to share our opposition and broad concerns with SB 0754.

ETA supports disclosures that promote transparency and accountability for small business borrowers. However, as drafted, the disclosures required in SB 0754 could be confusing for both online companies that provide financing to small business and the small business community. Moreover, ETA is concerned that the legislation's effective date will not provide regulators with the necessary time to promulgate rules required by the legislation and will not give providers of commercial financing enough time to comply.

Small businesses are the backbone of the economy and have different needs and objectives than consumers. In response, providers of commercial financing to small businesses have developed credit products specifically designed to meet those needs and objectives. ETA supports maintaining choice in small business financing, however, SB 0754, would impose burdensome barriers for providers of commercial financing, and likely result in less options for the very businesses the legislation aims to protect. Therefore, ETA would like to work with the committee to incorporate changes to the current bill and oppose SB 0754 as currently drafted.

ETA's concerns with SB 0754 can be summarized as follows:

Annualized Percentage Rate:

- **APR as applied to Commercial Financing**: ETA is concerned that SB 0754, by mandating an annual percentage rate or estimated annual percentage rate (collectively "APR") disclosure for commercial financing, will create significant confusion and uncertainty for Maryland small businesses trying to make informed decisions about the cost of financing products. The Truth in Lending Act ("TILA") was enacted strictly for consumer transactions, not commercial transactions and does not take into account the unique payment features of sales-based financing products, which do not have a fixed term, fixed payments, or have an absolute right to repay. The Consumer Financial Protection Bureau (CFPB) stated that because these types of products do not have a defined term or a periodic

payment amount, it would require a funding company to assume or estimate parts of the APR formula, which only increases complexity.

- **Alternative Measurement:** ETA urges the Committee to consider Total Cost of Capital ("TCC") as the method for disclosing the cost of financing products. The TCC method has been enacted in Connecticut, Florida, Georgia, Kansas, Missouri, Utah, and Virginia, and is a key measurement that matters to small business owners.

Effective Date: The current effective date and timeline for implementation of SB 0754 would place an undue regulatory compliance burden on the industry. ETA respectfully recommends allowing for a longer regulatory comment and approval process, and a 180-day compliance period that begins after final rules are published.

Requirements to Report Certain Items to the Commissioner:
SB 0754 requires a provider to disclose to the Commissioner: 1. the method in which a provider is calculating the estimated annual percentage rate (APR); 2. the estimated APR given to a recipient: 3. requiring a provider to retroactively calculate the actual APR of completed sales-based financing transactions. This is extremely overreaching and is not required by any other state that has implemented a disclosure law. There is no indication that the Commissioner wants to receive this information or even has the capability at this time to process this type of information. These requirements are overreaching and should be stricken from SB 0754.

Definitions:

- **Provider:** The definition of "provider" should exclude "1st party financing;" specifically, where the owner of the product or service is the one offering the financing opportunity.
- **Interest Accrued:** The legislation references "interest accrued," without definition. Clarifications are necessary to provide certainty of the bill's requirements and to help ensure the ability to provide accurate and meaningful disclosures.
- **Recipient:** The definition of "recipient" should be limited to businesses that are principally managed or directed from Maryland, and providers should be permitted to rely on either (1) a representation from the recipient, or (2) the business address provided by the recipient. This would parallel the approach taken by New York.
- **Total Repayment Amount:** The definition of "total repayment amount" should include any portion of the financing that is used to pay off a prior financing transaction, whether to a third-party or to the provider.

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TILA Disclosure Exemption: The New York commercial financing disclosure law ("CFDL") provides that the definition of "commercial financing" *(b) does not include any transaction in which a financier provides a disclosure required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., that is compliant with such Act.* This provision should be incorporated into SB 0754 as it prevents the unnecessary duplication of disclosures from providers who already provide TILA compliant disclosures in commercial financing transactions, and it encourages uniformity across the country, which reduces the burden of complying with the different disclosures in each state.

Open-End Financing: Section 12-1207 requires the disclosure of the credit limit along with the amount to be drawn at the time the offer is extended. There are two issues here. Firstly, it is not always known what the initial draw will be at the time the specific offer is presented to the recipient because the recipient is only selecting a credit limit, not a credit limit plus initial draw. Secondly, it appears that the entire disclosure for an open-end product is based on the assumption that the total credit limit is being drawn. For products like a commercial credit card or line of credit, where a customer is receiving access to the card or line with an available credit limit, requiring an initial disclosure with the credit limit and initial draw is not possible. As such, we recommend removing the requirement to disclose the initial draw and only require disclosure of the overall credit limit. Moreover, the requirement to base the disclosures on the entire credit limit being drawn is misleading as the majority of small businesses do not draw the entire credit limit at the initial draw.

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We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me.
Respectfully Submitted,

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