March 8, 2023

Chair Prozanski, Vice Chair Thatcher and Members of the Senate Committee on Judiciary,

On behalf of the Oregon Financial Services Association (OFSA) and its members, thank you for the opportunity to comment on SB 619 and the -1 amendment.

OFSA submits these comments to particularly express concerns with the proposed entity-level exemptions for financial institutions as drafted in the -1 amendment, and to request that as this policy is further developed through additional amendments that we understand are forthcoming, the proposed entity-level exemption for financial institutions be modified to include such an exemption for "a licensee under ORS Chapter 725."

OFSA is a trade association for the consumer credit industry, founded in 1937 to promote safe, ethical lending to responsible, informed borrowers and to improve and protect consumer access to credit. We are non-bank, non-depository lenders licensed under ORS Chapter 725 that provide traditional installment loans to borrowers for personal and household purposes. We typically lend to people who have experienced past credit problems and do not have access to other traditional lenders, helping to repair our customer's credit and provide access to resources needed for everyday living. ORS Chapter 725 licensees play a critical role in the lending industry by extending credit to consumers when others might not, thus providing valuable options to help consumers establish a good credit history so that they may eventually qualify for less expensive credit in the future.

Traditional installment lenders provide the same loan product that a consumer would obtain from a bank or a credit union. We fully underwrite each loan we make, assessing a borrower's ability to pay. Our loans are also fully amortized, meaning they are repaid in manageable monthly installments made of both principal and interest. We furnish information to credit reporting agencies, allowing borrowers to establish new creditworthiness or rehabilitate damaged credit.

As introduced, SB 619 includes an entity-level exemption for financial institutions as defined in the Gramm-Leach Bliley Act. The GLBA definition of financial institution includes our members, and the vast majority of all data we control is federally regulated under the GLBA. OFSA is supportive of an entity-level exemption for financial institutions, because such an exemption recognizes the significant privacy protections provided to Oregon consumers under federal law, while avoiding unnecessary confusion and unnecessary increases in compliance burdens for marginal consumer benefit. An entity-level exemption for financial institutions also promotes uniformity with other states' laws.

For financial institutions, both the GLBA and the Fair Credit Reporting Act (FCRA) ensure that consumers engaging with our members have strong privacy protections. Under the GLBA, consumers have the choice of whether a financial institution may share their personal information with nonaffiliated third parties. The GLBA prohibits disclosure of consumer information to any nonaffiliated third party unless the consumer is given notice and the opportunity to opt out of the sharing.

Under the FCRA, consumers choose whether certain consumer report information can be shared with affiliated companies, and also whether that information can be used to send marketing solicitations. Under both the GLBA and the FCRA, consumers must receive notice and have the opportunity to opt out of the sharing or use unless a specific exception applies. The FCRA affiliate sharing opt-out notice must be included in the financial institution's GLBA privacy notice at the beginning of a customer relationship and every subsequent year, unless an exception applies. While both the FCRA and the GLBA permit information sharing for necessary customer service purposes, the fundamental consumer protections in both laws limit other information sharing. Exempting financial institutions from Oregon's draft privacy law would continue to afford significant protections to consumers, given the strong protections already afforded by federal law.

Unfortunately, the -1 amendment to SB 619 narrows the entity-level exemption for financial institutions in such a manner that the new, proposed language would not include our members.

As the comments included in the proposed redline to SB 619 circulated by the Attorney General's office on February 15 explain, the intent of the new entity-level exemption language for financial institutions, as set forth in Section 2 (2)(h) of the -1 amendment, is to narrow the scope of the exemption while still fully exempting "banks, credit unions and *other entities defined as a financial institution under state law*."[1] The -1 amendment does not fully effectuate the intent, as it does not include our members even though we are financial institutions and regulated as such under Oregon state laws.

To explain, the -1 amendment would narrow the entity-level exemption to financial institutions "as defined in ORS 706.008 (9)," a definition particular to the Oregon Bank Act and that does not encompass non-depository lenders of traditional installment loans. While OFSA members are not subject to the Bank Act, we are licensed and regulated as a completely separate type of financial institution, under ORS Chapter 725, to provide the same type of loan product that a consumer would obtain from a bank or a credit union.

[1] https://olis.oregonlegislature.gov/liz/2023R1/Downloads/PublicTestimonyDocument/59865, at comment MK32.

ORS 725 licensees are considered financial institutions for purposes of the GLBA[2], the FRCA[3], and for purposes of many Oregon state laws[4]. For more than 100 years, traditional installment lenders have served customers with the same kind of safe and affordable credit as banks and credit unions. To effectuate the stated intent for the entity-level exemption to cover financial institution-like entities, we believe the exemption must be modified to include licensees under ORS Chapter 725.[5] There are several drafting methods by which this could be accomplished, but one straightforward method is to include an additional paragraph (j) in Section 2 (2) of the draft to read:

"(j) Licensees under ORS Chapter 725."

Finally, we acknowledge and appreciate that the -1 amendment continues to maintain a data-level GLBA exemption that would apply to our industry. However, our members have indicated that, in general, we collect very limited types of "personal data" that are not collected, processed, sold or disclosed pursuant to the GLBA. Requiring our members to undertake a significant implementation and compliance burden to address a very limited number of use cases will provide a marginal benefit to a very small set of consumers and is unnecessary.

Laws and regulations must be crafted in ways that ensure maximum protection for consumers without unnecessarily disrupting essential businesses and devaluing the utility of data for commercial purposes that benefit everyone. Providing for an entity-level exemption in Oregon's data privacy law for "A licensee under ORS Chapter 725" will be the best way to achieve this difficult balance and is consistent with other comprehensive privacy laws in the United States including those in Colorado, Connecticut, Virginia, and Utah.

We are actively working closely with the Attorney General's office to address our concerns and we very much appreciate those conversations. Thank you again for the opportunity to provide comments.

If you have questions, please contact Maureen McGee at 971-610-1140

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[2] *See*, 15 USC 6809(3)(a); 314.2(h)

[3] *See*, 15 USC 1681(a)(t)

[4] *See, e.g.,* ORS 105.462 (1); ORS 131.550 (4); ORS 131A.005 (3); ORS 180.540; ORS 744.609 (4); ORS 674.100 (3)(a).

[5] Importantly, modifying the exemption in this manner *would not* lead to the exemption of businesses like payday lenders, which function under a completely different business model than traditional installment lenders and are separately and distinctly regulated in Oregon. See ORS Chapter 725A (addressing regulation and licensing of payday and title loan lenders)