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March 13, 2024

Councilmember Kenyan R. McDuffie
Chair of the Business and Economic Development Committee
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

RE: Opposition to B25-0609 – Protecting Affordable Loans Amendment Act

Dear Chair McDuffie and Members of the Committee on Business and Economic Development,

On behalf of the Electronic Transactions Association ("ETA"), the leading trade association for the payments industry, we appreciate the opportunity to provide this written testimony in opposition to B25-0609 known as the "Protecting Affordable Loans Amendment Act" that poses a significant threat to the stability of the lending market and, more importantly, to the ability of consumers and small businesses in the District of Columbia (the "District") to access affordable credit opportunities.

Impact of DIDMCA Opt-Out: The legislation would require the District to opt out of the Depository Institutions Deregulation and Monetary Control Act (DIDMCA) that was enacted over 40 years ago to allow for FDIC-insured state-chartered banks to export rates across the country to provide innovative credit products for consumers and businesses. Opting out of DIDMCA is an untested concept, so the implications and potential unintended consequences of this decision are not yet known.

Definitions: B25-0609 may designate some financial technology ("Fin Tech") companies as the "lenders," thereby disregarding the crucial role played by banks in originating loans through contracted partnerships. This shift in perspective threatens to disrupt the highly regulated financial options that currently support credit-constrained small businesses in the District.

- **§ 28-3311a.** This section introduces subjective factors to determine the definition of a lender. The definition includes "any person engaged in a transaction that is in substance a disguised loan or a subterfuge for the purpose of avoiding this chapter, regardless of whether or not the entity or person is subject to licensing." This definition is subjective and lacks a strong degree of clarity, therefore, ETA requests that it be removed from the bill.
- **§ 28-3311a. (c)(3)** The section also states that an actor is subject to the act if it "Purports to act as an agent, service provider, or in another capacity for an exempt entity while acting directly as a lender in other states" ETA encourages an amendment to provide more flexibility to lenders by inserting the word "or" after "agent" and remove the term "or in another capacity".
- **§ 28-3311b.** This section also introduces a broad definition for "loan." As other states have done across the US, the definition of "loan" or "credit" should align with Regulation Z, which limits its applicability, in part, to credit primarily for personal, family, or household purposes subject to a finance charge. This would allow for increased consistency both for

credit providers and also for consumers who use these products. As such, we propose the following definition: "For the purposes of this chapter, the word "loan" means money or credit provided to a consumer for personal, family or household use, that is subject to a finance charge, in exchange for the consumer's agreement to repay the money or credit in full and a certain set of terms, including, but not limited to, any finance charges, interest, or other payments, closed-end and open-end credit, retail installment sales contracts, motor vehicle retail installment sales contracts, and any deferred deposit transactions."

Compliance Date: Given the potential impact on various products currently available to DC customers, the compliance date should be established to allow product buildout and timely compliance.

Impact to District of Columbia Consumers: If enacted, B25-0609 would significantly negatively impact DC's consumer credit market, leading to a substantial reduction of credit access for DC consumers. Imposing stricter interest rate caps will limit access to credit for consumers in the state. Additionally, it will discourage financial institutions from creating new products tailored to meet the needs of underserved communities. It is important for DC Councilmembers to carefully consider the potential consequences of this legislation to ensure there is a balance between consumer protection and maintaining access to credit.

Impact to Small Businesses: Limiting credit options not only affects consumers but also has significant ramifications for small business owners across the District. Many of these entrepreneurs rely on individual access to credit to fulfill their funding needs, particularly when traditional financing avenues are inaccessible or inadequate. Whether it is purchasing inventory, covering operational expenses, or funding expansion initiatives, these financing options are essential for the success and sustainability of small businesses. It is important to recognize that small and short-term loans play a pivotal role in providing small business owners and entrepreneurs with the capital they need to thrive. Small businesses serve as engines of growth, driving innovation, creating jobs, and fostering economic activity within DC communities. By limiting access to credit, the District of Columbia would risk stifling the potential of these businesses to contribute positively to the state's economy. Passing B25-0609 would only serve to exacerbate difficulties in entrepreneurs' ability to access vital resources for growth and development and curtail the positive impact that entrepreneurs and small business owners could have on the city's economy.

Conclusion: Rather than stifling innovation and disrupting well-established partnerships, ETA supports legislative efforts that encourage and promote new and leading-edge online lending models, which provide more access to credit for consumers and businesses in the District. These lending partnerships have been proven and have the potential to strengthen the ability for consumers and small businesses to access credit by fostering innovation, encouraging healthy competition, ensuring affordability, and maintaining overall stability.

ETA and its members support an inclusive financial system that provides high quality, secure, and affordable financial services for the broadest possible set of consumers and small businesses. ETA encourages the Council to support these efforts through policies that support innovation and the use of technology in financial products and services rather than legislative efforts to restrict this innovation and ability to access credit by redefining lending and opting out of the longstanding DIDMCA legal framework.

ETA stands ready to engage in constructive dialogue and collaboration to address concerns raised by B25-0609. We believe that by working together, we can find solutions that support the growth of small businesses, foster innovation, and maintain the stability of the lending market in the District.

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Thank you for the opportunity to participate in discussion on this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at stalbott@electran.org.

Respectfully Submitted,

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