March 23, 2017

Mr. Mark Calabria
Chief Economist
Office of the Vice President
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, DC 20502

Dear Mr. Calabria:

Thank you for taking the time to meet with the American Financial Services Association (AFSA)[1] in the beginning of March. We know how busy you are and we are very appreciative of the time you and your colleagues spent with us.

At the meeting, you expressed interest in hearing about reforms that the Consumer Financial Protection Bureau (CFPB) could implement quickly to reduce unnecessary burdens on financial institutions. Reducing these burdens would increase lending, create jobs, and stimulate local economies. Your request coincides with President Trump's Executive Order directing federal agencies to establish a regulatory reform task. As we discussed at the meeting, the CFPB's regulations, bulletins, and enforcement actions have had a detrimental impact on financial institutions and the customers they serve. Below is a list of actions that the CFPB could take to help the president meet his goal of making life better for American businesses and consumers.

- *Halt CFPB examinations*. The standards the CFPB is using to examine its regulated entities for their level of compliance are far-reaching and not well-grounded in comparison to the common audit examinations that financial institutions experience from states. The examined company's compliance is subject to being judged by the particular whim of the examiner, rather than based upon express and objective statutory law. The CFPB's examination practices make it impossible for a company to style its compliance model with an assurance that it will pass muster in the examination. CFPB examinations need to be stopped while the need for them is reevaluated by Congress.

- *Place a moratorium on the use of disparate impact theory*. The CFPB has been using a controversial and unreliable methodology to find disparate impact in the auto finance industry. The CFPB should stop using the Bayesian Improved Surname Geocoding (BISG) method, which research has proven to be conceptually flawed in its application and subject to significant bias and error. The CFPB should put a moratorium on all disparate impact enforcement actions. There should also be some form of relief for companies already operating under consent orders. Although the CFPB issued a blog post stating that it would be shifting its focus from fair lending in the auto finance market to other markets, we are hearing that that is not the case.

- *Withdraw compliance bulletin 2015-07 on in-person collection of consumer debt.* The CFPB issued this bulletin stating that in-person collections may cause or may be likely to cause substantial injury to consumers. The bulletin was issued with no published research, no comment period, and no input from stakeholders. Some creditors may use field visits as part of a high-touch model that may help consumers who need help managing their budgets. The CFPB should withdraw this bulletin, at the very least until further study on in-person collections is complete.

- *Terminate the arbitration and small-dollar rulemakings.* The CFPB should not finalize the proposed arbitration rule that would prohibit the use of class action waivers. The CFPB's own study shows that arbitration is inexpensive,

[1] Founded in 1916, AFSA is the national 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, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance

fast, and beneficial to consumers. The study also shows that class actions only benefit plaintiffs' attorneys. In addition, the CFPB should not finalize the proposed small-dollar rule. Expanding lending is a top priority for the administration. That goal cannot be met by limiting small-dollar loans. Moreover, the CFPB has exceeded its authority by including a de facto rate cap in the proposed rule.

- *Withdraw compliance bulletins 2012-03 and 2016-02 on service providers*. These bulletins direct banks and nonbanks to ensure that their service providers are in compliance with applicable laws. This is an improper assignation of authority. For example, a small, one-office finance company cannot oversee one of the nation's three largest credit bureaus. In another example, it is inappropriate for a finance company to oversee a credit insurance provider – that is a job best left to state insurance regulators.

- *Place a moratorium on the CFPB's complaint database*. There are a number of significant problems with the CFPB's Complaint Database, including the fact that it does not provide any meaningful information to the public. The CFPB does not verify the validity of the complaints posted and does not have robust security systems in place to safeguard consumers' personal identifiable information and financial data. The CFPB should halt the use of the complaint database until these problems are satisfactorily resolved.

- *Review CFPB procedures*. The CFPB's enforcement procedures, rules relating to investigations, rules regarding the disclosure of records and information, and rules of practice for adjudication proceedings should be revised to provide a better balance between the needs of the regulator and the needs of financial institutions.

- *Re-designate payments from the civil penalty fund*. There is no transparency to the process of allocating money from the civil penalty fund. Although the CFPB says that the money goes towards consumer education and financial literacy programs, it is unclear how this money is actually allocated. The administration should consider redirecting this money to the Veterans Educational Assistance Program.

- *Ensure the accuracy of press releases*. The CFPB has repeatedly issued press releases related to enforcement actions that misrepresent the content of the order. The CFPB should ensure that the press releases accurately reflect what is being announced.

We are happy to provide any assistance that might be useful. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

Bill Himpler

Bill Himpler
Executive Vice President
American Financial Services Association