

September 12, 2016

The Honorable Jeb Hensarling  
Chairman, Committee on Financial Services  
U.S. House of Representatives  
2129 Rayburn House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

The American Financial Services Association (“AFSA”)<sup>1</sup> is pleased to endorse the chairman’s mark of the “Financial CHOICE Act of 2016.” On behalf of the consumer finance industry, our member companies wish to express their appreciation to you and your subcommittee chairs for your leadership in crafting this legislation.

Of particular interest to our members is **Title III**, which would reconstitute the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) as a bipartisan “Consumer Financial Opportunity Commission” funded by congressional appropriations. AFSA believes that the unusual degree of autonomy granted to the CFPB by the Dodd-Frank Act – including a single director who unilaterally determines his agency’s budget, priorities and policies – has produced less than optimal outcomes. Five years after its establishment, the CFPB has proven to be an agency that is neither accountable to Congress nor transparent to industry stakeholders and the general public.

The financial services industry is too vital to the health and welfare of the nation’s economy to be left in the hands of a regulator led by a solitary individual who is able to tap the public purse with virtually no oversight. The structural reforms in Title III would bring the CFPB in compliance with federal regulatory norms.

Specifically, AFSA welcomes the inclusion of **Section 333**, which would permit states and Indian tribes to request an unconditional five-year waiver from federal regulation of small-dollar credit. While we appreciate our ongoing dialogue with the CFPB on matters concerning the traditional installment loans offered by our members, the Bureau has proposed a rule that would substantially restrict consumer access to this product – one of the simplest, most predictable and time-tested sources of credit available to consumers today. Many states and tribes have struck a careful balance of consumer protection that successfully promotes the availability of affordable borrowing options, and they have learned important lessons from neighboring jurisdictions that regulate consumer lending out of business altogether. Those states and tribes should not be undermined by a federal regulator who would impose the most restrictive lending environment upon them, depriving their consumers of credit they want and need.

Additionally, AFSA supports **Section 334**, which would nullify CFPB Bulletin 2013-02, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*. AFSA believes that the Bureau's current approach to overseeing motor vehicle finance amounts to regulation by enforcement – denying due process to industry participants and causing disruption in the marketplace that risks increasing the cost of financing for all consumers, especially those whom fair lending laws aim to protect. Section 334 would provide an opportunity for the successor agency to replace the CFPB's policy with one that considers stakeholder input, reveals the evidence relied upon, and analyzes the costs and impacts of such policy on consumers, small businesses and rural areas.

**Section 337** would repeal the CFPB's authority to ban products or services it deems "abusive." At best, the so-called abusive standard stifles innovation in the marketplace through its ambiguity. At worst, it creates a catch-all authority that the CFPB and attorneys general may cite in prosecuting any business practice that their agency finds disagreeable. In fact, "abusive" is not a standard at all; it is an ill-defined tool that singularly expands the scope of regulators' power to determine which financial products and services pass muster. AFSA supports this repeal.

Finally, AFSA applauds **Section 338**, which would repeal the CFPB's explicit authority to regulate arbitration clauses in financial services contracts. The Bureau has proposed to outlaw pre-dispute arbitration agreements, effectively vitiating the Federal Arbitration Act of 1926 by depriving financial institutions and their customers of an efficient process for resolving contractual disputes. The CFPB's leadership hewed to a predisposition against arbitration by proposing to essentially eliminate it. Doing so could substantially increase the cost of providing financial services due to the potential for greater legal expenses required to litigate disputes, and the Bureau's own research suggests this litigation is likely to reduce the monetary relief that will end up in the pockets of consumers.

Again, we are grateful for your efforts and you may count on AFSA's continuing support as we work to see these reforms enacted. Please contact me at 202-466-8616 or [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org) with any questions.

Sincerely,



Bill Himpler  
Executive Vice President

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<sup>1</sup> Founded in 1916, the American Financial Services Association 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 traditional installment loans, direct and indirect vehicle financing, mortgages, payment cards and credit for non-vehicle retail customers. AFSA members shape the industry's direction and positions on a broad range of public policy issues that affect the consumer credit industry.