Protecting Credit Since 1916
American Financial Services Association

March 29, 2017

The Honorable Jeb Hensarling
Chairman
House Financial Services Committee
Washington, DC 20515

Re: Request for APR Amendment to Financial CHOICE Act 2.0

Dear Chairman Hensarling:

The American Financial Services Association (AFSA)[1] writes this letter in support of a recent amendment (see attached) offered to the Financial CHOICE Act 2.0. The amendment would prohibit federal agencies from creating annual percentage rate (APR) calculations that differ from the APR calculations governed by the Truth in Lending Act (TILA). For decades, TILA has provided a clear standard for creditors and it should be preserved.

Some advocacy groups have argued that instead of the traditional TILA APR calculation, creditors should use an APR calculation that includes charges for voluntary protection products (VPPs), such as credit insurance, that are sold in conjunction with the loan. Commonly referred to as "all-in APRs" these calculations artificially increase the cost of credit. VPPs are *not* a cost of credit under TILA because they are optional products that are not imposed on the consumer as a condition of obtaining the loan. VPPs are a separate and distinct charge as identified in TILA.

From a practical perspective, an all-in APR inhibits or eliminates credit comparison shopping and access to financial protection for consumers because it creates an inaccurate cost of credit. The core objective of TILA was to help consumers shop for credit by being able to compare APRs across loans and creditors. However, by including VPPs in an APR calculation (which vary in cost and benefits) consumers lose the opportunity to make an informed decision on the cost of the loan.

For nearly 50 nears, TILA has provided a standard of how to calculate APR so that all references to APR mean the same thing. All creditors calculate APR the same way. The cost of any loan can be measured by the TILA APR. It is important that APR be consistent among all creditors, for all loan products, and in all circumstances. For this reason, five decades of jurisprudence and regulatory guidance have assiduously guarded confidence in the term "APR" – what it means, what is included, and what is not included. It is not useful to have the cost of voluntary protection products included as an alleged cost of *credit* by inclusion in an APR.

Thomas A. Durkin, a former senior economist at the Federal Reserve, explained these concepts clearly:

> "First, if ancillary products are not required as part of the credit, then the fees for them are not payment for the credit granted and the fees economically are not finance charges. … Second, in 1968, Congress understood that debt protection that is not required is economically not part of the underlying credit and

[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 indirect and direct vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance.

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the fee for debt protection is not part of the finance charge. … Third, since debt protection fees are not finance charges economically, arbitrarily declaring them to be finance charges confounds the ability of consumers to shop effectively for credit costs, frustrating the basic purpose and intent of TILA in the first place. This is bad public policy.”[2]

We might add that Congress has spoken. TILA expressly excludes the cost of certain voluntary protection products from the cost of credit, as long as the products are not required to be purchased by the consumer. Courts and regulators prohibit a creditor from advertising the cost of credit without expressing the APR and they prohibit a creditor from giving the term any meaning different than the one it is assigned in TILA. Not only do courts and regulators prohibit a creditor from advertising an APR term that is calculated differently from how TILA's implementing regulation, Regulation Z, calculates the rate, they regard a creditor's use of an APR variant as a particularly pernicious TILA violation because such behavior undermines the universality of the term.

We respectfully request that the amendment prohibiting all-in APRs be added to the Financial CHOICE Act 2.0.

Thank you for your consideration.

Sincerely,

Bill Himpler
Executive Vice President
American Financial Services Association

[2] Durkin, Thomas A., *Conceptual Difficulties with the "All In" Finance Charge and APR Proposal from the Consumer Financial Protection Bureau*. Consumer Finance Law Quarterly Report. Vol. 67, Nos. 1-2. p. 53.