

June 8, 2017

Ms. Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1275 First Street, NE  
Washington, DC 20002

**Re: *Request for Information Regarding Consumer Credit Card Market (Docket No. CFPB-2017-0006)***

Dear Ms. Jackson:

The American Financial Services Association (AFSA)<sup>1</sup> appreciates the opportunity to comment on Consumer Financial Protection Bureau's (CFPB) request for information (RFI) regarding the consumer credit card market. Section 502(a) of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act)<sup>2</sup> requires the CFPB to conduct a review of the consumer credit card market every two years. To inform that review, the CFPB seeks public comment.

AFSA's members report that the credit card market is healthy, despite the huge investment made in 2009 and 2010 in complying with the CARD Act. This is reflected by data covering the period since the CFPB's last review which shows that in 2017, 171.38 million consumers have access to a bankcard—a 6.7% increase from 2015.<sup>3</sup>

Below are AFSA's comments on several of the specific topics on which the CFPB asks for information.

#### *Credit Card Agreements*

Credit card agreements have not changed significantly in terms of length or complexity since the significant CARD Act revisions in 2010. Credit card agreements were revised to be more readable after the passage of the CARD Act, but because credit cards are complicated products, the agreements have not changed dramatically.

Based on a low level of consumer complaints, AFSA members believe that their credit agreements are effective in conveying the terms and costs to consumers.

#### *Adequacy of Protections Against Unfair or Deceptive Acts or Practices (UDAP) or Unlawful Discrimination*

While there may be some areas in which UDAP or unlawful discrimination exist in the card market, the CARD Act has been generally effective in eliminating areas of concern. Card issuers continue to work on improving the clarity of promises made and ensuring that promises are kept.

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<sup>1</sup> 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.

<sup>2</sup> 15 U.S.C. 1616(a).

<sup>3</sup> TransUnion Industry Insights Report Q4 2016.

### Use of Risk-Based Pricing

Some credit card issuers have discontinued risk-based pricing, as the CARD Act has made it difficult for those issuers to offer such pricing.

However, other issuers continue to use risk-based models to set pricing at card acquisition. Pricing may remain high because re-pricing is no longer a tool available to address risk which develops in the future life cycle of an account. Issuers must address that potential risk earlier in the account life cycle by either offering higher rates (to all borrowers, not just those who later display increased risk characteristics) or using lower credit lines so less outstanding balance is subject to the risk. Both of these, or a combination of both strategies, may raise the cost of credit or restrict the availability of credit.

### Deferred Interest Products

AFSA emphasizes that deferred interest programs continue to be popular with consumers and with retailers. The more extensive disclosures required by the CARD Act may have been effective, but regardless of the changes, AFSA members had a very low level of consumer complaints on those programs previously.

As a result, there is no need for the CFPB to issue new regulations regarding deferred interest products at this time. Deferred interest products benefit consumers by allowing them to pay for major purchases while, over the deferral period, avoid paying interest. The majority of consumers repay within the deferred interest period. Consumers would be harmed if the CFPB decided to disallow this valuable product.

AFSA notes that deferred interest products are already heavily regulated. Card issuers are required to: provide special disclosures related to deferred interest balances, send reminders of the date by which the balances must be paid to avoid accrued interest charges, clearly disclose the timeframe of the promotional period, conspicuously disclose the post-promotional APR, only use the phrase “no interest” if the phrase “if paid in full” precedes the disclosure of the deferred interest period, and include information about the deferred interest period on each periodic statement.

### Rewards

Rewards play an important part in consumers’ decisions to apply for a card. AFSA members have worked to simplify features and benefits to address the potential complexity of disclosures surrounding rewards. AFSA members have also simplified rewards redemption. These efforts have meaningfully reduced consumer complaints.

Moreover, AFSA emphasizes that card issuers need to have the ability to innovate to meet consumer needs and stay competitive with non-card rewards programs that consumers use. Placing restrictions on only a portion of the rewards market will not provide benefits to consumers and will harm financial institutions, pushing more products into the unregulated space.

### Debt Collection

Early contact, especially before charge-off, benefits both consumers and issuers. At early stages of delinquency, issuers can be more flexible, consumers can get back on track and referrals to third-party collectors can be

avoided. Therefore, any debt collection rules should allow for frequent early contact and for the use of new technology.

More importantly, regulators should focus on enforcement against bad actors. Unscrupulous debt collectors can cause considerable harm to consumers. The CFPB should concentrate its efforts on protecting consumers from these predators.

Regulators should also recognize that creditors are distinct from third-party debt collectors. Imposing burdensome and unnecessary regulatory constraints on creditors that are clearly designed to address the well-documented issues with debt collectors will lead to higher business costs and costs of credit, as well as overall reduced access to consumer credit.

Congress did not intend for creditors to be regulated like debt collectors. Congress realized when it passed the Fair Debt Collection Practices Act (FDCPA) that creditors operate differently than debt collectors, and therefore rules applicable to debt collectors may be appropriate, but those rules would not be applicable to creditors.

Congress distinguished between creditors collecting their own debts and third-party debt collectors, subjecting only the latter to the FDCPA and finding creditors were more accountable to their customers and noting that since consumers have a choice from whom to borrow, creditors are forced to avoid unfair and improper practices when attempting to collect their own debts. The legislative history of FDCPA states creditors “generally are restrained by the desire to protect their good will when collecting past due accounts,” unlike third-party debt collectors who are “likely to have no future contact with the consumer and often are unconcerned with the consumer’s opinion of them.”<sup>4</sup>

While much has changed in the credit industry since the 1977 passage of the FDCPA, creditors are still restrained by the same motivation to protect their goodwill when collecting past due accounts. Unlike consumers who cannot choose their debt collector, consumers make a conscious decision of which creditor to use. Nothing has changed that would warrant a different conclusion today or warrant unnecessary regulation.

Please contact me by phone, 202-466-8616, or email, [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org), with any questions.

Sincerely,



Bill Himpler  
Executive Vice President  
American Financial Services Association

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<sup>4</sup> S. REP. NO. 95-382, at 2 (1977); 123 CONG. REC. 10,242 (1977) (statement of Rep. Annunzio)