

October 27, 2020

Hon. Kathy Kraninger  
Comment Intake—CARD Act Rules  
RFA Review and Credit Card Market Review  
Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20552

**Re: RFA Review and Credit Card Market Review  
Docket No. CFPB-2020-0027**

Dear Director Kraninger:

The American Financial Services Association (AFSA)<sup>1</sup> is pleased to respond to the Consumer Financial Protection Bureau's (CFPB) request for information (RFI) on: (1) the economic impact of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) Rules on small entities, and (2) the CFPB review of the consumer credit market.

The key point for AFSA members is that the changes in the 2009 CARD Act were extremely difficult to implement and there seems to be no significant evidence that they are not working as intended. Additional restrictions and requirements imposed on consumer credit card lending will likely just increase costs for both lenders and customers, discourage the entry of new lenders, and speed up lender consolidation.

Our letter addresses the concern with monitoring developments to a decades-old statute and provides feedback on some of the specific areas the CFPB asks about.

## **I. Is the CARD Act still relevant?**

While AFSA recognizes the Regulatory Flexibility Act and the CARD Act mandate the CFPB undertake this review, the CARD Act reflects a marketplace that has dramatically changed since enactment in 2009. The description of the credit card marketplace in the RFI provides inadequate context relating to fundamental product and consumer behavior has changed in the last decade. Since enactment, new forms of credit and payment products, app-based payment services, and point of sale financing products, have been offered by an array of new fintech entities and traditional financial services companies and networks.

This explosion of consumer choice makes moot the arguments that consumers were tricked or trapped into accepting credit card products.

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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.

General purpose credit cards are also payment devices—even when the cardholder does not maintain a revolving credit balance. This market too has changed since 2008 with the rise of digital payment offerings including cloud-based apps—all of which are part of what is estimated to be part of a staggering 726 billion global digital transactions that will occur in 2020.<sup>2</sup>

Finally, while limitations on repricing is one of the centerpieces of the CARD Act, the efficacy of those provisions has never been tested in a high interest rate environment. During much of the time since enactment, the cost of capital has been artificially low as Federal Reserve monetary policy dealt with the Great Recession and now the current pandemic.

In sum, reviewing the CARD Act is akin to studying passenger railroads in the area of growing air transport.

## **II. Review of the Credit Card Market**

While AFSA welcomes the CFPB’s invitation to consumers to comment on the efficacy of the CARD Act, we are concerned that this process can devolve into another version of CFPB’s consumer complaint database. We encourage the CFPB to continue to use a data-driven approach in its CARD Act reports.

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

### *Credit Card Agreements*

As AFSA wrote in our letter in response to the last credit card RFI in 2017, 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 card agreements are effective in conveying the terms and costs to consumers.

### *Adequacy of Protections Against Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) Relating to Credit Card Plans*

While there may be some areas in which UDAAP 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 to consumers and ensuring that those promises are kept. To the extent that the CFPB uses its UDAAP authority, we encourage it to follow the Statement of Policy

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<sup>2</sup> See: *World Payments Report 2017*, Capgemini and BNP Paribas at <https://worldpaymentsreport.com>.

Regarding Prohibition on Abusive Acts of Practices<sup>3</sup> released in January 2020 which provides a common-sense framework on how the Bureau intends to apply the “abusiveness” standard in supervision and enforcement matters.

*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, raise the cost of credit and restrict the availability of credit.

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We appreciate the CFPB’s time and attention in this area. Please contact me by phone, 202-776-7300, or email, [cwinslow@afsamail.org](mailto:cwinslow@afsamail.org), with any questions.

Sincerely,



Celia Winslow  
Senior Vice President  
American Financial Services Association

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<sup>3</sup> Available at [https://files.consumerfinance.gov/f/documents/cfpb\\_abusiveness-enforcement-policy\\_statement.pdf](https://files.consumerfinance.gov/f/documents/cfpb_abusiveness-enforcement-policy_statement.pdf).