

October 21, 2021

The Honorable Jack Reed  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

The Honorable Jim Inhofe  
Ranking Member  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

The Honorable Adam Smith  
Chairman  
Committee on Armed Services  
House of Representatives  
Washington, DC 20515

The Honorable Mike Rogers  
Ranking Member  
Committee on Armed Services  
House of Representatives  
Washington, DC 20515

Dear Chairman Reed, Chairman Smith, Ranking Member Inhofe, and Ranking Member Rogers:

On behalf of the American Financial Services Association (AFSA),<sup>1</sup> I am writing as you work to advance the National Defense Authorization Act (NDAA) for Fiscal Year 2022 (S. 2792 and H.R. 4350). We commend your bipartisan efforts and dedication to our nation's servicemembers and their families. We support many provisions that assist financial institutions and military consumers. We also would like to highlight several concerns currently in H.R. 4350, passed by the House of Representatives earlier this year.

First, the provision on arbitration (Sections 6414-6416 of the House bill) limits arbitration for servicemembers. This in turn favors class action lawsuits that take years to be adjudicated, clog the court system, and result in comparatively small payouts. Servicemembers deserve the ability to settle disputes through arbitration, a more expedient process that yields greater payouts for consumers. The U.S. Supreme Court has recognized arbitration as a fair and effective mode of settling disputes, and servicemembers deserve the option for quick and effective justice. AFSA strongly supports the use of arbitration as a timely, low-cost dispute resolution option for servicemembers and everyone alike. In 2015, the Consumer Financial Protection Bureau's own study on arbitration found that:

1. Arbitration costs consumers less. Consumers paid an average of \$206 in total fees in arbitration cases reviewed by the Bureau, compared to the several thousand dollars consumers face in attorney fees in civil court.
2. Arbitration is quick. Telephone arbitrations are generally resolved within five months while in-person arbitration is generally settled within seven. Class-action settlements, on average, do not receive final court approval for 690 days, or more than two years.

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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.

3. Arbitration results in higher monetary relief. The average amount received by consumers through arbitration is \$5,389. The average received by consumers through class-action lawsuits is \$32.

Second, the provision on regarding consumer protections for active duty (Section 5108 of the House Bill) would restrict servicemembers and their spouses from reaching their full creditworthiness by incorporating unnecessary risk associated with less accurate credit data. Moreover, servicemembers and their spouses would be negatively impacted and forced to borrow at higher costs with less financial flexibility under regulations that alter accurate credit information. Historically, an accurate credit reporting system lowers borrowing costs and facilitates appropriate underwriting safeguards, including the standards on ability to repay afforded to all consumers. Without vital information on credit reports, lenders might make loans that Servicemembers would not be able to repay. Servicemembers not paying their bills would have no resulting negative information on their credit report. Deployed servicemembers could open multiple new lines of credit and lenders would be unaware of the true financial picture that could result in more debt. The provision also would force lenders to account for increased risks and added costs to military consumers.

Additionally, AFSA supports the following provisions in H.R. 4350, which have historically received overwhelming bipartisan support in the Senate and House:

AFSA supports Sections 6501-6510 of the House Bill regarding electronic notarization. This provision will facilitate more access to notarization, allow for flexible accommodation, and afford consumers time to review documents.

AFSA supports Sections 5401-5415 of the House Bill allowing state-legal cannabis businesses to access the banking system. No highly regulated business, including state licensed consumer finance companies, should be unfairly targeted solely bases on the political bias of a particular administration.

Military personnel are entitled to at least the same freedoms as the citizens they defend. We sincerely believe that access to reliable, transparent and affordable financial services is a cornerstone of the American way of life; for many consumers such access enables opportunities that might otherwise be out of reach. This fundamental principle is supported by the facts and the data that show that restricting access to safe and affordable credit is not consumer protection, it is denial of avenues toward financial success often during difficult times.

As the Committee works to enact the annual NDAA later this year, we also want to highlight the importance of maintaining access in the marketplace to high-quality small-dollar loan products used by millions of hard-working Americans each year. Safe and affordable credit options are critical in helping consumers achieve their financial goals and to improve their lives. However, there are proposals in Congress, including, extending the Military Lending Act's "all-in" 36-percent APR rate cap to all consumers.

This proposal would dramatically curtail access for millions of Americans seeking affordable financial services, as it has for servicemembers. Last year, the Federal Reserve published a report

on small-dollar loans and stressed consumers who needed a smaller loan or might not be served when a 36-percent APR restriction is implemented. We encourage any policy change regarding access to credit are carefully deliberation and has bipartisan support before the Armed Services and Banking Committees.

We share your concern about the well-being of military consumers and applaud the Committees' inclusion in the Defense Bill of the Basic Needs Allowance for military families to assist families stressed by financial difficulty. Toward this end, we look forward to continuing to work with you to ensure that all consumers have access to the full range of affordable, reliable and responsible financial services to help consumers, especially members of our military, as you work to relieve the stress of military life including rebounding from the fear and uncertainty of the pandemic.

Thank you for considering our views.



Ann Harter  
Vice President, Congressional Affairs  
American Financial Services Association