Testimony of Matt Kownacki Regarding B24 0357
November 29, 2021

Good afternoon and thank you for the opportunity to provide comments today. My name is Matt Kownacki. I am the Director of State Research and Policy at the American Financial Services Association, known as AFSA. Our members provide District consumers with credit cards, vehicle loans and leases, and mortgages, among other types of credit, and include national banks and sales finance companies. Importantly, our members are not seeking a carve out from the law. Our members are committed to working with their customers to provide assistance to the greatest extent possible. We share your goal of protecting consumers from abusive collection practices.

Today I will highlight specific areas of the proposed dramatic expansion of existing law that could result in immediate confusion for borrowers and their lenders, make it difficult to communicate with consumers, harm those whose accounts are delinquent, and likely limit the availability of credit for borrowers in the District. Because of time constraints, I will focus on the most concerning aspects of the bill and refer you to our written comments, which expand on these issues and identify several other points of clarification.

With few exceptions, the bill’s restrictions apply to debt collectors, debt buyers and also creditors alike. Original creditors, however, do not operate like debt buyers or third-party debt collectors. For this reason, it is inappropriate and unnecessarily burdensome to lump in creditors equally across the board, as this legislation would do, and we urge clarity to unambiguously reflect the fundamental differences between the different actors covered under the law

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To be clear, when I say creditors, I mean entities who either originate their own accounts or acquire accounts shortly after origination but well before default. Most of these entities go on to service and collect on these accounts, but debt collection is not their principal business. Creditors usually collect from consumers with whom they have a long-term and continuous relationship and who may have other accounts with the creditor. In contrast, third-party debt collectors or debt buyers typically collect static balances from consumers with whom they have no prior or ongoing relationship. Creditors continue to service an account when the borrower is past due, while debt buyers and debt collectors solely engage in collection activities and are more likely to collect much older charged-off or time-barred debts.

I'd like to also focus briefly on the bill's calls restrictions. In emergency situations, like the current pandemic, customers want assistance. When creditors can communicate openly with customers in a timely manner, they help many customers avoid negative outcomes and protect their credit. Creditors are often able to offer assistance or hardship programs that restore accounts to good standing, particularly in the early stages of delinquency. Engaging with customers commonly results in short periods of frequent communications. These creditor-driven solutions include deferred payments, changes in due dates, and interest rate reductions. Direct phone calls to borrowers are a crucial tool for this relief, but it can be extremely difficult to reach a borrower in three attempted phone calls over seven days, as the bill requires. Limiting communication will make customers unaware of options for relief and more likely to default— resulting in negative impact to credit reports and credit scores.

The CFPB recently implemented Regulation F, which generally prohibits a debt collector from placing more than seven calls within a seven-day period. Importantly, the CFPB recognized the crucial role that phone calls play for account servicing and declined to apply the call frequency restrictions to creditors.

Reg. F applies the seven-call limit *per debt*, rather than per consumer. The bill's three-call limit is inconsistent with the CFPB's approach, and particularly onerous, in that it applies across all of a consumer's accounts, so creditors who have customers with multiple accounts—a credit card and a vehicle loan, for example—would be limited to fewer than three calls per account, making it even more difficult to reach them with possible relief to prevent late fees, repossession, account closure and/or charge-off. For these reasons, we propose that the bill be amended to adopt Reg. F's approach to call frequency limitations.

When Congress passed the federal Fair Debt Collection Practices Act, it recognized that creditors "generally are restrained by the desire to protect their good will when collecting past due accounts," which distinguishes them from debt collectors who are "likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them." Similarly, we request that the Council carefully consider the unique role creditors play when assessing whether the bill's proposed restrictions on debt collectors and debt buyers should also apply to creditors.

We welcome the opportunity to discuss these issues and others we did not have time to address today with the Council. We will be sharing proposed amendments with the Council to address our concerns, and I also again refer you to our more detailed written comments. Thank you again for your consideration of our comments.