

August 16, 2022

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)¹, I am writing as you work to advance the National Defense Authorization Act (NDAA) for Fiscal Year 2022 (S. 4543 and H.R. 7900). I commend your bipartisan efforts and collaboration to our nation's servicemembers and their families. We respectfully provide the AFSA perspectives on several provisions of the bills.

Section 5892, Limitation on waiver of rights and protections under Servicemembers Civil Relief Act. *Prevents the enforcement of pre-dispute forced arbitration clauses in any dispute covered under the Servicemembers Civil Relief Act.*

This amendment limits arbitration for servicemembers and would favor 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.

Arbitration is already governed by the Federal Arbitration Act and has been approved by the Supreme Court, which recognized arbitration as a fair and effective mode of settling disputes between borrowers and creditors. In fact, the American Arbitration Association (AAA), the country's largest arbitration provider, imposes stringent rules in consumer arbitration cases to ensure fairness and maintain arbitrator independence. Cases are not accepted if they fail to meet these standards.

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 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.

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.
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.

- **AFSA Opposes Section 5892.**

Sec. 5101, Maximum rate of interest on debts incurred before military service applicable to military dependents. This section expands the Servicemembers Civil Relief Act interest rate cap to dependents when a servicemember is deployed.

For this provision to be fully effective to achieve the desired purpose, AFSA requests technical changes to this section: a clear definition of dependent and an implementation period. These suggested changes are at enclosure 1.

Subtitle B, Sections 5461-5474, SAFE Banking. Adds the bipartisan SAFE Banking Act which allows state-legal cannabis businesses to access the banking system and ends Operation Choke Point.

The amendment would prohibit a federal banking agency from terminating a banking relationship with a legal business unless there is a valid reason that is not based solely on reputational risk. No highly regulated business, such as state-licensed consumer finance companies, should be unfairly targeted solely based on the political bias of a particular administration.

Last year, the House of Representatives overwhelmingly passed similar legislation introduced by Rep. Perlmutter - H.R. 1996 - SAFE Banking Act.

- **AFSA Supports the Safe Banking provisions.**

Section 591, Electronic notarization for members of the Armed Forces. Authorizes every notary to use remote online notarization (RON) and creates national standards and protections on its use.

This amendment would expand the usage of RON technology nationally and enable the notarization process to be completed with the notary and signer in different physical locations, using two-way audiovisual communication. The immediate nationwide use of RON will create more access to notarization, allow for flexible accommodation and afford consumers time to review documents.

- **AFSA Supports Section 591.**

Section 5450, Bureau servicemember and veteran credit reporting ombudsperson. *Establishes a credit reporting ombudsman at the CFPB to assist servicemen and veterans in resolving credit reporting errors not resolved in a timely manner by a credit reporting agency as well as to enhance oversight of consumer reporting agencies and reporting any violations of the law in relation to servicemen and veterans.*

AFSA believes the United States has the best and most robust credit reporting system in the world. The Fair Credit Reporting Act (FCRA) ensures Americans the right to an accurate, fair, and private credit report. Additionally, the FCRA gives any individual – at no cost – the ability to submit a legitimate dispute (and investigate) to credit reporting agencies and directly with the lender or servicer that provided the credit information.

We agree that the credit reporting industry plays an integral role in deciding individuals', especially servicemembers', access to credit and that accurate information is crucial. We also agree that any errors should be addressed as quickly as possible. While improvements and system modifications can always be implemented, this amendment as drafted is duplicative and likely unnecessary for servicemembers.

While the Dodd-Frank Act created Ombudsman's Office within the CFPB as an independent, impartial, and confidential resource to informally assist individuals in resolving process issues, the CFPB also created an Office of Servicemember Affairs (OSA). This department supports servicemembers, veterans, and military families to address financial challenges, including monitoring complaints and providing free resources for those who need them.

As highly regulated financial institutions providing millions of customers access to affordable loans, including motor vehicles, credit cards, and mortgages, AFSA's members know and understand how imperative that servicemember credit reports are accurate. The availability of convenient forms of consumer credit allows Americans to spread the costs of important household items over time. These benefits have opened the door to great prosperity.

We would also appreciate the opportunity for additional dialogue on this topic as you work to develop new legislation to enable all Americans to access affordable credit nationwide.

- **AFSA Opposes Section 5450.**

Section 5413, Small business loan data collection. *Requires financial institutions to report certain credit application data to the Consumer Financial Protection Bureau (CFPB) for the purposes to enforcing fair lending laws. Specifically, financial institutions must report this data regarding lesbian-, gay-, bisexual-, transgender-, or queer-owned businesses.*

Small businesses are the cornerstone of the American economy. They are local restaurants, retailers, auto repair shops, construction companies, manufacturers, real estate, agriculture businesses, and many others. These main street businesses are in every town across the country and provide employment opportunities and drive economic growth for communities.

To collect and report demographic data about small businesses to the CFPB, covered financial institutions would be required to compile, maintain, and report information concerning credit applications made by a variety of small businesses with unique financial circumstances. Implementing a small business data collection system of this magnitude, which may apply to multiple credit products and loan operation systems within each financial institution, will require the development of new data privacy policies and procedures, systems acquisitions and changes, and extensive training. System modifications require not only time for development, but also for appropriate testing before being implemented. It's unclear if the massive effort and expense to collect this information will result in any useful data.

- **AFSA Opposes Section 5413.**

Section 5436, Protections for Active-Duty Uniformed Consumer. Extends consumer credit protections to active duty armed and uniformed consumers to dispute adverse actions or inaction on their credit report that occurred while they were in a combat zone, aboard a U.S. vessel, or away from their usual duty stations.

AFSA has supported members of the military and their families by providing affordable financial services and access to responsible credit products, including vehicle financing and other consumer lending needs, for over 100 years.

Undoubtedly, AFSA supports the desire of servicemembers, their spouses, and all Americans to build credit histories that provide individuals financial choice and the chance of economic mobility. However, Section 5436 as drafted 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 ability to repay standards afforded to all consumers.

- **AFSA Opposes Section 5436.**

Thank you for the opportunity to comment on the FY23 NDAA. AFSA hopes to continue to work with Congress on policies that help ensure access to consumer credit and regulated financial services remains safe and affordable for millions of hard-working families, including those serving in the military.

Sincerely,



Celia Winslow
Senior Vice President
American Financial Services Association