

December 29, 2022

The Hon. Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: CFPB's Press Release: "CFPB Finds Members of the Reserves and National Guard Paying Millions of Dollars in Extra Interest Each Year"

Dear Director Chopra:

The American Financial Services Association (AFSA)¹ writes today in response to the Consumer Financial Protection Bureau's (CFPB or Bureau) December 7, 2022 press release, *CFPB Finds Members of the Reserves and National Guard Paying Millions of Dollars in Extra Interest Each Year*.² At the outset, we emphasize that the Association and our members support servicemembers, reservists, and National Guard personnel and believe they should take full advantage of the Servicemembers Civil Relief Act (SCRA) benefits and those additionally provided by state laws.

Most of the press release is a summary of the CFPB's research regarding servicemembers' usage of credit protections under the SCRA. At the end of the press release, the CFPB includes three recommendations for creditors. This letter does not address the report, but rather the recommendations.

Specifically, we request that the CFPB retract the recommendations in its press release. The press release ignores the statutory requirements of the SCRA, fails to account for the impact of the recommendations on the securitization market, and does not address the limitations of the Defense Manpower Data Center (DMDC) SCRA website. Each issue is addressed in more detail below.

I. Statutory Requirements of SCRA

In its press release, the CFPB recommends that creditors: (1) apply SCRA interest rate reductions for all accounts held at an institution if a servicemember invokes their rights for a single account, (2) automatically apply SCRA rights, and (3) develop comprehensive and periodic indicators of SCRA interest rate reduction utilization.

¹Founded 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.

² Available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-members-of-the-reserves-and-national-guard-paying-millions-of-dollars-in-extra-interest-each-year/>.

These recommendations are not consistent with the plain language of the SCRA.³ The SCRA requires that servicemembers provide to the creditor written notice of their active-duty service and a copy of military orders before receiving the benefit of the interest rate reduction.⁴

The CFPB lacks authority to change the statute. We ask that the CFPB make it clear that creditors complying with the statutory language are not in violation of the law.

II. Securitization Impact

Besides contradicting the statutory language, the CFPB's press release fails to account for the impact its recommendations could have on the secondary market.

The recommendation in the press release to automatically apply the SCRA's interest rate reduction creates ambiguity under the requirements of some asset-backed securitization (ABS) programs. Some ABS transactions place repurchase obligations on creditors if certain events occur, which typically include changing the customer's interest rate unless the change is required by law. As explained above, the SCRA places specific requirements that must be met for the rate reduction to be required by law. It is unclear how creditors would need to treat those servicemember accounts if they were to follow the CFPB recommendations contained in the press release.

III. DMDC SCRA Website Concerns

The CFPB's press release advises creditors to proactively check the DMDC SCRA website to identify borrowers eligible for the SCRA interest rate reduction. However, it is not clear that the DMDC SCRA website would be able to handle the increased volume without crashing, nor that it could securely protect consumers' data.

If every creditor checked every account monthly, the number of accounts checked on the DMDC SCRA website would increase dramatically. Take a captive vehicle finance company with a portfolio of two million accounts outstanding as an example. If that captive has a two percent repossession rate, it would complete 40,000 checks of the DMDC SCRA website a year, once for each account prior to repossession. If that same captive followed the CFPB's suggestion and checked its entire portfolio monthly, that creditor would need to check the DMDC SCRA website 60 times (assuming 60-month contracts) for all two million accounts, amounting to 120 million checks. And that's just one creditor. The increase from 40,000 checks to 120 million checks represents *a 3,000 times multiple* of the number of checks of the DMDC SCRA website, a drastic change in scale. This is like the difference between walking around the neighborhood (one mile) and walking from New York City to Los Angeles (2,800 miles).

³ 50 U.S.C. §§ 3901—4043.

⁴ Some creditors may not require that active duty servicemembers strictly comply with the prerequisites the SCRA imposes on servicemembers to receive interest rate reductions. Instead, the creditor may voluntarily check the DMDC website when a servicemembers informally requests a rate reduction. If the DMDC confirms the servicemembers status, the creditor will provide the rate reduction.

There is no discussion in the CFPB's press release as to whether the DMDC SCRA website can handle that volume without crashing. In our members' experience, the DMDC system is already periodically unavailable or inaccurate.⁵ Increasing the use of the DMDC SCRA so dramatically could cause the site to crash more frequently. When the site is unavailable – whether for a crash or maintenance – creditors cannot access it for interest rate reductions or to be sure they are meeting compliance requirements regarding repossessions. If the website is down more frequently, it will harm both borrowers and creditors.

Furthermore, the DMDC SCRA website is unable to accept or send encrypted data, and it does not require multifactor authentication to verify the identity of its users. Because the DMDC SCRA website cannot receive encrypted data, personally identifiable information is being sent to and received from the DMDC in an unencrypted, and therefore unsecure, manner. Multifactor authentication, which is required by many regulators in other instances, is not required to obtain data from the DMDC SCRA website to validate the identity of the person accessing the database information. Recommending that creditors proactively check their entire customer base with the DMDC SCRA website without these data protection safeguards is contrary to the CFPB's consumer protection mandate because it would increase the risk of a large-scale data breach of personally identifiable information (*i.e.*, names, social security number, and dates of birth) for millions of consumers.

* * *

AFSA respectfully requests that the CFPB retract the recommendations for creditors outlined in its December 7 press release because the recommendations are contrary to the plain language in the SCRA. Moreover, if the recommendations are followed, they: (1) may wreak havoc in the securitization market, (2) could crash the DMDC SCRA website entirely, and (3) would increase the risk of a large-scale data breach for consumers the CFPB is charged with protecting.

At the same time, we welcome the opportunity to work with the CFPB and the Department of Defense to reach out to servicemembers to help educate them about the SCRA. Please contact me with any questions: cwinslow@afsamail.org or (202) 776-7300.

Sincerely,



Celia Winslow
Senior Vice President
American Financial Services Association

⁵ For example, some creditors find out a servicemember is on active duty when they are notified by the individual, despite checking the DMDC. The CFPB should make it clear that a failure of the DMDC SCRA website to identify a servicemember's active-duty status should not give rise to creditor's liability under the SCRA or UDAAP.