

December 6, 2022

Councilmember Phil Mendelson
Chairman, District of Columbia Council
1350 Pennsylvania Avenue, NW
Suite 504
Washington, DC 20004

Re: District of Columbia B24-0553

Dear Chairman Mendelson:

I write on behalf of the American Financial Services Association (AFSA)¹ to express our serious concerns with B24-0553, the Public Health Emergency Credit Alert Amendment Act of 2021, which would permanently extend the District’s strict restrictions on the use of consumer reports during public health emergencies. We appreciate the opportunity to submit comments into the record as part of the Committee’s process.

We have previously voiced our concerns with these restrictions when the Council initially considered similar emergency and temporary legislation during the COVID emergency, and we believe the economic effects of the pandemic are sufficiently resolved to not justify the extraordinary step of extending those measures permanently. Importantly, B24-0553 would expand the restrictions and create even greater compliance challenges but with limited added benefit for consumers.

As drafted, the bill would permanently extend to future public health emergencies a previously temporary prohibition on users of a consumer report using or considering “any adverse information in a report that was the result of an action or inaction by a consumer” if the consumer’s file contains the COVID-19 emergency alert. Our members share your goal of providing relief to borrowers facing financial hardship and took tremendous steps to help borrowers throughout the COVID emergency. While our members are committed to continuing to work with borrowers in the future to provide assistance where possible, we believe the Council must reconsider expanding these restrictions, as drafted, beyond the COVID emergency.

Unlike the temporary bills during the COVID emergency, the permanent legislation requires the user of a consumer report to inform the consumer of their right to file a written statement for their credit file “if the consumer receives a denial or rejection by the user of a credit report due to information that occurred during the public health emergency.” The credit underwriting process assesses a prospective borrower based on a number of different factors, including their overall credit profile,

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

income, and ability to repay the loan. Credit decisions are not made solely based on the status of any single credit account, making it difficult, if not impossible, to isolate or disregard the specific effect of any piece of adverse information at the consumer report user level. Individual credit trade lines stay on a consumer's report for years, and this specific provision would create a vague obligation that is not feasible to comply with for the years following any declared public health emergency.

Moreover, developing a credit model that disregards certain adverse information in compliance with the bill's requirements would not be feasible given that control over credit reporting processes largely rests with consumer reporting agencies. While creditors do work closely with prospective borrowers to tailor the credit offered based specifically on each borrower's financial needs and individual credit profile, blanket restrictions on considering certain credit information, like these, preclude creditors from offering credit narrowly tailored to meet certain borrowers' needs. Further, to the extent that any adverse information provides an indication of the borrower's ability to repay new credit, requiring creditors to disregard such information would create safety and soundness concerns for the new loan by interfering with creditors' means of fully assessing the borrower's ability to repay the loan.

The information required to be disregarded could affect individual tradelines, delinquencies, or other information that is provided as part of a consumer report obtained by a user. Because creditors do not have the ability to remove or dissect information from a consumer report, or to identify how that information included in a consumer report may have affected an individual's credit score, this provision could limit the ability of creditors to use consumer reports overall and thus affect the availability of credit for District of Columbia consumers as the prohibition stretches on.

Further problematic is that the legislation results in a two-tiered credit market by excluding national banks and credit unions from the credit alert information restrictions but including state-chartered banks and other non-depository financial institutions. Leaving certain segments of the market subject to significant restrictions creates an uneven playing field with the rest of the market. These restrictions would limit competition in the state by raising compliance costs for certain companies and leave consumers with fewer choices and worse off as a result. Additionally, the difference could prove confusing for consumers who have relationships with multiple types of financial institutions.

We urge you to consider the effects these restrictions have on the District's credit markets and not move forward with legislation as drafted. Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org at your convenience.

Sincerely,



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