

## AFSA FEDERAL PRIORITIES 2023

*The U.S. has a full history of evolving national consumer financial protection laws to ensure consumers are fairly and responsibly treated by financial institutions. Some 22 different federal laws, spanning eight different agencies, create a layered system of laws that protect consumers. The steady progression of these laws promotes a rich and diverse economy where consumers have tremendous choice in accessing a myriad of credit products from a wide variety of sources. Economic justice and opportunity for all Americans is best assured by a regulatory regime that provides consumer credit access. As our economy changes and evolves, our consumer finance laws must keep up. With an eye toward improving our existing system, we offer the following priorities to strengthen the marketplace for today's consumers:*

**PROMOTION AND REINFORCEMENT OF THE TRADITIONAL RULEMAKING PROCESS:** It's time for federal agencies to return to required rulemaking to impose new regulations, rather than regulating without rules via enforcement, blog posts, or press releases. Stakeholders should be afforded the opportunity to provide comment and feedback on policy proposals through the rulemaking process before any changes are implemented. Circumventing the traditional rulemaking process is a violation of regulated entities' rights and undermines the basic tenets of democracy.

**RESTORING THE PRIMACY OF CONGRESS AND RETAINING AN IMPARTIAL JUDICIARY:** The administrative state has amassed great power over the economy little deference to Congress—the fount of the underlying statutory law. We support meaningful congressional oversight and independent judicial review to ensure agencies are not exceeding their statutory mandates in the rulemaking, guidance, and enforcement functions.

**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB):** AFSA encourages the CFPB to provide clear rules of the road through rulemaking and to educate and empower consumers to make better-informed financial decisions. The CFPB's rulemakings should be based on data and include clear cost-benefit analyses. The CFPB's examination and enforcement procedures must balance the needs of all stakeholders. AFSA opposes the creation of nonbank registries, which create an unlevel playing field. Robust Congressional oversight will help achieve these objectives.

**FEDERAL TRADE COMMISSION (FTC):** The FTC should work constructively with all stakeholders, enforce the law in a way that minimizes undue burden and costs, and protect due process. AFSA supports Congressional oversight to prevent the FTC overstepping its regulatory authority and bypassing longstanding regulatory norms.

**RATE CAPS:** AFSA strongly opposes efforts to impose harmful interest rate caps, which would severely limit access to safe and affordable credit for many Americans. Rate caps disproportionately harm the very people they are intended to help because they lead to increased overall cost, longer terms, less transparency, and less general credit availability. Additionally, calculations for rate caps should not include the cost of optional products.

**VEHICLE FINANCE:** Most consumers who finance a vehicle purchase opt for dealership financing, where credit is extended by the dealer and the resulting retail installment sales contract is then assigned to a finance company, bank, or credit union. AFSA encourages policymakers to support the current model of dealership financing, which promotes competition and enables the consumer to negotiate a fair deal.

**SMALL-DOLLAR LOANS:** Policymakers should preserve consumer access to traditional installment loans. For over a hundred years, well-regulated installment lenders have provided access to safe and affordable credit. AFSA opposes attempts to limit the use of clear and transparently marketed prescreened offers of credit or “live checks,” which offer a convenient way for creditworthy borrowers to obtain installment loans.

**CREDIT REPAIR:** Credit repair schemes prey on consumers with low credit scores by luring them in with the false promise of an easy fix and then charging the consumers high fees. But credit repair companies can't remove negative

information that's accurate and timely from credit reports. AFSA will work with policymakers to try and eliminate these junk credit repair fees.

**SERVING THE MILITARY AND VETERAN COMMUNITIES:** AFSA seeks to maintain access to responsible credit and credit protection products for the military and veteran communities and is committed to educating servicemembers and their families to improve financial literacy. AFSA will continue to engage with policymakers regarding the Military Lending Act and the Servicemembers Civil Relief Act.

**CREDIT PRICING:** Risk-based pricing is the cornerstone of the American consumer credit system and fosters financial inclusion. AFSA opposes efforts that restrict lenders' ability to price credit based on risk.

**CREDIT REPORTING:** AFSA supports the voluntary furnishing of consumer information to credit reporting agencies (CRAs) in accordance with the Fair Credit Reporting Act (FCRA). AFSA also supports the proper handling of direct and indirect credit reporting disputes and encourages consumers to work with the furnisher or CRAs directly to address any concerns with information in their credit reports. Policymakers should address the increasing number of meritless credit disputes that create needless compliance burdens and harm consumers. In addition, AFSA cautions policymakers against: suppressing negative information, which could result in borrowers getting loans they cannot afford; and requiring CRAs and creditors, as opposed to the courts, from making a legal, factual determination in disputes.

**ARBITRATION:** Governed for decades by the Federal Arbitration Act, arbitration has been approved by the U.S. Supreme Court. It is a fair and effective mode of settling disagreements between borrowers and financial institutions. The CFPB's own study shows that arbitration is inexpensive, fast, and beneficial to consumers. As such, it should be preserved. The CFPB should not create an arbitration registry that contradicts Congress' intent, as expressed in its use of the Congressional Review Act overturning the CFPB's arbitration rule.

**SMALL BUSINESS LENDING:** The Dodd-Frank Act added extensive data collection requirements to the credit application process for small businesses, which will result in significant additional costs for financial institutions, as well as a reduction in credit and increased costs for borrowers, potentially without commensurate benefits. We are concerned about the impact the CFPB's rulemaking in this area will have on the availability of credit to small businesses. The CFPB's rules should ensure that the collection requirements are reasonable and beneficial.

**ANCILLARY PROTECTION PRODUCTS:** Optional credit insurance, debt cancellation, service contracts, GAP waivers, extended service contracts, and other credit products play a critical role in delivering financial security to borrowers. AFSA resists efforts to limit consumer choice through misleading disclosures or other unfair regulatory requirements.

**INDUSTRIAL BANKS:** Industrial banks serve an important role in consumer and commercial lending and are subject to the same consumer protection laws as other financial institutions. AFSA opposes legislation that impacts new or existing industrial bank charters by imposing restrictions on their ownership or regulatory agency structure.

**DATA PRIVACY/SECURITY:** Financial institutions are subject to privacy and data breach notification requirements under federal and state laws. Yet, consumers remain vulnerable to identity theft and fraud because breaches of personal and financial data commonly occur at retailers and other businesses. Meaningful protections will require cooperation by all industries, and a comprehensive approach to securing sensitive information is long overdue. AFSA supports a nationwide standard that preempts state law to promote uniformity and coordination among all entities entrusted with private consumer data and no private cause of action. Additionally, any nationwide standard should include a provision limiting private lawsuits.