September 19, 2023

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| The Hon. Andy BarrChairSubcommittee on Financial Institutions and Monetary Policy Washington, DC 20515 | The Hon. Bill FosterRanking MemberSubcommittee on Financial Institutions and Monetary PolicyWashington, DC 20515 |

***Re: A Holistic Review of Regulators: Regulatory Overreach and Economic Consequences***

Dear Chairman Barr and Ranking Member Foster:

Thank you for holding this important hearing on the economic consequences of regulatory overreach. The American Financial Services Association (“AFSA”)[[1]](#footnote-1) understands the focus of the hearing is exploring the interaction and economic impact of the Federal banking agencies’ recent regulatory proposals. As the Subcommittee engages in its holistic assessment of the combined impacts of the recent significant federal banking regulatory proposals on financial stability, the U.S. economy, and American consumers, businesses, and families, we ask that it include in its impact assessment recent actions by the Consumer Financial Protection Bureau (CFPB) as well. The CFPB’s actions continue to have a significant impact on the banking system and the American economy overall.

Previously, in March, this subcommittee held a hearing on the CFPB. Since that hearing, however, the CFPB has released a new policy statement that it already is using in enforcement actions – the Policy Statement on Abusive Acts and Practices.[[2]](#footnote-2) This policy statement applies to all financial institutions under the CFPB’s jurisdiction, including banks.

The Policy Statement holds that the following could be considered abusive:

* Fine print and complex language;
* Form contracts;
* Pop-ups or drop-down boxes;
* Multiple click-throughs;
* If a consumer doesn’t benefit from a product or service;
* Complicated products;
* If an entity benefits from “increased market share, revenue, cost savings, profits, reputational benefits, and other operational benefits”;
* “Negative consumer outcomes”;
* A consumer having “unequal bargaining power”;
* Gaps in understanding, which are risks, which include default;
* A product or service the consumer complains about;
* Anything a consumer says is abusive;
* Risky transactions;
* If it takes too long to obtain the consumer financial product or service;
* Customer support taking too long;
* A consumer having to spend money;
* Servicing (when a customer cannot select the servicer), including credit reporting companies, debt collectors, and third-party loan servicers;
* Arbitration;
* Large companies; and
* Brokers who don’t have a fiduciary duty to the borrower.

In addition, the CFPB says it does not matter whether the business in question causes a consumer’s lack of understanding through untruthful statements or because the consumer simply claims to not understand something. *Either* is abusive.

This overreaching policy is already being used in enforcement actions. On August 22, 2023, the CFPB sued an installment lender, mischaracterizing day-to-day activities and practices specifically allowed by state law as abusive. For example, the CFPB claims that assisting borrowers in refinancing loans is abusive. Refinancing a loan, however, when done in the context of a traditional installment loan (no balloon payments, no hidden fees, a review for ability to repay), can be a good way for borrowers to manage their debt.

The CFPB’s abusive standards are seemingly predicated on two beliefs: consumers who require installment credit are incapable of understanding, let alone managing, their finances in manners that give them the same flexibility other forms of credit provide; and that providing such credit products as installment loans and doing so profitably is abusive behavior. Both beliefs are false and misguided and reflect a zealotry that harms *both* the consumers the CFPB claims to be protecting, and the financial services industry the CFPB should work to ensure is well-functioning and meeting the needs of the marketplace.

The CFPB’s abusive policy statement is a clear example of regulatory overreach. As outlined above, the CFPB claims “abuse” has occurred if a consumer makes a complaint, even if that complaint is unsubstantiated. This policy statement stands in stark contrast to the “unfair” and “deceptive” polices outlined and litigated for years by the Federal Trade Commission (FTC).

The FTC’s policy statements are based on decades of legal precedent and actual court decisions and are written in such a way that compliance is possible. It is unprecedented that the CFPB is attempting to establish the definition of “abusiveness” through press release, a policy statement unsubstantiated by court decision, and the filing of litigation. This circumvents the constitutional tenet of due process and is itself demonstrative of an abuse of power.

Installment lenders create highly successful lending relationships with tangible benefits for the borrower, particularly those who do not have access to other forms of credit. Congress should pass H.R. 2798, *the CFPB Transparency and Accountability Reform Act*, to ensure that the CFPB is accountable to Congress and to the American people.

Sincerely,

Celia Winslow

Senior Vice President

American Financial Services Association

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. [↑](#footnote-ref-1)
2. Policy Statement on Abusive Acts or Practices, APR 03, 2023, https://www.consumerfinance.gov/compliance/supervisory-guidance/policy-statement-on-abusiveness/ [↑](#footnote-ref-2)