

## **CONSUMER FINANCIAL PROTECTION BUREAU (CFPB) REFORM**

**Structure:** At the CFPB, too much power is consolidated in a single director who is not accountable to Congress. AFSA supports Congressional oversight of the CFPB by funding the Bureau through the appropriations process. In addition, the director should be replaced by a bipartisan commission, or the agency should be placed under the Federal Reserve's jurisdiction. The CFPB should also have its own inspector general and an Office of Economic Analysis to review policies and regulations.

**Authority and procedures:** Financial markets work best for both consumers and institutions when regulators follow the law and issue clear rules of the road. The Bureau's supervision and enforcement authority should be limited to actions that are clear violations of the law and its overall authority to issue new regulations and to obtain monetary remedies should be appropriately tailored. The Bureau's "abusive" authority should be eliminated, or at least clearly defined. The CFPB should follow the Administrative Procedures Act (APA), not engage in rulemaking by guidance, blog posts, supervision, or enforcement. Rulemakings should be justified using quantitative and qualitative assessments. Circumventing the traditional rulemaking process is a violation of regulated entities' rights and undermines the basic tenets of democracy.

**Rule changes:** The Bureau should rescind the payments provision of the Payday Rule, the nonbank registry for enforcement orders, the medical debt rule, and the interpretive rule on state enforcement of the Consumer Financial Protection Act. The Bureau should also delay the implementation of the Small-Business Lending and Credit Card Late Fee Rules and reverse its position in the litigation on both. All open rulemakings should be paused and reviewed. In addition, the Bureau should not have the authority to designate state-licensed and -regulated companies as "risky."

## **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.

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## **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 (MLA) and the Servicemembers Civil Relief Act (SCRA).

## **CREDIT CARDS:**

Credit cards are a necessity for millions of Americans, and unjust limits on credit card companies harm consumers. Caps on late fees will result in those who need credit the most being unable to obtain it. Furthermore, the system and infrastructure that process credit card transactions should not be subject to a “swipe fee” limitation, particularly since efficiency and data security are paramount in providing safe, reliable credit transactions.

## **CREDIT REPAIR & DEBT SETTLEMENT:**

AFSA urges Congress to pass H.R. 306, the Ending Scam Credit Repair Act (ESCRA). 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. However, credit repair companies by law cannot remove negative information that is accurate and timely from credit reports. Debt settlement companies offer to change the terms of a person’s debt but charge expensive fees and pose risks to consumers. AFSA will work with policymakers to protect consumers from unscrupulous credit repair and debt settlement companies.

## **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 regulators against requiring CRAs and creditors, as opposed to the courts, to make legal, factual determinations 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 nor should it prohibit the use of pre-dispute, mandatory arbitration contracts.

## **SMALL BUSINESS LENDING:**

Any legislation or regulation affecting small business lending should carefully weigh the benefits and costs of such a law or rule. Small business lending is a driver of economic prosperity and should be encouraged by policymakers.

## **ANCILLARY PROTECTION PRODUCTS:**

Optional credit insurance, debt cancellation, service contracts, GAP waivers, extended service contracts, and other voluntary protection products play a critical role in delivering financial security to borrowers. AFSA resists efforts to mislabel these products as “junk fees,” limit consumer choice through misleading disclosures, or other unfair regulatory requirements.

## **INDUSTRIAL BANKS, FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) AND DIDMCA:**

Industrial banks have been an integral part of the U.S. financial system for over a century, providing credit and financial innovation during good times and bad. AFSA opposes legislation and regulations that negatively affect new or existing industrial bank charters by imposing restrictions on their ownership or regulatory agency structure. AFSA encourages the FDIC to grant new industrial bank charters. The FDIC should also preserve and promote the bank partnership model and clarify its position on the extent of Depository Institutions Deregulation and Monetary Control Act (DIDMCA) preemption. Regarding bank-fintech arrangements, Congress should amend existing law to clarify that a bank retains the authority to export interest rates or preempt state usury laws on any loan to which the bank is a signatory.

## **FEDERAL TRADE COMMISSION (FTC):**

The FTC should withdraw its advisory opinion on the Holder Rule on the recovery of attorneys’ fees and costs above the amount paid on a consumer receivable arising out of a financed sale of goods or services. The FTC in 2022 declared that the Holder Rule does not prevent a plaintiff from recovering attorneys’ fees and costs against a “loan holder” where another state, local, or federal law permits the recovery, but the Commission should withdraw that advisory opinion in favor of one following the law stating that the Holder Rule prevents plaintiffs from recovering attorneys’ fees. The FTC should also review and amend or withdraw its vehicle shopping rule.

## **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.

