March 20, 2025

The Honorable Vince Haley
Director
Domestic Policy Council
1700 G Street NW
Washington, DC 20552

The Honorable Kevin Hasset
Director
National Economic Council
1700 G Street NW
Washington, DC 20552

Re: Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative

Dear Director Haley and Director Hasset:

The American Financial Services Association (AFSA)[1] appreciates President Trump's February 19, 2025 executive order (EO) directing agency heads to rescind unlawful regulations and regulations that undermine the national interest, as well as guidance documents.[2] We welcome the opportunity to identify faulty regulations which, if eliminated, will allow the executive branch to focus its limited enforcement resources on regulations which are squarely authorized by constitutional Federal statutes. Below, AFSA has listed out a number of regulations and guidance documents by agency that are overreaching and contrary to the Administration's mission to root out the overbearing and burdensome administrative state.

The regulations and guidance documents listed below fit into one or more of the classes laid out in the EO:

(i) unconstitutional regulations and regulations that raise serious constitutional difficulties, such as exceeding the scope of the power vested in the Federal Government by the Constitution;
(ii) regulations that are based on unlawful delegations of legislative power;
(iii) regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition;
(iv) regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority;
(v) regulations that impose significant costs upon private parties that are not outweighed by public benefits;
(vi) regulations that harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response, inflation reduction, research and development, economic development, energy production, land use, and foreign policy objectives; and

[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.
[2] https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative/

(vii) regulations that impose undue burdens on small business and impede private enterprise and entrepreneurship.

The list below also includes examples from the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC), the Department of Defense (DoD), and the Federal Communications Commission (FCC).

I. Consumer Financial Protection Bureau

1. *Policy Statement on Abusive Acts or Practices*: For years, AFSA has been asking for a description of "abusive acts or practices" so that financial institutions could tailor their compliance management systems. Unfortunately, the statement is so vague and unwieldy, it is impossible to implement. For example, the CFPB says that the following could be abusive: fine print and complex language (much of which is required by law and by regulation imposed by the CFPB), pop-ups or drop-down boxes, an entity benefiting from cost savings, a product or service the customer complains about (even if the complaint is unsubstantiated), a consumer having to pay money, and being a large company. By being impossible to implement and so vague, it is counterproductive to providing actionable guidance on an "abusive act or practice." This is a clear example of a regulation that is not based on the best reading of the underlying statutory authority or prohibition and that implicates matters of social significance that are not authorized by clear statutory authority.

2. *Payday, Vehicle Title, and Certain High-Cost Installment Loans*: As lenders have begun implementing this rule, it has become apparent that it would harm the very consumers the CFPB is trying to protect. Under this rule, consumers would lose flexibility and payment options. Furthermore, the rule was promulgated based on conclusions drawn from data collected fifteen years ago. During the last several years, lenders have changed their practices, making the need for the rule obsolete. The costs of the rule are not outweighed by any benefit.

3. *Nonbank registry for enforcement orders*: This rule requires nonbank covered persons to register and submit to the proposed registry specific information about final, public orders issued by federal, state, or local agencies or courts. This new registry is structured to "name and shame" rather than act as a useful tool to effectively monitor and reduce any potential risks to consumers. In addition, it is duplicative as any information published in the registry is already publicly available elsewhere. This regulation imposes significant costs that are not outweighed by public benefits.

4. *Small-business lending (Dodd-Frank Act Section 1071)*: The rule requires commercial lenders to collect and report to the CFPB data on applications for credit for small businesses. Lenders will be required to ask for their business customers' personal information, such as their sexual orientation, and report it to the CFPB. This data collection will be extremely burdensome and will yield little valuable information. While part of the rule is statutorily mandated, the Bureau is proposing that creditors collect and report information beyond what is required by the statute.

In addition, this rule implicates matters of social significance that are not authorized by clear statutory authority.

5. *Credit card late fee*: The CFPB's rule significantly restricts late fees that consumer credit card issuers may charge from $30 or $41, in most cases, to a mere $8. This rule places an undue burden on small businesses and impedes private enterprise and entrepreneurship. It also imposes significant costs that are not outweighed by a benefit. The CFPB has openly conceded that the majority of cardholders will likely see their credit card interest rates increase and credit availability decrease. This will be particularly impactful for the nearly 50 percent of subprime card consumers who work hard and budget to successfully pay their bills on time – and will now have a harder time obtaining credit, managing their debt, and improving their credit histories, as a significant cut in late fees would likely encourage higher delinquency rates that would lead to reduced credit scores. AFSA notes that this rule is being litigated currently, and a more lasting resolution of this issue may be to receive a favorable court ruling asserting that the rule is procedurally or substantively flawed and invalid.

6. *Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information:* Medical debt is a serious concern for many Americans, but the CFPB's rule will do nothing to address a complex healthcare system or eliminate the debt. Instead, it will harm the very individuals it aims to help as it will hide significant consumer debt which may lead to poor underwriting decisions and a higher likelihood of future defaults. The credit system works best when a consumer's history is complete and accurate so that future loans can be correctly tailored to the individual's true credit profile. Additionally, this rule is not based on the best reading of the underlying statute.

7. *Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders*: The CFPB issued this rule laying out procedures for designating a company that poses "risks to consumers" without actually defining risk. It has used this authority to designate companies as "risky" who are licensed and regulated by the states in which they operate. The CFPB clearly states that companies in full compliance with the law can still be designated as "risky." This rule is not based on the best reading of the underlying statute; it also implicates matters of social significance that are not authorized by clear statutory authority. Furthermore, the "risk" designation imposes significant costs upon private parties that are not outweighed by a public benefit.

8. *Interpretive Rule on the States' Ability to Enforce Federal Consumer Protection Laws (12 CFR 1042):* The interpretive rule incorrectly stated that states can enforce the Consumer Financial Protection Act, including the provision making it unlawful for covered persons or service providers to violate any provision of federal consumer financial protection law. Allowing states to act beyond the express enforcement authority granted to them usurps the role of the CFPB and is a clear case of government overreach. This is another clear example of a regulation that implicates matters of social and political significance that are not authorized by clear statutory authority.

9. *Larger Participant Rules:* The Bureau has the authority to supervise larger participants in a market for consumer financial products or services. However, all of the Bureau's "larger participant" rules are overly broad as they encompass medium to small participants and they aren't based on the best reading of the underlying statute. For example, in 2022 approximately 52.2 million vehicles were sold. The CFPB's "larger participant" definition includes any company who originated 10,000 loans, or .019% of the market, as a "larger participant." This extremely broad definition has led to smaller companies that were disfavored by previous administrations being targeted for social reasons. The larger participant rules impose significant costs upon private parties that are not outweighed by public benefit, especially for those companies who are licensed and supervised either at the state level.

10. *Mitigating Harm from Repossession of Automobiles (Bulletin 2022-04):* In this guidance document, the CFPB misuses its unfair and deceptive authority. For example, the Bulletin alleges that consumers were charged fees to recover personal property after repossession. However, it does not cite any specific state laws that were violated but provides that the items should be retained and returned without charging a fee as the items may have "practical importance or emotional attachment to" the consumer. The CFPB's guidance and bulletins should be grounded in law, not consumer emotional attachment. As such, it does not rely on the best reading of the underlying statutory authority.

11. *Fair Lending (CFPB Bulletin 2012-04):* This bulletin purports to establish that the Equal Credit Opportunity Act (ECOA) prohibits both overt discrimination as well as disparate impact. AFSA vehemently opposes discrimination in lending as harmful to society, individual liberty, and good business. Disparate impact is the legal theory that neutral policies applied to customers can be discriminatory if those policies can be said to create a discriminatory effect on protected classes. The disparate impact theory of legal liability harms industry and consumers by giving the false impression that creditors are acting in a discriminatory manner when they are treating all consumers equally. This theory of liability is not based on the language of ECOA. Rather, the CFPB, citing other federal regulatory agencies, bases this theory of liability on legislative history rather than the statutory text. For this reason, pursuing the theory of disparate impact in connection with ECOA is not based on the best reading of the statutory authority, and the CFPB should be limited to enforcing the statutes as enacted by Congress.

12. *Proposed Rule on Registry of Supervised Nonbanks that Use Form Contracts to Impose Terms and Conditions that Seek to Waive or Limit Consumer Legal Protections (CFPB -2023-0002)*: In 2023, the CFPB proposed a rule to require certain non-bank entities to submit entries for a registry of contract terms in connection with offered consumer financial products and services. These contract terms would have included legal arbitration provisions. The CFPB once attempted to impose a rule on arbitration provisions in 2017, but Congress revoked that rule by operation of the Congressional Review Act. In so doing, the CFPB lost its authority to write rules relating to arbitration unless granted new authority from Congress. Congress has not provided such authority, so any efforts by the CFPB to limit the availability of arbitration provisions is illegal and based on an unlawful use of authority that is no longer available to the

CFPB. AFSA asks that this proposed rule be withdrawn subject to the ongoing review of active regulatory proposals.

13. *Proposed Rule on Prohibited Terms and Conditions in Agreements for Consumer Financial Products or Services (CFPB-2025-0002):* This proposed rule, issued in January 2025, proposes prohibiting certain terms and conditions in consumer finance contracts. As written, this rule would prohibit arbitration agreements, among other things. As mentioned above, by revoking the 2017 CFPB rule on arbitration, Congress stripped the CFPB of the authority to draft similar rules. For this reason, this proposal is based on an unlawful use of authority that is no longer granted to the CFPB. AFSA asks that this proposed rule be withdrawn subject to the ongoing review of active regulatory proposals.

14. *Expansive and Abusive Data Requests (e.g., Auto Finance Data Project):* The CFPB has taken an extreme approach toward its claimed need for data from covered entities. As one example, the Auto Finance Data Project was a proposal to collect a broad set of data on an annual basis from companies offering vehicle finance. This particular data collection effort is similar to those undertaken by the CFPB with regard to other types of consumer financial products and services. These data collections are based on expansive readings of the statutory authority granted to the CFPB and should be limited to only data that are specifically necessary to perform critical functions. While the Congress granted the CFPB authority to engage in "market monitoring," the exercise of this authority calls out for oversight and reform. AFSA asks that any proposals relating to data collection be withdrawn subject to the ongoing review of active regulatory proposals.

15. *Truth in Lending (Regulation Z); Use of Digital User Accounts to Access Buy Now, Pay Later Loan*s: In its interpretive rule, the CFPB failed to define key terms necessary for understanding the Interpretive Rule's scope on products colloquially referred to as Buy Now, Pay Later (BNPL) loans, including what accounts may be considered a "digital user account." The CFPB failed to comply with the Administrativec Procedures Act (APA), and it did not fully explain the reasoning behind the "rule" or its legal validity or enforceability given its fatal APA shortcomings. To wit, the interpretive rule should have been promulgated as a proposed rule subject to Notice and Comment in accordance with the APA. Further, the Interpretive Rule is likely to increase regulatory uncertainty around BNPL products. Also, a properly promulgated rule should also require the Bureau coordinate with other regulators to reaffirm that nonbank BNPL providers are subject to the same privacy and cybersecurity requirements and oversight for protecting consumer data as banks and other holders of consumer financial data.

16. *Required Rulemaking on Personal Financial Data Rights*: The final rule does not address concerns about safeguarding consumer data, eliminate unsafe practices such as screen scraping, or allocating liability for data privacy and security. Nor does the rule address commenters' legitimate concerns that banks could be liable for actions that are the fault of nonbank parties. The Bureau's final rule did not adequately consider the secondary use of data for cross selling financial products and marketing to offer improved products and services to historically underserved communities and provide additional responsible services beyond those the consumer initially sought. And the rule imposes an unreasonable implementation

timeline and an unfunded mandate on data providers to build and operate developer interfaces, which third parties may exploit for profit behind the fig leaf of consumer information requests. The final rule also fails to establish any meaningful regulation of aggregators that collect, use, and sell consumer information. Most significantly, the Bureau lacks explicit congressionally directed or designated rulemaking authority to promulgate the proposed rule, and considering the Supreme Court of the United States' decision in Loper Bright Enterprises v. Raimondo, the proposed rule should be permanently withdrawn pending congressional action.

17. *Protecting Americans from Harmful Data Broker Practices (Regulation V)*: The Proposed Rule would significantly and irrevocably alter the use of data in the marketplace and the financial markets. It would cause harm to consumers and other stakeholders by heavily restricting or eliminating efforts to provide key services to consumers, including fraud prevention and detection and identity theft programs. The Proposed Rule would also significantly increase compliance costs, especially for entities that would be deemed a CRA for the first time under the Proposed Rule. In addition, the proposed rule's unilateral alteration and expansion of the definitions of "consumer report" and "consumer reporting agency" conflicts with the statutory language of FCRA and decades of well-settled case law. These proposed new interpretations exceed the statutory framework Congress created and raise significant concerns regarding legality and potential unintended consequences. AFSA asks that this proposed rule be withdrawn subject to the ongoing review of active regulatory proposals.

In addition to these specific items, AFSA notes that in the past the CFPB has frequently attempted to impose new rules on industry by issuing blog posts, guidance documents, consent orders with specific companies, and advisory opinions. Through these pronouncements which do not offer market participants the benefits of notice and comment rulemaking, the CFPB has attempted to create new substantive obligations for industry and enforce them as though they were laws or properly drafted regulations. AFSA requests that while addressing the specific items listed above, the Administration also confirm that the CFPB's random policy pronouncements are not legally binding on industry and will not be enforced as legally binding authorities.

II. Federal Trade Commission (FTC)

1. *The Holder Rule:* The FTC's advisory opinion on the Holder Rule declared in 2022 that the Holder rule does not prevent a plaintiff from recovering attorney's fees. This is an example of a guidance document that is based on anything other than the best reading of the underlying statutory authority or prohibition. In 2015, the FTC solicited comments from stakeholders regarding the Holder Rule, seeking suggested modifications to increase its benefits to consumers. At the end of that process, the FTC concluded that if a holder's liability for fees is based on claims against the seller that are preserved by the Holder Rule Notice, the recovery by the consumer cannot exceed the amount paid under the contract. This would prevent the recovery of attorney's fees. The 2022 advisory opinion expands assignee liability well beyond any fair reading of the Holder Rule's purpose and plain limits. The advisory opinion conditions even an innocent holder's right to payment on the original seller's duty to perform. This advisory opinion imposes undue burdens on small businesses and impedes private enterprise

and entrepreneurship because it allows plaintiffs to recover attorneys' fees, which encourages frivolous litigation.

2. *Click to Cancel:* The FTC's rule is not based on the best reading of the statute. The Commission's issuance of this rule violates the FTC Act in two ways. First, the rule's use of Section 18 to address "unfair and deceptive acts or practices" falls short of the Commission's statutory requirements in many aspects contained in this rulemaking. Second, the Commission lacks a statutory basis for comprehensive and economy-wide rulemaking. The rule would also place undue burdens on small businesses and impede private enterprise. The rule would impose a one-time cost of $2.7 billion on businesses and have an annual negative effect on the national economy of at least $100 million.

3. *The CARS Rule*: The FTC's proposed trade regulation rule purports to eliminate misrepresentations, improve the accuracy of disclosures, impose new contractual obligations, prevent sales of worthless items, and impose new recordkeeping obligations. To the extent that this rule purports to target fraud and deception in vehicle retail transactions, this rule attempts to prohibit conduct which is already illegal. The rule would add incredibly burdensome requirements to vehicle sale and lease transactions that consumers and industry are eager to simplify and accelerate. Adding more friction to these transactions is not in the public interest. This rule implicates matters of economic significance that are not authorized by clear statutory authority. The rule imposes significant costs upon private parties that are not outweighed by public benefits and harms the national interest by significantly and unjustifiably impeding technological innovation.

III. Department of Defense (DoD)

The Military Lending Act (MLA) Obama Regulations: The Military Lending Act (MLA) is a federal law that provides special protections for active duty servicemembers, like capping interest rates on many loan products. However, the current regulations go well beyond what was envisioned by the statute.

The Military Lending Act (MLA) was enacted as part of the National Defense Authorization Act in 2006. It was written to protect service members and their families from predatory payday, vehicle title, and tax refund anticipation lenders – a goal AFSA supports. The first regulations implementing the MLA were issued by the Department of Defense (DoD) in 2007 and they hewed closely to the MLA's goal.[3] In July 2015, the DoD issued new MLA regulations that expanded its scope to a much broader range of financial services without evidence that such an expansion was necessary.[4]

These regulations impose significant costs upon private parties that are not outweighed by public benefits. The Obama-era regulations limit servicemembers' and their families' access to safe,

[3] 72 Red. Reg. 50580 (August 31, 2007).
[4] 80 Fed. Reg. 43560 (July 22, 2015).

affordable credit. Instead of being able to take out a small loan from a licensed and regulated lender, servicemembers have had to rely on illegal, high-cost lending.

Instead of helping servicemembers and their families, the MLA cuts off access to fair and affordable small-dollar loans for many servicemembers and their families. The 2020 Military Financial Readiness Survey showed that the type of loan being taken out by active duty servicemembers had changed dramatically. It said:

- Over three-quarters of active duty servicemembers (78 percent) have taken out a loan in the prior year, representing a marginal increase from 2019 (75 percent).
- In 2020, 31 percent of active duty servicemembers took out a cash advance or payday loan, compared to only 13 percent in 2019.
- This represents an even more dramatic shift since 2014, when just six percent of active duty servicemembers reported taking out such loans.
- There is no verifiable data that would indicate that the MLA is assisting active military servicemembers and their families or that the MLA is being appropriately and widely enforced. To date, the Department of Defense has not released any data or research on the success or failure of the MLA, and it has not released data on how the MLA is being monitored or enforced.

The DoD should rescind the harmful 2015 regulations and replace them with the 2007 regulations that provided the right amount of protection to the men and women serving our country.

IV. Federal Communications Commission (FCC)

Revocation of Consent: The FCC's rules impose costs that are not outweighed by the benefits. The rule harms consumers because it limits businesses' ability to ensure that consumers do not inadvertently opt out of critical messages. It also encourages and facilitates frivolous or manufactured litigation.

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AFSA members support identifying and rescinding regulations and guidance documents that have harmed American consumers and business owners. We appreciate the Administration consulting those that the regulations actually affect. Please contact me at cwinslow@afsamail.org or (202) 776-7300 with any questions or to set up a meeting.

Sincerely,

Celia Winslow
President-elect
American Financial Services Association