November 5, 2025

Committee on Public Works and Operations
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Re: DC B26-0174, Enhancing Consumer Protection Procedures Amendment Act of 2025

Dear Chairperson Nadeau,

On behalf of the American Financial Services Association ("AFSA"), thank you for the opportunity to provide comments on Council Bill B26-0174, also known as Enhancing Consumer Procedures Amendment Act of 2025. 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. AFSA shares the committee's goal of protecting consumers from unscrupulous practices and ensuring the district's consumers do not fall victim to bad actors.

However, we wish to share our significant concerns with the bill as written due to the broad scope of the bill and inclusion of vague language that can severely affect the financial services industry. Currently, the broad and duplicative scope of the legislation would put additional compliance requirements on our members who operate in a legitimate manner and already comply with federal regulations. In turn, our members' compliance burdens would dramatically change along with the increased likelihood of expenses for not only compliance but defending against potential litigation. Instead of spending resources and efforts to give consumers and the community they reside in resources to flourish, such resources would be diverted elsewhere.

One area of concern is the additional powers granted to the District of Columbia's Attorney General (AG) in relation to complying with a subpoena or interrogatories under D.C. Official Code § 1–301.88d(d), and fines associated with compliance. While our members acknowledge the Attorney General's powers and prerogative to protect consumers, we believe the proposed language is problematic as drafted. Thus, we suggest this section be pared to:

> "(d) In the case of refusal to comply fully with a subpoena or interrogatories issued under this section, the Attorney General may petition the Superior Court of the District of Columbia for an order requiring complete compliance. ~~and where appropriate, imposing a fine payable to the District. In assessing any fine for incomplete or inadequate compliance with the subpoena, the court shall consider the income and assets of the person or entity being fined to ensure that the monetary fine meaningfully deters inadequate compliance. Any failure to obey the order of the court may be treated by the court as contempt~~."

The issue lies in the inclusion of a fine, as well as the structure of the severity of the fine— not in requiring "complete compliance." Our members take compliance, as well as interactions with regulators and law enforcement, extremely seriously. Court ordered compulsion is not necessarily problematic; however, being imposed a fine based on unknown, seemingly subjective factors causes concern. Structuring the level of the fine based on "income and assets of the person or entity being fined to ensure that the monetary fine meaningfully deters inadequate compliance" unnecessarily would harm larger institutions, that while they believe are complying with the AG are required to pay an enormous fine based simply on their income. Such a standard is inherently subjective and could unfairly penalize larger institutions without considering their community contributions, local employment, or operational costs.

Protecting consumers against nefarious individuals and entities acting to gain an upper hand against innocent consumers is becoming increasingly complex. This is all the more true given that certain entities are unregulated or face no regulation at the federal level. However, many of our members already face a plethora of federal regulations that would be seemingly duplicative under this bill's broad expansion of DC Code § 28–3904, the Unfair or Deceptive Trade Practices Chapter. Specifically, the inclusion of Paragraph 20(A) and Paragraph 29, in which the apparent intent of the legislation is currently being served under Regulation Z of the Truth in Lending Act. Therefore, we would request that an additional paragraph, Paragraph (c), be added which states:

> "Financial institutions that are subjected to the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Truth in Savings Act, and the Truth in Lending Act, along with their implementing regulations, are considered exempt with the provisions of this chapter."

Another aspect of the expansion of the Unfair or Deceptive Trade Practices that will undoubtedly cause compliance issues, as well as costly litigation can be found under Paragraph 20(E), which focuses on a variety of instances of individuals who are in a precious physical or intellectual state of mind, and seemingly, additional circumstance than beyond those listed.

While we agree that the more vulnerable members of society can be at a disadvantage as a consumer, if a different standard exists for these individuals, it should be one that is clear and unambiguous with the circumstances causing the disadvantaged delineated to both parties. This standard must be appropriately articulated so that the entity or individual providing a good or service can interact and respond with the proper care and attention that would be needed for that consumer. To address this, we suggest the following language be added at the end of the current paragraph:

> "The disadvantaged consumer has informed the merchant of an acknowledged circumstance [insert delineated vulnerability] and the consumer has made reasonable efforts to accommodate the individual's circumstances, to reasonably ensure the merchant has not taken advantage of the consumer's known circumstance."

A final area in which the expansion of the District's Unfair and or Deceptive Trade Practices Act could be further elaborated on is making the term "Retaliate" a defined term under Paragraph 27. As currently drafted, there are several likely unintended consequences due to the use of a broad and undefined operative term that a reasonable mind could view as retaliatory but occur in the ordinary course of business for a consumer finance company.

For example, a consumer files a consumer complaint with the AG's Office; however, a week later they missed a payment on their student loan. The consumer's credit score then in turn decreases, which causes a reduction in their line of credit. One may reasonably view this as retaliation from the filing of the consumer complaint, but the decrease in line of credit occurred because of the missed payment and corresponding credit score decrease, all of which are normal occurrences in the day-to-day functioning of a consumer credit company. We recommend defining "Retaliatory" as:

> "a merchant's response to a consumer's recourse against the merchant that is unrelated to the operation of the merchant's goods or services."

Lastly, we urge the inclusion of a "good-faith safe harbor" provision to accompany the bill's treble damages clause. Without such a safeguard, well-intentioned merchants could face excessive penalties despite acting responsibly. A safe harbor would encourage collaboration between merchants and consumers while deterring genuine misconduct.

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 erayhan@afsamail.org or (805) 501-8873 at your convenience.

Sincerely,

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