

April 14, 2017

The Honorable Mike Crapo
Chairman
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
Washington, DC 20510

Re: Request for Proposals to Foster Economic Growth

Dear Chairman Crapo and Ranking Member Brown:

The American Financial Services Association (AFSA)¹ appreciates the Senate Committee on Banking, Housing, and Urban Affairs' interest in legislative proposals to increase economic growth. The proposals outlined below will help AFSA members responsibly participate in the economy in a more effective and efficient manner. We believe that they will create real economic growth by increasing lending, creating jobs, and stimulating local economies.

AFSA urges Congress to reform the Consumer Financial Protection Bureau (CFPB) to improve its accountability, fairness, and transparency. The CFPB, created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), has extraordinary authority over all facets of consumer credit. Six years after its establishment, the CFPB has proven to be an agency that is neither accountable to Congress nor transparent to industry stakeholders and the general public. The Bureau is led by a single director, who can only be removed for cause, and who can unilaterally determine the agency's budget, priorities, and policies. The Bureau has the power to levy enforcement actions and promulgate regulations with a significant impact on the ability of consumers to access credit.

- *Structural Reform:* The CFPB should be subjected to traditional checks and balances by being restructured as a bipartisan commission, subject to appropriations and Congressional oversight. A bipartisan commission structure would provide a diversity of perspectives, leading to more balanced and effective regulation that weighs consumer protections against consumer credit. Placing the CFPB under the appropriations process would also ensure that the agency is not self-regulated and that Congress has proper oversight and funding authority over the Bureau as it does over other federal agencies.

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, direct and indirect vehicle financing, mortgages, payment cards, and retail sales finance.

- Use of Disparate Impact Theory in Vehicle Finance:* The CFPB should be prohibited from circumventing the formal rulemaking process by making policy through bulletins that neglect to consider stakeholder input. In 2013, for example, the CFPB issued a short bulletin that attempts to hold indirect auto lenders liable for discrimination resulting from dealer compensation policies. As well as being an example of guidance designed to function as rulemaking without due process of law, this is also contrary to the Dodd-Frank Act which prohibits the CFPB from regulating dealers. The CFPB has pursued disparate impact cases against financial services companies without a valid legal basis, employed the Bayesian Improved Surname Geocoding (BISG) statistical proxy methodology, which it knew was deeply flawed,² and refused to consider non-discriminatory factors that could explain alleged pricing disparities. The current model of dealership financing promotes competition and enables the consumer to negotiate a fair deal. Curtailing the discretionary pricing of financing could unnecessarily increase the cost of purchasing a vehicle. To ensure consumers are able to purchase or lease a vehicle at an affordable price in order to get to their job or to school, Congress should preclude the CFPB explicitly from using disparate impact liability theory under the Equal Credit Opportunity Act.
- Supervisory Authority:* Congress should remove the CFPB's supervisory authority and return it to prudential regulators or the states. The standards the CFPB is using to examine its regulated entities for their level of compliance are far-reaching and not well grounded in comparison to audit examinations that financial institutions experience from states. Rather than basing a company's compliance upon express and objective statutory law, it is being judged by the whim of the examiner. These examination practices make it impossible for a company to style its compliance model with an assurance that it will pass in the examination. The consumer finance industry is already subject to substantial supervision at the state level. State examiners have decades of experience examining financial companies and have a better understanding of the industry as well as what financial products and services their constituencies need and want. Because they know the market and consumers, they can better strike a balance of between appropriate access to affordable borrowing options and the need to protect consumers from harmful products and services.
- UDAAP and Regulation by Enforcement:* The Bureau's authority to ban products or services it deems unfair, deceptive or abusive (UDAAP) should be removed. The Bureau's use of "abusive" and "unfair" practices has stifled innovation in the marketplace through its ambiguity and creates a catch-all authority that the CFPB and state attorneys general may cite in prosecuting any business practice their agency fines disagreeable. For example, the CFPB brought an enforcement action against EZCORP for employing debt collection practices that were "unfair," even

² Staff of H. Comm. on Fin. Serv., 115th Cong., *Unsafe at Any Bureaucracy: CFPB Junk Science and Indirect Auto Lending*, Jan. 18, 2017. Available at http://financialservices.house.gov/uploadedfiles/1-18-17_cfpb_indirect_auto_staff_report_iii.pdf.

though they were consistent with federal and state law. Additionally, the CFPB is governing the industry through enforcement orders by telling the financial services industry it has to figure out how to comply with orders, even if they are not consistent. This has imposed an unnecessary, costly burden on financial companies, preventing them from spending that capital on job creation and product innovation.

- *Small-Dollar and Arbitration Rulemakings*: The CFPB's proposed small-dollar rule should not be finalized. The Bureau is statutorily prohibited from imposing rate caps. Yet, that is just what it is trying to do with its small-dollar rulemaking. The proposed rule imposes substantial and burdensome requirements on loans with a total cost of credit that exceeds 36 percent. As a result of such costly underwriting requirements, many lenders will not make such loans and charge such interest rates, potentially eliminating access to short-term, unsecured credit for most Americans. Additionally, the CFPB should not finalize the proposed arbitration rule that would prohibit the use of class action waivers. Arbitration is a fair and effective mode of settling agreements between borrowers and creditors. A careful reading of the CFPB's own study has shown that arbitration is inexpensive, fast, and beneficial to consumers. It also shows that class actions only benefit plaintiff's attorneys.

AFSA appreciates the opportunity to provide proposals that will promote economic growth and help consumers and financial companies better participate in the economy. If you have any questions, please do not hesitate to contact me at 202-466-8616 or bhimpler@afsamail.org.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive, flowing style.

Bill Himpler
Executive Vice President
American Financial Services Association